GOOD GOVERNANCE AND LEGAL REFORM IN INDONESIA

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R. Herlambang Perdana Wiratraman (Salaya, August 2006)

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GOOD GOVERNANCE AND LEGAL REFORM IN INDONESIA

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ABSTRACT

This thesis focuses on assessing good governance and legal reform, especially under the World Bank projects which have been introduced to Indonesia after the financial crisis in 1997, and analyzes its impact on human rights.

This thesis attempts to deconstruct mainstream discourse and practice of good governance in Indonesia and criticize its connection with donor-driven legal reform issues which are importantly assessed by using a human rights perspective. By deconstructing the presence and absence of the World Bank's projects of good governance and legal reform in Indonesia, it will picture legisprudence and its legal dynamic between text and context, particularly in assessing legislation-based human rights violations. This study uses a critical legal studies method, and focuses on labor legal reform as a neo-liberal project. Interviews and several focus group discussions were used by involving about 40 people, and it was conducted in Jakarta, Surabaya and Sidoarjo.

The findings of this study indicate that the World Bank projects on good governance systematically hegemonized and softly hijacked state and non-state institutions in Indonesia, particularly through bridge institutions which mystified the power asymmetry. These institutions have reproduced 'truth' and 'imperatives projects' under loan conditionalities, especially under a legal framework for development and its doctrine of rule of law. By analyzing three waves of labor legal reform in Indonesia post crisis (1997-2006), the World Bank has dominated the discourse of good governance and its legal reform.

The absence of this discourse is the issue of state obligation under a human rights framework which is shifted to good governance. Good governance favors a market friendly strategy, or in the case of labor, so called 'labor market flexibility'. Labor market flexibility hugely impacts the deprivation of labor rights, especially on the issue of outsourcing, liberal minimum wage, long-term contract workers, and restraining the role of the state in labor dispute mechanism. In the legisprudence perspective, legal reforms are found as tools to legitimize systematic human rights violations through legislation projects. This thesis deconstructs a 'market friendly human rights paradigm' under the flag of good governance and legal reform.

KEY WORDS: INDONESIA / GOOD GOVERNANCE / LEGAL REFORM /
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LIST OF ABBREVATIONS

AAUPB	*Asas-Asas Umum Pemerintahan yang Baik* (The General Principles of Good Governance/Proper Administration)
ABBB	*Algemene Beginselen van Behoorlijk Berstuur*
ACILS	American Center for International Labor Solidarity
ADB	Asia Development Bank
ADR	Alternative Dispute Resolution
AJI	*Aliansi Jurnalis Independen* (The alliance of Independent Journalist)
ALNI	Asian Labor Network on International Financial Institutions
ASPEK	*Asosiasi Serikat Pekerja Perbankan* (Banking Workers Association)
AusAID	The Australian Government's Overseas Aid Program
AWB	Algemene wet Bestuursrecht
Bappenas	*Badan Perencanaan Pembangunan Nasional* (National Development Planning Agency)
BIC	Bank Information Center
BPHN	*Badan Pembinaan Hukum Nasional*/National Law Development Agency
CDD	Community Driven Development
CDF	Comprehensive Development Framework
CGI	Consultative Group on Indonesia
CIDA	Canadian International Development Agency
CPI	Corruption Perception Index
CPPS	Center for Population and Policy Studies (Gadjah Mada University, Yogyakarta)
CSOs	Civil Society Organizations

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LIST OF ABBREVATIONS (CONT.)

Demos	Center for Democracy and Human Rights Studies
DFID	UK Department for International Development
DPR	*Dewan Perwakilan Rakyat* (People Representative Council)
DPRD	*Dewan Perwakilan Rakyat Daerah* (Local People Representative Council), it can be at province or district level.
EIR	Extractive Industries Review
ELIPS	Economic Law, Institutional and Professional Strengthening (Project)
EU	Europan Union
FBS	*Forum Buruh Surabaya* (Surabaya Labor Union)
FGD	Focus Group Discussions
Forum Asia	Asian Forum for Human Rights and Development (Bangkok-Thailand)
FPBN	*Forum Pendamping Buruh Nasional* (National Labor Defender Forum)
GALA	General Administrative Law Act (Netherland)
GGIC	Good Governance Information Center (Indonesia)
GGSD	Good Governance in Sustainable Development (promoted also as GSDG (Good Sustainable Development Governance)
G-7	Group of Seven, but now called as Group of Eight (G8) consists of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. Together, these countries represent about 65% of the world economy.
HIP	*Hubungan Industrial Pancasila* (Pancasila Industrial Relation)
HOM	The Netherlands Humanist Committee on Human Rights

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LIST OF ABBREVATIONS (CONT.)

HuMa	*Perkumpulan untuk Pembaruan Hukum Berbasis Masyarakat dan Ekologi* (Association for Community and Ecological Based Legal Reform)
IBRD	International Bank for Reconstruction and Development
ICCPR 1966	International Covenant on Civil and Political Rights
ICESCR 1966	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IFIs	International Financial Institutions
IGGI	IGGI, Inter-Governmental Group on Indonesia (now CGI).
IGJ	Institute for Global Justice
IHRIP	International Human Rights Internship Programme
ILGR	Initiatives for Local Governance Reform Projects
ILO	International Labor Organization
IMF	International Monetary Fund
INFID	International NGO Forum on Indonesia Development
ISAI	Institut Studi Arus Informasi (Information Flow Studies Institute)
JICA	Japan International Cooperation Agency
KAU	*Koalisi Anti Utang* (Coalition for Anti Debt)
Kepmenaker-trans	*Keputusan Menteri Tenaga Kerja dan Transmigrasi* (Manpower and Transmigration Ministerial Decree)
Kepmenaker	*Keputusan Menteri Tenaga Kerja* (Manpower Ministerial Decree)
KHN	*Komisi Hukum Nasional* (National Law Commission)
KKB	*Kesepakatan Kerja Bersama* (Common Employment Agreement)
KKN	*Kolusi, Korupsi dan Nepotisme* (Collusion, Corruption and Nepotism)

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LIST OF ABBREVATIONS (CONT.)

KontraS	*Komisi untuk Orang Hilang dan Korban Tindak Kekerasan* (Commission for Disappearances and Victims of Violence)
KAPB	*Komite Anti-Penindasan Buruh* (Committee against Labor Oppression)
KPK	*Komisi Pemberantasan Korupsi* (Corruption Eradication Commission)
KPKD	*Konsorsium Pengawas Kinerja DPRD* (Consortium for Parliament Monitoring)
KPPD	*Kelompok Perempuan Pro Demokrasi* (Pro-Democracy Women Group)
KPU	*Komisi Pemilihan Umum* (General Election Committee)
KRHN	*Konsorsium Reformasi Hukum Nasional* (National Law Reform Consortium)
LBH Jakarta	*Lembaga Bantuan Hukum Jakarta* (Jakarta Legal Aid Institute)
LBH Semarang	*Lembaga Bantuan Hukum Semarang* (Semarang Legal Aid Institute)
LBH Surabaya	*Lembaga Bantuan Hukum Surabaya* (Surabaya Legal Aid Institute)
LCHR	Lawyers Committee for Human Rights (US)
LoI	Letter of Intent
LP3ES	Institute of Economic and Social Research, Education, and Information
MBH	*Perkumpulan Masyarakat Bantuan Hukum* (Indonesian Legal Aid Society)
MDBs	Multilateral Development Banks
MNCs	Multinational Corporations
MPR	*Majelis Permusyawarakatan Rakyat* (Assembly of People Representative)

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LIST OF ABBREVATIONS (CONT.)

NGO	Non-Governmental Organization
OECD	Organisation for Economic Co-operation and Development
P4D	*Panitia Penyelesaian Perselisihan Hubungan Industrial* (Committee of Industrial Relation Dispute Solving)
Papanjati	*Paguyuban Petani Jawa Timur* (East Java Peasant Union)
Permenaker	*Peraturan Menteri Tenaga Kerja* (Manpower Minister Regulation)
PERPU	*Peraturan Pemerintah Pengganti Undang-Undang* (Substitute Government Regulation of Act).
PPHI	*Pengadilan Perselisihan Hubungan Industrial* (Industrial Relation Dispute Court)
PPK	Sub-District Development Program or *Program Pengembangan Kecamatan* (Kecamatan Development Program
Prolegnas	*Program Legislasi Nasional* (National Legislation Program)
PRSPs	Poverty Reduction Strategy Papers
PSHK	*Pusat Studi Hukum dan Kebijakan* (Law and Policy Study Center)
RCS	Report Card System
RKP	*Rencana Kerja Pemerintah* (Government Work Plan)
SAP	Structural Adjustment Program
SAPRI	Structural Adjustment Participatory Review Initiative
SMERU	SMERU Research Institute
SBPD	*Serikat Buruh Payung untuk Demokrasi* (Umbrella Labor Union for Democracy, Sidoarjo)
Spektra	*Studi Pengembangan Ekonomi Kerakyatan* (Spektra)
SPN	*Serikat Pekerja Nasional* (National Worker Union)
SPSI	*Serikat Pekerja Seluruh Indonesia* (Indonesian Labor Union)
TNCs	Transnational Corporations

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LIST OF ABBREVATIONS (CONT.)

The Partnership	Partnership for Governance Reform (Indonesia)
TURC	Trade Union Research Center (Jakarta-Indonesia)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UPP	Urban Poverty Project
USAID	United States Agency for International Development
UUD 1945	*Undang-Undang Dasar 1945* (1945 Indonesian Constitution)
UUDS	*Undang-Undang Dasar Sementara-Republik Indonesia Serikat* (Indonesia Republic United Constitution)
WBI	World Bank Institute
WCD	World Commission on Dams
Wet AROB	*Wet Administratieve rechtspraak over-heidsbeschikkingen*
WTO	World Trade Organization
YPSDI	*Yayasan Pengembangan Sumberdaya Indonesia* (The Foundation for Indonesian Resource Development)

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CHAPTER 1
INTRODUCTION

1.1 Context of the Research

The issue, concept, practice, and assessment of good governance are not new, and this issue has been concerned and criticized by many scholars (Abrahamsen 2000; Bello 2002, 2005; Bendana 2004; George 1995; Parasuraman, et. al. 2004; Pieterse 2004; Purbopranoto 1978; Quadir et al. 2001; Robinson 2004; Selznick 1969; Gathii 1998; Hosen 2003). Since the early 1980s, and more prominently in the 1990s, it has been seen as a gradual emergence of the promotion of democracy and the strengthening of good governance as both an objective of and a condition for development cooperation (Abrahamsen 2000; Stokke 1995; Gathii 1998). The World Bank was the first institution which introduced the concept of 'public sector management programs' in order to maintain better governance in the frame of development assistance conditions, well known as Structural Adjustment Program (SAP) (Dasgupta 1998; World Bank 1983: 46). Good governance in this context is a sound of development.

As a sound of development, actually it has indeed shown process of disciplining democracy or model of governance at that time. Crisis in Africa brought clearer messages on establishing a new concept of governance to encounter what the World Bank identified as a 'crisis of governance' or 'bad governance' (World Bank 1992). In this context, governance was mentioned as 'the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank 1989: 60). The experience of Africa in the post-debt crisis and post Cold War has also been convergence as a backdrop of a general climate in

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favor of free markets and liberal democracy, and it has tremendously shown good governance as politico-legal imposition by the Western, industrialized countries, and international agencies (including donor institutions) in shaping market governance (Abrahamsen 2000; Stokke 1995; Gathii 1998).

In Indonesia, although the word good governance was not exactly used, it actually has been similarly promoted before the financial crisis in 1997 or during the authoritarian regime of Soeharto, which in turn was tremendously influenced by the World Bank SAP. Historically, the idea of governance which has been applied to government bureaucracy, judicial institutions, and also parliament was more shaped by the Dutch legal legacy, known as *algemene bepalingen van behorlijk bestuur* (general principles of good government). It was introduced to students at every school of law in Indonesia under constitutional and administrative law as well as at economic or public administration schools.

However, in practice, the World Bank's governance concept dominated government policies in complementing loan conditionalities, regardless of their positive or negative impact these policies were meant to be obeyed and implemented by the government. This situation in Indonesia was similar to the experience of other neighboring countries who had received loans from international financial institutions, particularly after the financial crisis in 1997.

The World Bank imposition of governance reform was strongly injected after the Asian financial crisis. The practices of 'bad or poor governance' were also – like the African experience -- diagnosed by the Bank as a serious factor in causing the crises in East Asia and Southeast Asia, including Indonesia. After the fall of Soeharto, various loan projects under governance reform and hundreds millions dollars were given to the government, and it inevitably became mainstream on law and governance issues. Through many institutional and legal reforms, and decentralization projects, the term of good governance became sexy, famous and pronouncedly used by bureaucrats, politicians, academics, anti-corruption activists and many others, as a new icon in accompanying democratization process in Indonesia.

Given the context above, this thesis attempts to deconstruct mainstream discourse and practice of good governance in Indonesia, and to criticize its connection with donor-driven legal reform issues which are importantly assessed through a

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human rights perspective. By deconstructing the presence and absence of World Bank good governance projects and legal reform in Indonesia, it will picture legal dynamics between text and context, particularly in assessing legislation-based human rights violation.

1.2 Statement of Research Problem

There are at least three important facts to be considered in analyzing good governance and its myth. First, the problem of good governance and legal reform project which has been designed and transplanted by the World Bank, and greatly and systematically injected under financial 'assistance' or loan and its conditionality schemes. Interestingly, it is doubtful why it has emerged and influenced the development agendas in spite of the fact that the Bank's driving management has shown bias in favor of implementing good governance projects in the framework of sustaining economic growth and market liberalization rather than fighting impoverishment and economic inequalities.

Second, according to the database of Corruption Perception Index (CPI) published by Transparency International, the Indonesian corruption level has been growing and worsening from year to year since 1995 (as the most corrupt country) up until the present regime (2005), including the regimes before and after the fall of Soeharto in 1998. It means that the role of World Bank projects on good governance and legal reform (included judicial and institutional reform) is highly questionable. By flooding hundreds of millions of dollars in loan projects on governance reform to the Indonesian government since the crisis could not reduce and mitigate the problem of corruption itself.

Thirdly, as side effects of the two problem facts mentioned above, although democratization process has been promoted, it still does not touch the model of governance which tackles human rights problems, especially in protecting and fulfilling economic and social rights. Under good governance projects, the government does not seriously implement and protect human rights. This experience was studied by Abrahamsen (2000), in the four African Sub-Saharan countries where human rights were perceived as irrelevant to good governance business. In Indonesia,

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on the one hand, people are still facing human rights problems, such as hunger and poverty, deprivation and privatization of public services, lack of education and health access, and the large number of unemployed workers. On the other hand, there is still rampant prevalence of corruption at the levels of bureaucracy and parliament, not only in Jakarta as the central government, but also in many local governments after the decentralization projects were actively launched. Here, the model of good governance should be reviewed by performing 'state obligation' as human rights indicator to measure whether the government protects and fulfils human rights.

Because of these factors, the role of World Bank and its projects in sponsoring good governance and legal reform are significantly questionable, whether there is an absence of human rights promotion or lack of attention to respond to those problems, needs to be investigated into.

The idea of good governance itself has been introduced and projected by not only the World Bank, but also International Monetary Fund (IMF), Asia Development Bank (ADB), international community, donor countries, United Nation agencies and other institutions. It has become a mainstream on governance reform. Although its principles look 'good', as written in the term 'good governance', they are not necessarily so. Moreover, when we look at its principles, such as decentralization, participation, financial accountability, transparency, and rule of law, we should also check whether or not the word 'good' in this context has positive impacts on human rights or whether it is contrary to the principle of human rights.

Like the African Sub-Sahara, Indonesia is also a country which started to apply neo-liberal policies on good governance after the economic crisis, or post authoritarian regime of Soeharto. These policies include political and legal framework under loan conditionality schemes, which favor the free market paradigm. The notion of neo-liberalism here refers to the role of the World Bank and neo-liberals proponents, included bureaucrats/technocrats, academics, non-governmental organizations, civil society groups, multilateral and partnership groups, in sponsoring and defending the importance of free market paradigm and liberal democracy at each policy level. In this mainstream, discourse and prescription on good governance have been applied as 'robotic type' of development management, and human rights problems are still not being adequately dealt with. Good governance is also adjusted

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within the context of grand scenarios of the World Bank and other free market proponents, by shifting governance in the framework of ‘structural adjustment program’ to ‘poverty reduction strategies program’ (Guttal 2000).

Although good governance itself has been continuously introduced in lectures at Constitutional and Administration Law course in every law school, there are not many studies that scrutinize the implementation of good governance, legal reform and its impact on human rights situation in Indonesia. Anti-corruption movements also strengthen this concept without considering the context, ideology and paradigm behind it. Under the World Bank poverty reduction and economic management projects, it was introduced explicitly that the role of Bank focused on controlling corruption in Bank-financed projects (World Bank 1997a: 29-34). The governance reform projects through good governance tend to serve the promotion of economic and social reform consensus, especially by applying technocratic empowerment and liberal language of participation. The World Bank has also exported experts and its technical assistance under conditional scheme. In the fight against corruption, what the neo-liberals have addressed through governance reform projects can negate the strong effort of combating corruption itself because the matter of corruption is fixed or inherent in ‘designated-loan projects’ and in pushing for ‘comprehensive facilitation of private development’ (World Bank 2004b; Justice for the Poor-World Bank 2005). Unsurprisingly, the problem of corruption is worsening year after year since the financial crisis, especially in the countries which depend on foreign debt policies and apply good governance selectively in favor of the free market paradigm.

Presently, good governance becomes a mainstream idea which systematically influences many policy makers, politician, bureaucrats, judges, university lecturers and activists in Indonesia. There are limited concerns to debate or criticize good governance under neo-liberalism discourse, Limited number of works look at more detail legal reform designs and its impact on human rights through policy and implementation.

In order to address these problems, the thesis will address good governance and legal reform in relation to human rights.

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1.3 Objective of Research

The main objective of this research is to study the causal link between World Bank projects on good governance, legal reform and its impact on the promotion and protection of human rights in Indonesia.

The specific objectives of this research are,

1. To analyze the prevalence and domination of the World Bank's projects on good governance
2. To analyze the discourse and practice of the World Bank's projects on good governance and its legal reform framework.
3. To assess through a human rights perspective the impacts of the World Bank's projects on good governance on legal reform in Indonesia, especially in shaping legislation policies.

1.4 Key Research Questions

Although the World Bank has given loan up to hundreds of million of US dollars through governance reform (including legal reform) in Indonesia since the economic collapse in 1997/1998, it seems that good governance rather seeks to facilitate neo-liberalism grand scenarios in promoting market liberalization paradigm. In this regard, the key question in this research will identify whether legal reform framework, which is seen as conditionalities of good governance under the World Bank's projects, have any relation to and impact on the promotion and protection of human rights in Indonesia.

In order to explain this key question, the research will address the following questions:

1 Why did the World Bank project on good governance become so prevalent and dominant?

2 Did the projects of good governance and its legal reform framework subvert democratic governance and human rights discourse? How are the issues about World Bank's projects on good governance and legal reform debated and practiced?

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3 Do the World Bank's projects on good governance and its legal reform framework contribute to the promotion and protection of human rights in Indonesia?

1.5 Research Methodology

1.5.1 Overall research design

This research uses qualitative method carried out by documentary and policy research, using semi-structured interviewing as well as purposive sample. This research uses interview of key person in the World Bank, government and other relevant persons who are involved directly in decision making process on good governance and legal reform projects in order to get formal statement. Informal statement is collected from various sources such as media, workshop transcript and others. Focus group discussions (FGD) were used. Besides interview, the research also observes directly the related projects at the ground level.

The study focuses on discourse and practice of World Bank projects on good governance and legal reform under loan condition schemes which have been injected after the fall of Soeharto in 1998 until the present. Since the focus goes to the examination of World Bank project as one of major international financial institutions, it is necessary to look into its official documents in detail, such as policy statements, annual report, briefing papers, training manuals, during that period. The policy documents are examined, especially those dealing with the Indonesian projects. The study also explores how good governance is transplanted into certain policy by bureaucrats and technocrats at various levels. Those findings are critically examined by using human rights perspective based on international human rights standard, constitutional and national legal framework.

1.5.2 Documentary research

The documentary research is used to look at World Bank project on good governance and legal reform in more details. It uses as primary resources from the World Bank's documents, such as World Development Report, Policy Research,

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Project Documents, Briefing Papers, Operational and Evaluation Documents, Press Release and also official written statements. Most of the World Bank's resources are accessed from internet, and the rest is taken directly by visiting World Bank offices in Jakarta and Bangkok. In scrutinizing national policy, this research studies Indonesian government documents, such as law or regulations, project or planning documents, workshop reports and official written decisions. Mostly, those documents are taken by visiting directly to government offices in Jakarta, although some documents can be accessed electronically.

The materials used in this research are supplemented by secondary sources, such as the reports of non-governmental organizations or research institutions relating to the issue of good governance and legal reform. The documents include annual report, bulletins, articles, workshop or FGD proceedings.

1.5.3 Policy research

The thesis studies policy impacts, particularly the World Bank's projects on good governance and legal reform in order to get a comprehensive picture of World Bank project on good governance. It tries to analyze policies carried out by the World Bank and Indonesian government. In analyzing policy, it carefully scrutinizes and differentiates policy as an expression of general purpose or desired state of affairs, specific proposals, decisions of government, formal authorization, programme, output, outcome, process and a theory or model (Hogwood and Gunn 1984: 12-31).

The project on good governance and legal reform have been promoted not only by the World Bank, but also by other financial or development institutions such as the Asian Development Bank (ADB), the International Monetary Fund (IMF), the United Nations Development Program (UNDP), or donor countries such as USAID (United States), AusAID (Australia), JICA (Japan), and also a multilateral agency (Partnership for Governance Reform and Consultative Group for Indonesia). Although many projects are involved in shaping Indonesian good governance and legal reform, but this research does not touch all of them. Rather it focuses on the problem and the process of policy decision carried out by the World Bank and its cooperation with other institutions.

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1.5.4 Collecting Data: Interview and FGD

Since the research also attempts to tackle the issue on the impacts of World Bank projects, the researcher interviews people who are directly and indirectly involve with the World Bank projects on good governance and legal reform. The purpose for the interview is to clarify, interpret and get responses regarding the projects before analyzing in a more systematic way. During research, interviews with two World Bank consultants and Daniel Kaufmann, the Director of Global Program, the World Bank, was conducted.

The thesis uses a semi-structured interview to get detailed information and deeper comments from official World Bank staff and government bureaucrats. Although it uses a semi-structured interview, the research remains open for expanding the questions (open questions) in order to deepen the theme provided they are related to the research objective. Field interview through focused group discussion (FGD) is used to explore public opinion and to understand their responses to World Bank's projects. Group discussion combined with structured and unstructured interview (or semi-structured interview) was conducted in participatory way (Bryman 2004: 126). It includes particular communities which are involved or affected by the projects, particularly labor unions in Surabaya. Semi-structured interview is conducted in order to minimize the problem of broader and irrelevant issues which usually occur, and to focus on a specific issue which affects the people. This thesis benefits from several FGDs that have been conducted voluntarily by including the labor, NGOs, and public interest lawyer groups. This research was conducted during March-June 2006 tenure of the labor legal reform in Indonesia and also during the International Labor Day, 1 May 2006.

1.5.5 Sampling

The sample in this research is purposive sample, or purposeful sampling, which means that sample is carried out in a deliberate way with a certain purpose or focus in mind (Punch 2005: 187-188). This sampling is a strategy in which particular settings, persons, or activities are selected deliberately in order to provide comprehensive information. Selecting times, settings, and individuals that can provide

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the information required to answer the research questions is the most important consideration in qualitative selection decisions (Maxwell 2005: 87-91). Although it uses purposive sample, this research has also tried to find and scrutinize other persons or opinions that are possibly different or contradictory in order to picture comprehensive argumentations from various perspectives. In this thesis, short interviews with legal experts on the issue of legal reform and human rights, such as Prof. Dr. Gordon Woodman (Birmingham University, UK) and Prof. Soetandyo Wignyosoebroto, MPA. (Airlangga University, Indonesia) are conducted.

Purposive interview is addressed to those people in charge of the World Bank projects on good governance and legal reform in particular, including World Bank staff in Indonesia, government officials, projects consultants, multi-stakeholders institutions or forums (especially Partnership for Governance Reform), non-governmental organization sponsored by the Bank and government agencies, and labor organization activists in Jakarta and Surabaya.

1.5.6 Research Scope

Although many institutions are involved in the project, but this research only studies World Bank projects and other cooperated or related institutions concerning good governance, legal reform and its impacts on legal reform in Indonesia. It covers the period after the financial crisis 1997/1998 until 2006. In exploring the seven-year period of practicing good governance, this thesis finds sufficient data in policy formulation and implementation, as well as its impact.

In assessing the impacts of World Bank project on good governance to legal reform in Indonesia, this research highlights the legislation which dealt with the governance reform project during 1997/1998 to 2006. Those legislations are entirely important to be seen as part of shaping legal framework and its implementation under the Bank’s conditionalities. However, in order to understand deeply the protection of human rights, it focuses on specific legislation in relation to major labor policies: Act Number 25/1997 concerning Manpower; Act Number 21/2000 concerning Labor Union; Act Number 13/2003 concerning Manpower; Act Number 2/2004 concerning Industrial Relation Dispute Settlement; and the most current controversial one, 2006

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new Revision Draft of Act Number 13/2003 concerning Manpower. This thesis does not try to limit the importance of other labor legislation policies during the past seven years, such as Manpower Ministerial Decree.

Concerning research sites, this research covers three major areas, Jakarta, Surabaya, and Sidoarjo. Jakarta and Surabaya are chosen because both of them are the largest city and population in Indonesia. Surabaya is a capital city of East Java which is the second most corrupted after Jakarta. More interestingly, Jakarta and Surabaya also have stronger labor movement and groups than other cities in Indonesia, particularly in protesting against legislation which affect labor rights. Sidoarjo is also chosen because this district has a very large number of industrial bases, and most of the time Sidoarjo labor groups base are involved in the labor movement in Surabaya as it is capital city.

1.6 Theoretical Framework

The theoretical framework in this thesis is a collection of interrelated concepts, which guides the research in determining what it will be measured. This part overviews the development of good governance discourse in general, and the critiques posed by scholars. Then, it shows the background of the thesis before addressing the specific case of good governance and legal reform in Indonesia. The theoretical framework in this part focuses on the issue of good governance, rule of law and its legal framework, and the dynamic of text-context on specific cases which are deconstructed by using Critical Legal Studies.

1.6.1 Discourses on Good Governance in General

Action Aid has contributed significantly in exploring the concept of good governance. In its publication, human concern with good governance is as old as civilization itself, and it is evident in the writings of social philosophers, political thinkers, and administrators (Parasuraman 2004: 1). Good governance is a ‘container’ concept. It has appeared in many other words, but they have pretty similar meanings. Significantly, there are three perspectives in defining and promoting good governance, namely, first, good governance promoted by the World Bank, or neo-liberal model;

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second, good governance with human development perspective; and third, good governance with human rights perspective.

The first one, historically in development assistance projects, discourse on governance was introduced by the World Bank in early 1980s. It was the concept of 'public sector management programs' in order to maintain better governance in the frame of development assistance conditions, or well known as 'Structural Adjustment Program' (SAP) (Dasgupta 1998; World Bank 1983: 46). In this idea, governance was designed as 'loan conditionalities'. The World Bank concept on good governance could be easily found in many of its reports. As 'loan conditionality', a similar concept of good governance in this context is also found at ADB or IMF perspective in its documents (ADB 1999; IMF 1997). In World Bank (1992) terminology 'governance' is defined as the exercise of political power to manage a nation's affair. This management – also called public sector management – has three components: (i) legal framework for development; (ii) accountability; (iii) transparency and information. In defining good governance, the World Bank distinguishes between two aspects of good governance, a political aspect concerning legitimacy and a technical aspect concerning capacity.

In its 1989 report, the World Bank expressed, "Efforts to create an enabling environment and to build capacities will be wasted if the political context is not favorable. Ultimately, better governance requires political renewal. This means a concerted attack on corruption from the highest to lowest level. This can be done by setting a good example, by strengthening accountability, by encouraging public debate, and by nurturing a free press. It also means fostering grassroots and non-governmental organizations such as farmers' associations, co-operatives, and women's groups" (World Bank 1989).

Concurrently, the Bank stated that "Good governance is epitomized by predictable, open and enlightened policy-making, a bureaucracy imbued with professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption." (World Bank

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1994: vii). In campaigning for good governance, the World Bank programmed a learning program, and it introduced the concept of governance. Good governance in its manual is defined as the effective implementation of policy and provision of services that are responsive to citizen's needs. Good governance embodies such qualities as accountability, responsiveness, transparency and efficiency. It assumes government abilities to maintain social, peace, guarantee law and order, promote and create conditions necessary for economic growth and ensure a minimum level of social security (World Bank 2002). This definition actually has been still and strongly established to encourage the rules that make market work efficiently and, more problematic, they correct for market failure (World Bank 1992).

Because good governance approach in the World Bank's definition highlights issues of 'accountability', particularly in maintaining reform for political stability and economic development, this concept actually focuses on liberal democracy model and economic liberalization (neo-liberalism model), or 'good governance free market assistance (Wiratraman 2006).

The second one, the concept of good governance is also approached by using human development perspective, particularly promoted by United Nations Development Programme (UNDP). From human development point of view, good governance means the exercise of political, economic, and administrative authority to manage a nation's affairs. It is the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interest, exercise their rights and obligations and mediate their differences (UNDP 1997a: 9). According to UNDP, the role of state is critical for creating economic environment conducive for sustainable human development. The State should protect vulnerable, improving governance efficiency and responsiveness, empower people and democratize the political system. These objective can be achieved only by state through decentralization, reducing the gap between rich and poor, by encouraging cultural diversity and social integration, and protecting the environment (UNDP1997b: 22-23).

And the third one, good governance is attached to the issue of human rights. Rooted in universality of human rights, it asserts that meaningful and sustainable development is possible only when all people have full access to and are able to enjoy all of their human rights. Human rights approach maintains that poverty and

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marginalization are primarily the consequences of human rights violations and the process can be reversed only when people are able to reclaim their rights (Parasuraman 2004: 47). Good governance contains general principles for recommending to the government to conduct of proper and clean governance, including responsive to human rights. Political recommendations may lead to greater fulfillment of human dignity, but it does not necessarily lead to increased respect for human rights. There is a difference between being given something and being entitled to something (Eide and Rosas 1995: 15-20; Kjoer and Kinnerup 2002: 1-18), and in human rights perspective, rights are entitled to everyone.

Human rights have and should continue to become an integral element of good governance programmes. It means that good governance also should reflect and apply substantial provisions in human rights. For instance in ICESCR 1966, the state should undertake steps to achieve 'full realization' of rights, by implementing 'progressive realization' and minimum core standards, maximizing and prioritizing availability resources, and applying the principle of non-discrimination. By using rights based approach, good governance is also expected to respect, protect and fulfill human rights which are based on rights entitlement and legal provisions.

Table 1: **Comparison Concept on good governance**

Issues	**Neo-Liberal Model**	**Human Development Model**	**Human Rights Model**
Good governance objective	Efficient resource management	Sustainable human development	Realization of all human rights of all
Focus of good governance	Helps market to flourish	Poverty reduction through sustainable development	Protection and enjoyment of human rights by all people and communities, particularly poor and vulnerable people.
Proponents	World Bank, IMF, ADB, OECD, G-7, EU, Northern Governments, etc.	UN Agencies	NGO's, people's movement, Organization of Poor People, Labor Union, Women's

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			Group, UNHCR, etc.
Core elements	Accountability, Rule of Law, Transparency and Participation	Also responsiveness, consensus building, equitability, efficiency, decentralization	Rule of justice, equity, protection and enjoyment of rights of all, people's planning and implementation.
Role of State	Retreating State	Versatile role for State	Interventionist State
Role of market	Dominant	Important but not supreme	Limited role in governance
Role of civil society	One of the actors	An important actor	Active civil society

Source: Parasuraman (2004:54)

1.6.2 Rule of Law and Legal Framework

Criticism against World Bank projects on good governance has been stipulated by many scholars, and it refers to derivative mantras of the rule of law and legal framework for development as a tool to promote market liberalization. In the current discourse of law and development, there has been concerned political discursive the role of law in development as promoted by the World Bank as the major influential player. As mentioned above, good governance has many interpretations, depending on whose interprets and when is it interpreted.

This thesis concerns on core elements of good governance as designed by the World Bank, namely, the rule of law. The doctrine of the rule of law has very broad perspective as well, but this thesis focuses on how the rule of law is defined by the World Bank. It is because related to the key dimensions of good governance: accountability, a legal framework for development, information and transparency (Cheria et al 2004: 37). In the early 1990s, the World Bank expanded its lending on legal reform in the promotion of good governance agenda. For the World Bank, law and its implementation are seen as important factors to strengthen economic growth and development. In supporting economic growth and free market system, one of principal elements of good governance is legal framework for development (World Bank 1992). In this legal framework, the rule of law is the primary concept which is

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instrumentality and substantially important, because it concentrates on justice, fairness and liberty. The World Bank emphasizes a 'fair' legal system, which is conducive to balance development (World Bank 1992: 29-30). That is why, unsurprisingly, World Bank perspective on good governance is dealt primarily with the legal needs of the commercial actors in the markets (LCHR 1993: 53).

A very critical opinion in analyzing the relation between the rule of law and legal framework for development under good governance agenda was written by Tshuma (1999). According to this analysis, the World Bank began addressing law reform in 1990s when good governance became part of its development agenda (World Bank 1992; 1995a). This legal framework for development is actually the evolution of World Bank projects, when the Bank promoted good governance as synonymous with sound development management (World Bank 1992: 1; Tshuma 1999: 79). It is because of this that the World Bank put the doctrine of the rule of law as a precondition for economic development.

There are five elements to be set as rule to be enforced, or as mechanisms ensuring application of rules. The first element implies the existence of a coherent set of rules, their communication with accuracy, clarity and effectiveness, and the application only of those rules known in advance. This element of the rule of law is said to be essential to the creation of climate predictability. The second element emphasizes the application and the enforcement of law. It addresses the need for effective administration of law, which refers to the procedures and institutions for implementing rules. The third element deals with the need for the state to exercise power under the authority of law. It addresses the issue of prescribing and proscribing discretionary power. The fourth element is conflict resolution, which means that the rule of law should function independently and there should be a credible judicial system to ensure economic efficiency. The fifth aspect addresses procedures for amending law. The Bank argues that the rule of law is instrumental in creating a climate of predictability and stability (Tshuma 1999: 81-82).

The perspective of the rule of law by emphasizing procedural and institutional version, in order to guarantee stability and predictability which are essential elements of a business climate, is a perspective more influenced by Weberian model in law. Weber (1978: 24-26) identifies four ways of orienting social

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action: instrumentally rational, value rational, affectual, and traditional. He argued that the predictability and calculability of a legal system was important for capitalist development. The rule of law as precondition for liberal capitalism is the conversion of all the means of production – land, labor and capital – into commodities whose chief value is their exchangeability in the market (Tshuma 1999: 85). In this regard, the capitalistic conversion means transformation process into commodities that use coercive state power to dispossess large number of society. Similarly, Polanyi (1944) stressed that the transformation had traumatic consequences for those who were dispossessed of their means of production and who were consequently forced to sell their labor in order to survive (Polanyi, in Tshuma 1999: 85).

In this context, the World Bank's projects of good governance actually set up democracy design by promoting the importance of procedural and institutional version of rule of law and by developing legal framework for development in facilitating free market paradigm. And these are World Bank's requirements for improving business culture and ethics (World Bank 1997a: 11-12). It has been clear that the idea of legal framework for development under good governance and its reform project has been exacerbated by neo-liberalist perspective in designing free market paradigm. The presupposition of necessary 'fit' between globalizing capitalism and the rule of law is grossly overstated (Scheuerman 1999: 19). In the other words, the doctrine of the rule of law has been proposed to shape market friendly legal system strategy, for underpinning economic imperialism through good governance as political-economic architecture.

In Indonesian context, under governance reform projects, the World Bank chairs the annual Consultative Group for Indonesia (CGI) and works closely with UNDP and ADB as major founding sponsors of the Partnership for Governance Reform (World Bank 2003c). Through these forum and multi-stakeholder group of partnership, the World Bank has involved in setting up legal framework for development, such as judicial reform, legal reform and also in establishing new government institutions to support this framework.

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1.6.3 Critical Legal Studies

The socio-legal research approach that this thesis used is intertwined with the role of legal study and social theories approach. This approach attempts to use critical theory to criticize positivism which is mainstream in legal study, particularly in understanding good governance and legal reform as major issues in this thesis. Tamanaha (1997: 2) explained that the label of socio-legal studies has gradually become a general term encompassing a group discipline that applies a social scientific perspective to the study of law, including the sociology of law, legal anthropology, legal history, psychology and law, political science studies of courts, and science-oriented comparativists. There has been strong 'critical' wing within socio-legal studies which is explicitly political in orientation, as a branch of critical theory of law, and initially provoked as critical legal studies (Silbey and Sarat 1987; Unger 1976, 1986, 1996; Schlegel 1984).

Critical theory in law in this context is well known as Critical Legal Studies. What is Critical Legal Studies? Critical Legal Studies is a theory that challenges and overturns accepted norms and standards in legal theory and practice. The basic idea of Critical Legal Studies is that the law is politics and it is not neutral or value free. Critical Legal Studies believes that logic and structure attributed to the law grow out of the power relationships of the society and the law exists to support the interests of the party or class that forms it and is merely a collection of beliefs and prejudices that legitimize the injustices of society. The powerful uses the law as an instrument for oppression in order to maintain their place in hierarchy. On the other perspective, Critical Legal Studies approach is used to encounter legal formalism approach in law that argues differentiation between law and politics, and law is rationally assumed in neutral positions. According to Weinrib who defense legal formalism, "Legal formalism is the approach that tracks the implications of form through the doctrines, institutions, and conceptual structure of a sophisticated legal system" (Weinrib 2003: 325-273)

One of the legal thinkers who prominently advocates of this idea, Roberto Mangabeira Unger, who stated that 'a constellation of governments', with the expansion of large state institutions, large corporations, and large universities, private

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individuals become increasingly dependent for their livelihoods, safety and security on organizations that are like governments: complex organizations have self contained rules, legal procedures, and ways of allocating power and making decisions (Unger 1976: 193). Institutions are increasingly governed by combinations of "state authorized rules and privately sponsored regulations and practices" (Unger 1976: 202). As a result of these factors, there are more and more laws that "neither defines the behavior of public officials or private transactions" (Unger 1976: 201). A law becomes more substantively rational as it becomes shaped by social policies and goals: law becomes characterized by "open ended standards, and general clauses in legislation, administration, and adjudication" (Unger 1976: 194).

Unger (1996: 9) has also written on neo-liberalism, which he explained as the program of macroeconomic stabilization without damage to the internal and external creditors of the state, of liberalization, understood both more narrowly as acceptance of foreign competition and integration into the world trading system and more generally as the reproduction of traditional Western contract and property law; of privatization; meaning the withdrawal of the state from production and its devotion, instead on social responsibilities; and of the development of social safety nets designed to compensate, retrospectively, for the unequalizing and destabilizing effects of market activity. Responding to this issue, Unger (1996: 9-10) said that neo-liberalism program has twin counterparts in the rich industrial democracies: one, overtly intolerant of governmental activism in the economy and hostile to worker and welfare rights; the other, a chastened, liberalized version of social democracy that is fast becoming the new center of gravity of Western politics.

In the context of capitalism, critical legal studies see that law is aimed to maintain market liberalization through domination, and law is a source of alienation and oppression. Legal framework for development in this scheme is based on 'essential legal relations', which support the exploitation in labor (Turkel 1996: 67-78). Laws are changed to discipline majority, restrict their rights of association and make it difficult to protest against the consequences of neo-liberalism and to develop alternatives (Filho and Johnston 2005: 1-6). Critical Legal Studies strongly focuses on deconstructing perspective on neutrality of law, because law is actually an expression

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of the economic interests of classes which dominate the working classes through legal ideas or articulation.

In the context of power, law is seen as source of power in making dependency and domination. Law can be a tool of suppression and subordination in social relations, and may be defined ‘as the capability to secure outcomes where the realization of these outcomes depends upon the agency of others’. Power in this context, either the broad or the restricted sense, refers to capabilities (Giddens 1976: 111). Based on the postmodern concept, explaining the power has close relationship with representation and knowledge, and making a ‘regime of truth’. Michel Foucault theorized on the relationship between power and knowledge/truth. According to him, he believed that truth is not outside power, or lacking in power. Truth is a thing of this world which is produced only by virtue of multiple forms of constraint. It also induces regular effects of power (Foucault 1980: 131). Power as a structure and process has potentially reproduced various violations, exploitations and deprivations of rights. In connecting with postmodern concepts, the power has reproduced ‘knowledge’ and ‘truth’ resulted by a system of ordered procedures for the production, regulation (law and its legislations), distribution, circulation and operations of statement (Foucault 2002, 1980, 1979). Reproducing legal texts is basically representing system of ‘knowledge’ and ‘truth’.

In the context of ideology, laws are seen as result or expression of particular ideology which dominantly influence legislation process. The emergence of good governance is also perceived as a form of ideological product, particularly neo-liberalism which has been found in this thesis. Neo-liberalism as ‘a dominant ideology’ tries to construct ‘politically lock-in neo-liberal reforms’ (Gill 1997). Ideology has often been thought of as ‘thought that mechanically served the interests of the rulings classes, or else as false or socially determined consciousness’ (Beirne and Quinney 1982: 253). Or, the belief might be developed intentionally by a dominant class to secure its interests (Sumner, 1979; Larrain, 1979; McLellan, 1986).

Gramsci’s theory of hegemony is relevant in this context because it dealt with his conception of the capitalist state, which he claims rules through force plus consent. The state is not to be understood in the narrow sense of the government. He divides it between ‘political society’, which is the arena of political institutions and

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legal constitutional control, and 'civil society', which is commonly seen as the 'private' or 'non-state' sphere, including the economy. According to Gramsci, the bureaucratic and technological rationalism analyzed by Weber was part of the capitalist ideological hegemony functioned to repress the working class (Gramsci, 1971: 60). Gramsci argued that under modern capitalism, the bourgeoisie can maintain its economic control by allowing certain demands made by trade unions and mass political parties within civil society to be met by the political sphere. Thus, the bourgeoisie engages in 'passive revolution' by going beyond its immediate economic interests and allowing the forms of its hegemony to change. Law is an especially rich lode for this kind of mining, because it records (literally) the structure of the state and reflects (virtually) the distribution of political, social, and economic advantages. In modern states generally law and legal process are an essential ingredient of the (Gramscian) hegemony that defines and justifies relationships of ruler and subject (Lev 1990: 438, 2000: 13).

In responding to the role of society, especially in contributing to hegemony, it analyzes not only the notion of class struggle being the crucial antagonism in society, but also radical democracy expressed by society. It will be relevant because there is no possibility of society without antagonism (Laclau & Mouffe 1985). This notion is also important to assess the role of non-governmental organizations, labor union movement, and other pro-democracy groups involved in the World Bank's projects on good governance and legal reform.

In order to get a comprehensive picture of good governance, legal reform, and its impact on human rights, this thesis also uses deconstruction for textual analysis. Deconstruction by its very nature is an analytic tool. It was influenced by Jacques Derrida as the founder of 'deconstruction', through his numerous writings. Deconstruction is an attempt to open a text (literary, philosophical, legislation or otherwise) to a range of meanings and interpretations. The method is usually to take binary oppositions within a text - rigidly defined pairs of opposites like good/evil, male/female, meaning/meaningless - and show that they are not as clear-cut or as stable as it first seems, that the two opposed concepts are in fact fluid, then this newfound ambiguity is used to show that the text's meaning is similarly fluid. Binary oppositions in this context are the hierarchical relation of elements that results from

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logo-centrism. Derrida is interested more in the margins, the supplements, than in the centre.

The task of the ‘deconstructor’ is to show where this oppositional or dialectical stability is subverted by the text’s internal logic. It will demonstrate system of logic largely through an examination of the traces, the presence and the absence (vide: metaphysics of presence, Derrida1976: 3, 10-18, 46), supplements, and invaginations in the text. This theoretical framework is very useful for this thesis, particularly when it is exploring the dialectic of text and context of good governance and legal reform, what is the presence and the absence of this project, what values and issues are not covered prominently, and also how the coherence and incoherence of good governance concept are used. Also, it studied ‘difference’ (Derrida 1973: 129-130) and ‘trace’ (Derrida 1973, 1976: 46-47) theory of Derrida, in understanding the hidden text of good governance, the otherness of text relation, and how they speak and practice on good governance logically and simultaneously. This thesis uses and it is interest to use deconstructive techniques for at least three reasons. First, deconstruction provides a method for critiquing existing legal doctrines (good governance, the rule of law, and legal framework for development), in particular, a deconstructive reading can show how arguments offered to support a particular rule undermine themselves, and instead, support an opposite rule. Second, deconstructive techniques can show how doctrinal arguments are informed by and disguise ideological thinking. Third, deconstructive techniques offer both a new kind of interpretive strategy and a critique of conventional interpretations of legal texts (Balkin 1998: 2-3).

In sum, critical legal studies as theoretical framework in this thesis proposes extra-legal explanations, by using social theories of power, dominant ideology, hegemony, and deconstruction. Extra-legal explanations in this regard are closely also related to critical social theory (Agger 1991), but it focuses on the issue of law. These theories are really important to understand and explain why good governance and legal reform have affected negatively the promotion and protection of human rights.

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1.7 Structure of The Thesis

This thesis is divided into six chapters. After Introduction (Chapter 1), Chapter 2 elaborates the emergence of good governance in Indonesia, by exploring the role of state, market and its power. This chapter overviews in more detail the Indonesian context and historical approach on governance, the relation between globalization and hegemony of good governance, the World Bank roles as dominant actor, the role of state institutions and judicial system on good governance, the role of universities, non-governmental organization and media in transmitting good governance, and explaining free market paradigm and its influences on good governance.

Chapter 3 focuses on analysis of good governance in Indonesian context. This chapter deconstructs discourse of 'bad and good' governance, the issue of democracy in relation to good governance projects, derivative mantras on poverty reduction, anti-corruption, participation, partnership, and the relationship between good governance and human rights. The important part of this chapter is the explanation of the subordination or subversion of human rights, which is unexplained by good governance projects.

In continuation of the previous chapter, Chapter 4 focuses on legal reform and its neo-liberal influence. This chapter deconstructs the texts of legal framework for development, projects, and approaches to Indonesian legal reform. This chapter answers whether good governance subverts state obligation in terms of human rights.

Chapter 5 examines cases of legal reform projects and its impact on the promotion and protection of human rights. This chapter deconstructs mysteries behind legal reform, particularly in the case of labor legal reform since the crisis. The interesting findings in this chapter can be seen in the sub-chapter on the three waves of labor reform since crisis and its impact on human rights. Lastly, it proposes the theory of legisprudence as new approach to analyze 'legislation based human rights violation'. By using this approach, this thesis answers the question of what is wrong with legal reform in the framework of good governance.

The final chapter (Chapter 6) contains different key ideas found in this research and concludes by answering key research questions. In the context of good

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governance and legal reform in Indonesia, it raises many questions particularly dealing with human rights framework in current situation, which is hugely influenced by market strategy. This thesis argues that human rights violation has been ‘softly’ occurring through legislation system, because ‘market friendly human rights paradigm’ can successfully highlight major discourse in transition countries, including Indonesia.

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CHAPTER 2
THE EMERGENCE OF GOOD GOVERNANCE: STATE, MARKET AND ITS POWER IN INDONESIA

2.1 Indonesian Context and History on Good Governance

'Good Governance' in Indonesia has been influenced by the Dutch law tradition and the civil law system. It has been practiced for a long time in the government bureaucracy through the adoption of 'the general principles of proper governance/administration' (*algemene beginselen van behoorlijk berstuur/ABBB*). Historically, these principles were rooted in considering principles for making administrative decision, and procedurally they have three main elements of administration law: (i) element of rule of law; (ii) element of democracy; and (iii) instrumental element, including efficiency (*doelmatigheid*) and effectivenes (*doeltreffenheid*) (Hadjon et al 1993: 266-270). And the idea of 'good governance' or ABBB has been also for long time introduced in lectures at any faculty of law (*Faculteit Rechtsgeleerheid*) (Addink 2002; Langbroek in Addink 2002).

At first, ABBB was actually used as legal elements for appealing or testing in administrative court.[1] But later on, it has also been generally considered as 'unwritten law norms' which should be obeyed by the government. In legal practice, ABBB describes principles: (i) equity principle; (ii) trust principle; (iii) legal certainty principle; (iv) accurate/carefulness principle; (v) giving reason principle; (vi) misuse (*detournement de pouvoir*) prohibition of authority principle (Hadjon et al 1993: 270-277). In other source, Philipus M. Hadjon (2002) also explained these important

[1] It was particularly referring to Article 8 Section 1 under Wet AROB.

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principles based on AROB (administrative court in the Netherlands) jurisprudence: (i) consideration principle (*motiveringsbeginsel*); (ii) carefulness principle (*zorgvuldigheidsbeginsel*); (iii) legal certainty (*rechtszekerheidsbeginsel*); (iv) trust principle or the principle of responding to the apparent hopes (*vertrouwensbeginsel of beginsel van op gewekte verwachingen*); (v) equity principle (*gelijkheidsbeginsel*); (vi) balancing principle (*evenredigheidsbeginsel*); (vii) authority principle (*bevoegheidsbeginsel*); (viii) fair play principle (*beginsel van fair play*); (ix) prohibition of misuse of power (*het verbod detournement de povoir*); (x) prohibition of arbitrary acts (*het verbodvan willekeur*). These principles, written or unwritten have been adopted and have become written principles in Netherlands, especially adopted in AWB (*Algemene wet Bestuursrecht*), or GALA (General Administrative Law Act).

Although there were very limited resources in Indonesia that explained the Dutch colonial law legacy, the ABBB was adopted as AAUPB or *Asas-Asas Umum Pemerintahan yang Baik* (The General Principles of Good Governance). In Indonesia, the general principles of good governance have been first known since 1953, through a book written by G.A. van Poelje, and translated by B. Mang Reng Say into Bahasa with title "Pengantar Umum Ilmu Pemerintahan".[2] But it has received a lack of attention from administration academics in Indonesia (Marbun, in Wairocana 2005: 103). And then after Professor Kuntjoro Purbopranoto, in his book "Beberapa Catatan Hukum Tata Pemerintahan dan Peradilan Administrasi" (Some Notes on Governance Law and Administration Court) mentioned 13 general principles of good governance (Purbopranoto 1978), it has become popular or famous in Indonesia. According to him, these principles are: (i) legal security; (ii) proportionality; (iii) equality; (iv) carefulness; (v) motivation; (vi) non misuse of competence; (vii) fair play; (viii) reasonableness or prohibition of arbitrariness; (ix) meeting raised expectation; (x) undoing the consequences of an annulled decision; (xi) protecting the personal way of life; (xii) wisdom (*kebijaksanaan; sapientia*); and (xiii) public services (Purbopranoto 1978: 29-30).

Purbopranoto, cited in Professor R. Crince Le Roy's lecture handout in the Advance Course of Constitutional Law and Administration Law at Law Faculty,

[2] "Pengantar Umum Ilmu Pemerintahan" is original title, translated into English it becomes "General Introduction of Governance Science".

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Airlangga University in 1976 which described these principles based on court jurisprudence, because Wet AROB has not been enacted yet. The principle of wisdom and principle of public services were actually added by Purbopranoto, because both of them reflected Indonesian characteristics (Hadjon 1993: 279-230).

Although the ABBB has influenced Indonesian legal system, it has not fully been adopted in the Administrative Court Act, in which the the provision on general principles of proper governance was particularly absent.[3] There has been no further explanation of why ABBB is not fully adopted. In this context, Indonesian legal system shows an unwritten code of 'good governance', and which does not really transplant Dutch colonial legacy.

During and after constitutional reform period in 1999-2002, there were a lot of regulations or acts reformed and shaped to be in accordance with 'reformation' agendas and the new Indonesian Constitution, including Act Number 28/1999 on Clean State Governance and Freedom from Corruption, Collusion and Nepotism, Act Number 31/1999 on Combating Corruption, and Act Number 9/2004 on Administrative Court.[4] Previously, the Assembly of People's Representative (*Majelis Permusyawarakatan Rakyat/MPR*) mandated through MPR Decree (Ketetapan MPR Number XI/MPR/1998) which urged the significance of practicing clean governance and freedom from corruption, collusion, and nepotism. This decree was the first legal basis of governance in Indonesia after the fall of Soeharto in 1998.

On the other hand, Act Number 28/1999 on Clean State Governance and Freedom from Corruption, Collusion and Nepotism had been expected as an 'umbrella provision' for enforcing good governance principles. The good governance principles that can be seen in article 3 on this act are: (i) legal certainty; (ii) state governing

[3] *Undang-Undang Number 5 Tahun 1986 (tentang Pengadilan Tata Usaha Negara)* or Act Number 5/1986 on Administrative Court, especially article 53 sub-article 2. This article recognized article 8 of Wet AROB: (i) *in strijd met een algemeen verbindend voorschrift* or contrary to rules/law; (ii) *detournement de pouvoir* or misuse of power; (iii) *kennelijk onredelijk* or arbitrariness. But the last element, *in strijd met enig in het algemene rechtsbewustzijn leven beginsel van behoorlijk bestuur (ABBB)* or general principles of proper governance was not adopted.

[4] Act Number 28/1999 on Clean State Governance and Freedom from Corruption, Collusion and Nepotism is the new regulation, translated from *Undang-Undang tentang Penyelenggaraan Negara yang Bersih dan Bebas dari KKN; Undang-Undang tentang Pemberantasan Tindak Pidana Korupsi*; and, Act Number 9/2004 on Administrative Court which is actually a new revised draft of previous Administrative Court Act (Act Number 5/1986).

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order/system; (iii) public interest; (iv) openness; (v) proportionality; (vi) professionalism; and (vii) accountability.

In this context, there are acts which were formally referred to after the Act Number 28/1999 was enacted. At least five acts address the principles of good governance under the Act Number 28/1999:

(i) Act Number 25/1999 about National Development Program 2000-2004
(ii) Act Number 20/2001 about Revising Act Number 31/1999 on Combating Corruption
(iii) Act Number 30/2002 about Commission of Combating Corruption
(iv) Act Number 9/2004 about Revising Act Number 5/1986 on Administrative Court
(v) Act Number 10/2004 about Legislation Making

In a very strong provision on good governance, the Act Number 25/1999 promotes good governance as one of main priorities. The Indonesian government, through National Development Program 2000-2004, has prioritized five national priorities: (i) developing a democratic, sustainable and unified political system democratically and sustaining unity; (ii) implementing the supremacy of law and good governance; (iii) hastening economic recovery; (iv) developing the people's welfare; (v) strengthening regional development. Among these priorities, the aspect of supremacy of law includes: (a) legislation; (b) empowering judicial institution and law enforcement; (c) promoting a governance ethic of obedience to the law; (d) shaping culture of legal obedience. The aspect of good governance includes: (a) law and human rights enforcement; (b) raising welfare; (c) raising public control; (d) strengthening control on corruption, collusion and nepotism practices; (f) tidying up institution and function; (g) raising capacity of resource of governance in optimally serving the public.

In combating corruption, the Act Number 20/2001 adopted Act Number 28/1999 into consideration, but it did not directly mention the good governance principles. But article 5 of Act Number 30/2002 provides the principles on governance obligations and authority by considering five principles which are basically similar to good governance principles under the Act Number 28/1999: (i) legal certainty; (ii) openness; (iii) public interest; (iv) proportionality; and (v)

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accountability. The Act Number 9/2004 explains good governance principles as the legal basis for settling administrative disputes in article 53 section (2), the general principles of good governance include: (i) legal certainty; (ii) state governing order/system; (iii) openness; (iv) proportionality; (v) professionalism; (vi) accountability.

Article 5 of the Act Number 10/2004 provides the seven principles for making legislation: (i) clear purpose; (ii) designated institutional or organ maker; (iii) consistency or appropriateness between the kind and substance of law; (iv) suitability of implementation; (v) usefulness and outcome; and (vi) clear formulation; (vii) openness. With a spirit of decentralization, good governance article 20 of Act Number 32/2004 adopted all principles under article 3 of Act Number 28/1999, and added two principles: (i) effectiveness and (ii) efficiency.

The emergence of these legislation is actually influenced by history of 'bad governance' during the authoritarian Soeharto regime, that has been more than 30 years in government has misused his power, authority and responsibility for the benefit of a smaller group by means of corruption, collusion, and nepotism.[5] After the fall of Soeharto in 1998, there were a lot of pressure under 'reformation' agendas, including fighting corruption, collusion and nepotism.[6]

Good governance has become a major issue in Indonesia, which is widely pronounced by politicians, academics, religious leaders, NGO activists, and also donor institutions. For instance, a special course on 'good governance' has been inserted into the lectures of all law schools in the subject of Constitutional and Administrative Law. Donor institutions, mainly the World Bank and the International Monetary Fund (IMF), have imposed good governance as a loan conditionality. They have designed a legal framework for development as part of good governance, and which has been tremendously influenced legal and policy reform in Indonesia.

In this context, Indonesian history on good governance was actually influenced by not only internally by the fall of Soeharto and 'reformation' agendas, but at the same time was also externally by international financial institutions, mainly the World Bank and the IMF. In particular, the idea of 'the general principles of good

[5] This history can be referred from the Explanation of Act Number 28/1999, paragraph 2-3.
[6] Corruption, collusion, and nepotism, has been known as "KKN", abbreviation of *Korupsi, Kolusi dan Nepotisme*.

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governance' or 'proper administration' that has existed in the Indonesian bureaucracy for a long time through the influence of Dutch administrative law was immediately replaced by the new concept of good governance, which has been written explicitly in many Indonesia legislations.

Next sections will analyze why the concept of good governance after 1998 has strong influence on many legislations and legal reform in Indonesia. This question is very significant, since it seeks to find out the important factors that drives the concept of good governance.

2.2 Globalization and Hegemony of Good Governance

Why has good governance quickly replaced the Dutch legacy on administrative law in Indonesia? According to a Transparency International Report (1995), Indonesia was the most corrupt country in the world, and the condition of corruption worsened from year to year until the peak of the economic crisis in 1997.

Good governance was born in the context of globalization, particularly after the collapse of communism and or the end of Cold War. It was systematically designed to actually respond to the problems of corruption, and the economic or financial crisis, but, most prominently, it was a part of conditionalities imposed by the World Bank and other international financial institutions. Even though there are several similar principles, good governance is different from the concept of Dutch legacy on administrative law in Indonesia, as shown in table below.

Table 2: **Comparison between AAUPB and Good Governance**

Issues	The General Principles of Good Governance/Proper Administration (AAUPB)	Good Governance
Emergence	Dutch legacy on administrative law in Indonesia	Designed by international financial institution (particularly the World Bank and the IMF)
Focus	As legal basis in administrative court, then applied to bureaucracy and other state institutions	As part of loan conditionalities and development project

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Ideology	Based on democracy and rule of law	Even though the rule of law is often pronounced by the Bank, neo-liberal ideology (market liberalization) is more dominant
		Applying market principles (privatization, deregulation, etc).
Principles/Elements	Principles: (i) legal security; (ii) proportionality; (iii) equality; (iv) carefulness; (v) motivation; (vi) non misuse of competence; (vii) fair play; (viii) reasonableness or prohibition of arbitrariness; (ix) meeting raised expectation; (x) undoing the consequences of annulled decision; (xi) protecting the personal way of life; (xii) wisdom; and (xiii) public services	Transparency, participation, legal framework for development, accountable institutions.

This table shows the differences in each of the concepts of good governance, not only in character and principles, but also in ideology. Good governance in the age of globalization has been strongly promoting a 'reform agenda' which complies with the neo-liberal agenda. 'Reform' in this context is economic reform, political reform, and legal reform.

In complying with the neo-liberal agenda in the age of globalization, it captures the essence of what globalization is. *Pieterse* wrote a very simple explanation of globalization by using the following logic, [capitalism = imperialism, and capitalism = globalization, therefore globalization = imperialism] (Pieterse 2004: 36). Through these equations, we can see that if we discuss globalization, it cannot be separated with imperialism as well as capitalism.

Globalization is the latest stage in a long accumulated process of technological advancement which has given human beings the ability to conduct their affairs across the world without reference to nationality, government authority, time of day or physical environment. These activities may be commercial, financial, religious, cultural, social or political--nothing is barred (Longhorne, 2001: 2). Globalization

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itself has both positive and negative effects. One of the most negative consequences of globalization is enlarging impoverishment or the deprivation of socio-economic rights. Especially in terms of economy, economic globalization constitutes integration of national economies into the international economy through trade, foreign direct investment (of corporations and multinationals), short-term capital flows, international flows of workers and humanity in general, and flows of technology. This phenomenon are defined and treated more fully below (Bhagwati 2004: 3).

Therefore the relevant question here is how globalization impacts on human rights. For example, most transnational corporations (TNC) can achieve their objectives escaping sovereign control, through the economic influence of the type provided by the IMF, World Bank, and WTO regulations, along with lobbying and sponsoring political actors. Projects like water privatization, deregulation, and cheap labor wage policy or labor flexibility have caused poverty in rural and urban communities, especially for small farmers and unskilled labor. Exploitation of natural resources and human life, monopoly of public needs, and deprivation of rights can be seen clearly in the context of globalization. Impoverishment could easily result from of the capital accumulation facilitated by globalized system.

The globalization system has aggravated the hierarchy of social, economic and political relations, which potentially threatens people who live in poverty, and drives the state foreign policy into neoliberal agendas. , And this is why globalization also influences disempowerment in most of developing, poor or underdeveloped countries. If globalization is not so much marked by qualitative transformation as by quantitative acceleration (Colas 2005: 73), and continuing the transnationalization of the dependency relations, so it is not a exaggeration to say that globalization is globalizing poverty.

Globalization as explained above is also systematically engineered through the hegemony of powerful institutions, such as international financial institutions (IFIs), transnational/multinational corporations (TNCs/MNCs), and state organs. In practical situations, globalization has been widely disseminated and mainstreamed through institutions by promoting ‘a dominant ideology’ to dominate every element of political, economic and legal reform. “Ideology” here is often defined as “thought that

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mechanically serves the interests of the rulings classes, or else as false or socially determined consciousness" (Beirne and Quinney 1982: 253). Ideology is also seen as an idea that is believed by a society as a truth. The belief might be developed intentionally by a dominant class to secure its interests (Sumner, 1979; Larrain, 1979; McLellan, 1986).

Hegemony in this context is taken from *Gramscian* theory, which talks about the capitalist state that claims rules through force plus consent. The state is not to be understood in the narrow sense of the government. He divides it between 'political society', which is the arena of political institutions and legal constitutional control, and 'civil society', which is commonly seen as 'private' or 'non-state' sphere, including economy. According to *Gramsci*, the bureaucratic and technological rationalism analyzed by *Weber* is part of the capitalist ideological hegemony functioned to repress the working class (Gramsci, 1971: 60). *Gramsci* argues that under modern capitalism, the bourgeoisie can maintain its economic control by allowing certain demands made by trade unions and mass political parties within civil society to be met by political sphere.

The emergence of 'good governance' is also perceived as a form of ideological product, particularly neo-liberalism. This neo-liberalist ideology has advanced after the collapse of communism, and created a conducive environment for the emergence of governance as a development issue. Because neo-liberalism as a 'dominant ideology' tries to construct 'politically lock-in neo-liberal reforms' (Gill 1997), 'good governance' which has been -articulated in the age of globalization is also part of neo-liberalism, especially when it introduces the role of state and civil society in applying market principles. Hence, 'good governance' has systematically hegemonized the discourse of 'democratization'. On the other perspective, the emergence of the successful projects of good governance is due to the success of the developmental state model among the newly industrializing countries of Southeast Asia and East Asia (Tshuma 1999; White 1987; Wade 1990).

When the Indonesian economy collapsed in 1997-1998, the World Bank and the IMF determined the roots of the crisis, and stated that it was significantly caused by corruption and 'bad governance'. For the Indonesian government (including civil society and reformer activists), it was impossible to escape from the discourse of the

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disease of corruption and 'bad governance' provoked by the World Bank, and it has tremendously influenced reform in many sectors. The problem with the reform agenda was that the leftists, conservative politicians, academicians and reformists (including most Indonesian NGOs), were uncritical in accepting the idea of good governance, especially in debating or criticizing the ideology behind it. Thus, in this context, good governance has been in the mainstream of reform in any policy.

2.3 The World Bank Domination

The role of the World Bank in Indonesia cannot be separated from the emergence of the authoritarian-military New Order government, which ruled Indonesia for 32 years under General Soeharto. The World Bank started operating in 1967. Since then, the World Bank has been playing an increasingly important role in financing development in Indonesia. The World Bank was one of the key initiators on the establishment of IGGI (Inter Government Group on Indonesia), a consortium of creditors and donors for Indonesian development consisting of donor/creditor countries in North America, Europe, Japan and other international financial institutions.[7]

During its operation in Indonesia, the Bank has disbursed US$ 23 billion. Of the government's current outstanding external debt of US$ 77,093 million (as of September 2003), some US$ 10,740 million 37.6% of Indonesia's multilateral debt (28,394 million US Dollar) was from the World Bank (IBRD and IDA). After the economic crisis hit Southeast and East Asia, Indonesia government asked for additional foreign debt from the Bank. One of the prominent project after crisis is good governance under governance reform projects.

As mentioned above, the emergence of good governance is inseparable from the context of globalization and the role of the World Bank. In that context, this section will answer the question why good governance is important for the World Bank, and why it is always articulated prominently. Although the World Bank claims--under Article III, section 4 (vii) of its Constitution–that its financial assistance is only

[7] This donor/creditor consortium was chaired by the Dutch Government. In 1992, the Indonesian Government dissolved IGGI and established the Consultative Group on Indonesia (CGI), chaired by the World Bank. Both IGGI and CGI play very important roles in financing development in Indonesia.

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aimed at specific projects on reconstruction and development, and therefore technocratic and apolitical in character, in reality good governance and its legal framework is actually a political construction of the World Bank. Legal reform cannot be seen only as technocratic or instrumentality matters because it always involves political process in nature, particularly in designing and redesigning policies for certain purposes. Designs in this perspective can be viewed from the way that the World Bank imposes projects under loan conditionality schemes.

Good governance under the World Bank projects is also emphasized in loan conditionalities. Good governance requires conditionalities under debt policies and reform agendas. The connection between good governance and funding is formally enabled by the policy of 'conditionality', under which an IFI "approves financial support on the condition that the member make an explicit commitment to a set of policy measures aimed at correcting its economic and financial imbalances" (Thomas 1999). As a simple example, good governance has promoted also privatization, competition policy and deregulation in order to push efficiency in free market policies (World Bank, N.D.). In this context, when financial crisis just hit Indonesian economy in 1998, the World Bank released loans for restructuring banks–it was more focused on financing collapsed banks rather than helping the needs of people for survival. At that time, banking restructurization dismissed hundreds of thousands labor in Indonesia, and Indonesian foreign debt was spent for overwhelmingly for bank recovery and corruptive debtor.

In addition, under the World Bank project of good governance, there were 'reform agenda' focused on institutional reforms, such as in the bureaucracy, judiciary, strengthening parliament, electoral, and civil society participation. Those programs were believed by the Bank to reduce corruption, create a good investment climate, and finally hasten economic growth in Indonesia. Although the World Bank started promoting good governance in early 1990s, the crisis in Southeast Asia and East Asia in 1997 was described by the Bank as resulting in 'failed countries', as it announced in its World Development Report in 1997, "The State in a Changing World" (World Bank 1997b). In the context of Indonesia, good governance has been dominant in driving the issue of administrative or bureaucratic and legal reforms after crisis. As a result, in this regard, the prevalence of good governance significantly

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exists for two reasons: First, it is because of the momentum of the economic or financial crisis; second, it is due to the fact the World Bank has influenced to construct the discourse through its reports and several reforms.

However, in reality, those measures actually failed because Indonesia has become dependent on foreign debt and have difficulty to strengthen domestic resources. It is because foreign debt cannot be given without economic motives in the interest of donors or creditors (Hayter 1971; Pomfret 1992). Until 1997, Indonesia had been recognized and praised by the World Bank as 'good boy', which drove Soeharto's pride. Nonetheless, after the economic crisis hit Indonesia, the word 'good boy' is no longer pronounced by the World Bank. Therefore, the discourse of good governance in Indonesia cannot have a single interpretation because there is nexus of interest among neo-liberalist proponents. The World Bank, which has been concerned about good governance for a long time, especially during authoritarian military regime of Soeharto, has funneled over US$ 30 billion in thirty years. Nevertheless, the notorious predatory corruption during the Soeharto regime, which continued well into the Wolfensohn, era was particularly damning (Bello 2002: 70).

The World Bank has again tried to dominate after the economic crisis in Indonesian by introducing governance reform programs. In this, good governance is always pronounced by the Bank to replace 'bad governance' during the *Soeharto* regime. 'Bad governance' was seen by the Bank as the primary problem that caused the economic crisis. However, this statement was actually too simplistic in attributing the crisis. It became a major discourse because the World Bank wanted to escape its responsibilities in causing the economic crisis in Southeast and East Asia.

The World Bank should share the responsibility for its failed projects, not to shift the sole burden to the Indonesian Government. According to Winters, the World Bank should also be responsible because of the 'criminal debt' that the Bank extended to the Soeharto regime. Winters says that it was 'criminal debt' sponsored by the World Bank because two senses: first, because it was a crime to allow the development funds to be stolen, and second, because it is injustice to expect poor populations around the world that never received these funds to bear the heavy burden of repayment (Winters 2002). Winters alleges that as much as $8 billion of World Bank money has gone missing since President Soeharto and his New Order

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government came to power in 1967. Another opinion is said that Winters's allegation that 30% of World Bank loans ($24.7 billion since 1967) were lost (Loveard 2001). The allegations have elicited angry responses from both the World Bank and the Indonesian government. "We know exactly where our money is going," says Jean-Michel Severino, the bank's vice president for East Asia and the Pacific. "We do not tolerate corruption." Besides this, the denial of corruption was also published by the World Bank through press conference Number 9811426/EAP (Loveard 2001; Winters 1999, 2002).

Nevertheless, Winters investigation revealed a the secret letter, which mentioned that the World Bank recognized that corruption has seriously occurred as a structural problem (Winters 1999; World Bank 1999a). Interestingly in an interview, World Bank staff, Julian Schweitzer says, "If you take the amount of 30 percent loss, it means 70 cents (on the dollar) got used for development after all. That's a lot better than some places with only 10 cents on the dollar" (Winters 2002, 2004a). Manish Bapna, executive director of the Washington-based watchdog group Bank Information Center (BIC), said that while multilateral development banks profess 'zero tolerance' for corruption in their projects and programs, this rhetorical commitment has not always been meaningfully implemented, and therefore corruption threatens the core mission of those banks: poverty alleviation (Mekay 2004). Contradictory with its principles, according to several reports, including a World Bank internal report that came out in 1999, the Bank tolerated corruption, accorded false status to false government statistics, legitimized the dictatorship by passing it off as a model for other countries, and was complacent about the state of human rights and the monopolistic control of the economy.

In this regard, it has been so clear that the World Bank has involved in corruption and 'bad governance' in Indonesia. This is why it can be said that actually the World Bank has reproduced discourse 'bad governance' and 'good governance' along the same neo-liberalist paradigm. The World Bank has dominated through its projects for a long time in Indonesia. And because of this, the Bank should share responsibility for the economic crisis or financial collapse in Indonesia and other countries in 1997-1998.

Ironically, even though the World Bank ought to share responsibility for

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'criminal debt' and had lost its credibility at that time, the new project on good governance is still being campaigned and is widely accepted as the best one. In this campaign, it cannot be separated from the role of 'reformasi' (reform) agendas after the fall of Soeharto. Reformist groups, political parties/politicians, the student movement, and academicians have easily accepted and even contributed to the idea of good governance, without fully understanding its concept and the ideology behind it. There was no alternative to good governance since it was an immediate reaction to counter 'bad governance'.

The concept of good governance has dominantly influenced Indonesian bureaucracy, and the spirit of anti-corruption under good governance has become main idea behind it. It means that the World Bank project on good governance was implemented through the wave of reform agendas at domestic level in Indonesia, and the concept and projects have dominated widely. However the failure of governance within the World Bank itself, it has reflected the hypocrisy of good governance which has been injected and dominated by the World Bank. Hence, the existence and dominance discourse of good governance in post-Soeharto Indonesia remains critical questions.

2.4 The Role of State Institutions and Judicial System on Good Governance

As mentioned above, the emergence of good governance in Indonesia cannot be separated from the role of the World Bank and also 'reformasi' agendas brought by the 'reformists', especially after the fall of the Soeharto regime. Reformists is symbolized and led by the political elite, such as Megawati, Amien Rais, Abdurrahman Wahid and Sri Sultan Hamengkubuwono. The public wished that these four leaders could lead Indonesia to introduce better ways of developing economy, politics and law.

After the President Habibie stepped down, and was replaced by Abdurrahman Wahid-Megawati who was elected by parliament as President and Vice President, the powers and political configuration of reformists group changed. Amien Rais became chair of the MPR (Majelis Perwakilan Rakyat or People's Representative Assembly). It meant that a part of New Order power has been changed. The problem was, even

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though Soeharto-Habibie stepped down, =the seriously corrupt political system was still there. Corruption, human rights violation, and marginalization of poor people still occurred. Winters analyzes that the political change in Indonesia only happened with structural and institutional power, but the elite network or oligarchy and ideology or mentality have not changed significantly (Winters 2004b: 1). The impact of 'new order' oligarchy has strongly influenced the political configuration in Indonesia, including the power of political parties and business networks, particularly Soeharto cronies.

These cronies have still been influencing the decision making process, and the most crucial issue was Soeharto trial in concerning to human rights violations and corruption, collusion and nepotism. Until now, none of the succeeding regimes could bring Soeharto into jail. He has still managed to escape criminal liability, even though the ideas of legal reform, including judicial reform, have been pushed in 'reformasi' agendas. Based on this situation, the relevant question in this section is whether 'reformasi' agendas corroborate the role of state in implementing good governance.

Theoretically, based on policy which has been planned and done since reform era, there are many programs, policies, and strategic plans on governance reform, including the spirit of good governance, that have been set up. For instance, Bappenas (National Development Planning Agency) which is the closest partner of various donor institutions has setup a special program and sub-institution on good governance, called the Public Development Secretariat for Good Governance. This secretariat has promoted 14 characteristic as principles of good governance, namely: (a) future insight of governance; (b) openness of governance; (c) rapid response governance; (d) accountable governance; (e) professionalism and competency based governance; (f) governance that uses efficient and effective structure and resources; (g) decentralized governance; (h) democratic and consensus-based governance; (i) governance that supports participation of society; (j) governance that supports partnership between private sectors and society; (k) governance that underpins the supremacy of law; (l) governance that commits in reducing gap; (m) governance that commits to favor the market;[8] (n) governance that commits to environmental protection (Bappenas 2002:

[8] Favoring market principles means needed the involvement of government in supporting market mechanism (Bappenas 2002: 5). In this research report, Bappenas concluded through interviewing 822

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2-5). These principles are the most complete ones set up by Bappenas, and similarly articulated by the donor agencies through their reports. In this context, we can say that there is surely a connection between good governance projects imposed by donor institutions, particularly the World Bank, and government institutions projects, especially after the financial crisis in 1997-1998.

As mentioned before, the emergence of good governance is accompanied with by enacting a number of legislations, particularly national development program, combating corruption and legislation making process. The state should refer to these legislations in order to make policy or program planning. During the 'reformasi' era, the government decentralized authority and tasks to regional governments by enacting the Act Number 22/1999, which was revised by Act Number 32/2004. In this Act, the head of the district government should implement its obligations, including implementing democratic life, obeying and enforcing all regulations, and implementing the principles of good and clean governance.[9]

However, in practice, those legislations were still ironically misused and violated by government or parliament. This is widely recognized by government officials themselves. Bribery and corruption were still rampant the bureaucracy, even though 'reformasi' has been in place for seven years.[10] It means that there are many inconsistencies and misuse of power carried out by the local government. Decentralization in the context of democratizing governance has broadened and decentralized systematic corruption and bad governance, from the central government to local/regional governments. It has reproduced local bandits, new oligarchy, and collective corruption. Even though it has been programmed and applied through various legislations, the implementation of good governance remains problematic.

Similar to the bureaucracy, the judicial and legal system are widely recognized in Indonesia to be largely corrupted. Decision can be bought, and judiciary system is still

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respondents in 5 provinces, 73, 72 percent respondent have understood the principles of good governance. But it still recommended to socialize the other principles that were not really familiar to the respondents, particularly in this the principle of governance that has commitment to favor market (Bappenas 2002: vi-viii).

[9] Article 27, sub-article (1) d, e, h, Act Number 32/2004 about Regional Development.

[10] Rini Gunawati (Head of Administration, Manpower District Official), *interview*, Sidoarjo, 25/4/2006. And Syarif Muhtarom (Parliament Member, *Fraksi Kebangkitan Bangsa dan Keadilan* (Awakening Nation and Justice Party), *interview*, Sidoarjo, 25/4/2006.

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strongly influenced by the powerful or state authority. For instance, in many cases, labor often faces difficulties with unjust law enforcement, which is recognized by the government in tackling industrial relation conflicts.[11] Based on a report of a mission of Special Rapporteur Cumaraswamy (2003), he had received allegations concerning the state of the rule of law, the administration of justice and, in particular, the independence of the judiciary, of widespread and systematic corruption within the administration of justice affecting all actors, including judges, prosecutors, police and other court officials. Ali, a member of National Commission of Human Rights, says that in Indonesia the government has not yet achieved the real meaning of good governance and this has tremendously influenced human rights situation after crisis. As we have seen, the Supreme Court under Bagir Manan is still very corrupt and morally questionable.[12]

Unsurprisingly, corruption in the judiciary in Indonesia is rampant because judges, prosecutor, and police lack integrity and competence of their judicial functions. In responding to this situation, legal reform also targeted institutional reform in the judicial system. For instance, after constitutional reform in 1999-2002, Indonesia established two new legal institutions, namely the Constitutional Court and the Judicial Commission, both of which are mandated by the new constitution to contribute to a strong, clean and fair judicial system.

Although there are many legislations emphasizing good governance from regime to regime after the fall of Soeharto, the interpretation of good governance looks too simple, since it only relates to anti-corruption and effective public services. Most of government officials who were interviewed have a similar concept and understanding on good governance.[13] Their perspective is simple, as also understood

[11] Jamaludin (Coordinator of FBS/Surabaya Labor Union), *interview,* Surabaya, 11/4/2006. Problem of law enforcement on labor issues is also stated by parliament member, *Syarif Muhtarom, interview*, Sidoarjo, 25/4/2006. According to him, he believes that the government officials have still been practicing illegal fee collection, bribery and corruption. The most serious problem in industrial relation is law enforcement and state apparatus mentality at any level (central, province and district level).

[12] Prof. Dr. Achmad Ali, SH., MH. (Commissioner, National Commission of Human Rights, Indonesia), *interview*, Surabaya, 17/6/2006.

[13] For instance, *Pelayanan Prima* (Prime service) is interpreted as manifestation of good governance. It is a public service which is carried out effectively, with a clear time frame and a fix cost, without bribery and illegal cost. Good governance has various implementation, it depends on government officials itself in interpreting this concept. Rini Gunawati has been working for many years in the Manpower District, and often facing pressure, corporation's games, and the hatred of many people because of her work. So that is why, *Gunawati* argues that the problem in the bureaucracy should be

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by Indonesian President Susilo Bambang Yudhoyono (2004: 19) who said that the outstanding components of good governance are accountability and transparency. Regarding the role of the state and judicial system on good governance, it is found that none mentions anything about the relationship between good governance and the importance of human rights realization, and, uniquely, all of them give strong notion of the relationship between implementing good governance and pushing better investment climate strategy as part of the market liberalization process. Almost all institutions involved with good governance projects are designed by the central government, but government officials themselves do not pay much attention to good governance as a prescription for getting loans from donor countries or international financial institutions.

2.5 The role of Universities, Non-Governmental Organization and Media in Transmitting Good Governance

Soon after the fall of Soeharto regime, the elements of civil society spoke about and projected on good governance. There emerged many anti-corruption movements during 'reformasi' eras, for instance. Many new researches or study centers at universities focus on anti-corruption and do monitoring work. Many new anti-corruption organizations and networks were established in many places. In addition, many non-governmental organizations founded before 'reformasi' have also changed the concentration of their work to corruption issues. Interestingly, those NGOs are trying to do reposition their role in relation to government.

What is the reason why many university centers and NGOs are engaged in programming for good governance? How do they transmit the ideas of good governance into practice?

There is no single reason for each NGO to explain its motivation in programming good governance. In Surabaya, there were many NGOs which have been working on good governance, which are sponsored mostly by the Partnership for Governance Reform (Partnership). The NGOs that earned financial assistance include:

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fought in order to serve people better, and she argues that it is good governance. Rini Gunawati, *interview*, Sidoarjo /4/2006.

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(i) LBH Surabaya (Legal Aid Institution); (ii) YPSDI (The Foundation for Indonesian Resource Development); (iii) KPKD (The Commission on Parliament Monitoring); (iv) Cakrawala Timur;[14] (vi) Spektra and (vii) KPPD (Committee for Women Advocacy and Democracy).

YPSDI, for instance, has been working on the issue of judicial monitoring program in 2003-2004. It aims at establishing a judicial process that is fair and free from corruption and bribery. The idea was simple. According to Sasmito, court, judges and judicial process should be monitored; and it was conducted for public cases in Surabaya, Malang and Jember.[15] YPSDI initiated a program on judicial monitoring because it was assumed to be important and the Partnership provided this program with financial assistance, particularly for legal reform. Legal reform in this case was more focused on institutional reform, such as strengthening the Supreme Court and district court, prosecutor, and police. But when the government was establishing PPHI (Industrial Relation Dispute Court) was widely protested and refused by the labor unions, both the YPSDI and the Partnership did not concern much about the controversy on PPHI. Even though the Partnership offered financial assistance openly, Partnership also designed its objectives to the applicants in proposing the program. But according to YPSDI, compromising program usually and normally happens financial assistance.[16]

Good governance was perceived in the context of s clean judicial process by strengthening institutional reform. Sasmito believes that good governance, as carried out by monitoring the courts, has an impact on judicial process. At least the judges, bureaucrats, and other government official have become more afraid to be corrupt. He stresses that the difference between the old regime (Soeharto) and current regime in terms of corruption is, *"mbiyen koruptor saling melindungi, tapi saiki koruptor saling 'nyokot'"* (in the past the corruptors protected one another, but now the corruptors are

[14] Cakrawala Timur, an NGO based in Surabaya, also has disseminated good governance through women issues. One of interesting statement given by Cakrawala Timur in its publication, that sweet ingredients of good governance have become major issue in constructing ideas of reform. For instance, women political participation problem was seen as the problem of the absence of good governance, by using mechanist perspective, such as institutional revitalization in emphasizing representation (Arif, *without year*: 3).

[15] Eko Sasmito (Director of YPSDI, and also Staff of KPU/General Election Commission in Surabaya), *interview*, Surabaya 20/4/2006.

[16] Eko Sasmito, *interview*, Surabaya 20/4/2006.

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biting one another).[17] In his experience, he believes that corruption is still going on systematically until now, although his program sponsored by Partnership for Governance Reform has finished already.

Another NGO, LBH Surabaya, one of the oldest NGOs in Indonesia involved with human rights advocacy and legal assistance, has changed their strategic plan to be more focused on legal reform and anti-corruption projects. LBH had done several projects which dealt with governance reform, such as RCS (Report Card System) on anti-corruption projects, voter education sponsored by ACILS. Their activity has accelerated in compromising funded projects, so that is why LBH has also changed its projects and does not pay much attention to tackling human rights issues, organizing and legal advocacy at grassroots level, particularly in defending labor cases, peasant or landless communities, and fisherfolk rights.[18]

When the government was establishing KPU or General Election Committee at the provincial and district levels, many LBH staff or activists were applying to be commissioners in the KPU. Then, this has influenced the work and focus of LBH as an advocacy institution. Especially during financial crisis, LBH only invited and involved the grassroots people if there was a funded project, regardless if the project was being categorized as developmental projects. In 2005, interestingly, LBH Surabaya asked the grassroots organization in East Java to propose financial assistance on the issue 'access for justice' from the Justice for the Poor of World Bank.[19] But after a long discussion and debate, most of grassroots organizations, including peasant groups and labor unions, finally refused to apply for 'access to

[17] Eko Sasmito, *interview*, Surabaya, 20/4/2006.
[18] Widihadi (Chairman of Papanjati or East Java Peasant Union) and Amir Makhmud (Secretary of Papanjati), *interview*, Pasuruan, 21/4/2006.
[19] *Rahayu* refused the claim that LBH has asked people's organizations to apply for financial resources from the World Bank, but said that LBH has only informed the World Bank about people's organization that have been organized. She said that, if World Bank wanted to finance people organization, LBH suggested that they to come directly to the people. Mudji Kartika Rahayu, *interview*, Jakarta, 10/5/2006. But this statement was countered by the grassroots organizations because they have been gathered for a meeting Sahid Hotel, during which LBH Surabaya clearly and strongly asked them to propose programs for application to the World Bank, which did not talk directly to them. Widihadi and Amir Makhmud, *interview*, Pasuruan, 21/4/2006; Jamaludin and Herry, *interview*, Surabaya, 11/4/2006.

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justice' projects to the World Bank.[20] After LBH offered this, most of the grassroots organizations in Surabaya and several parts of East Java extremely distrusted them.

There are a very limited number NGOs which critically focus on anti-globalization and foreign debt cancellation, and most are based in Jakarta. These NGOs include INFID (International NGO Forum on Indonesia Development), KAU (Anti-Debt Coalition), and IGJ (Institute for Global Justice). INFID has been concerned with anti-neoliberalist development and criticizing any new debt commitment given to the Indonesian government. In the case of the World Bank, INFID (2004) released a very strong statement as follows: (i) The World Bank and the Indonesian Government should establish independent team to audit past loans during the Soeharto regime; (ii) The World Bank should cancel Indonesia's debt that is criminal and odious in its nature and which resulted in human rights violations; (iii) The World Bank should be responsible for the rehabilitation and compensation for the victims whose rights were violated by these projects; (iv) The World Bank should ensure that its loans are tied to conditionalities which promote and protect human rights, to meet environmental standards, be based on gender analysis, and not to undermine the democratization process.

Contrast to the INFID, the GGIC (Good Governance Information Center) is a new NGO that has just been established only for in serving information to the public. They collect all information which is specifically related to good governance and its practice in Indonesia. This NGO works very close with donor institutions and never criticizes them. They feel that there has been very limited information about good governance, in terms of concepts, case studies, best practice experiences, and other instruments in helping people who would like to enforce good governance (GGIC 2003).

This explanation concerning the role of NGOs has shown that the emergence of good governance in 'reformasi' era has pushed NGOs also to change and follow the mainstream of good governance projects in Indonesia. They transmit the idea of good governance through various projects, but they have been trapped to follow neo-

[20] Andie Hermawan (Coordinator for Advocacy Program, Indonesian Legal Aid Society/MBH-*Perkumpulan Masyarakat Bantuan Hukum*), *interview*, Surabaya, 5/4/2006; Widihadi and Amir Makhmud, *interview*, Pasuruan, 21/4/2006; Jamaludin and Herry, *interview*, Surabaya, 11/4/2006.

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institutionalist reforms on good governance, rather than focus on human rights issues which actually can be brought systematically into governance issues as well.

Beside NGOs, the universities are also involved with promoting the discourse on ‘good governance’. What are their roles in transmitting good governance? Mostly, the projects on good governance which involve the World Bank are also related to the universities. The university could initiate to apply for good governance projects to the World Bank as long as they are relevant to the Bank’s prescriptions. This is why the university is also an institution which transmits the idea and project of good governance in Indonesia.

For instance CPPS (Center for Population and Policy Studies), based in Gadjah Mada University, Yogyakarta, has applied for a project on good governance to the World Bank with the title: “Sub-National Good Governance Indicators for Effective Decentralization.” This project supported the development and dissemination of best practices of sub-national good governance benchmarking and tracking indicators in the context of Indonesia’s 2001 ‘Big Bang’ decentralization. Totally, US$ 69,000 was proposed for a one-year project in 2002-2003 (World Bank Netherlands Partnership Programs-Governance Knowledge Sharing Program 2002).

Other examples of the role of university are the establishment of Center for Law and Good Governance Studies under Faculty of Law, University of Indonesia which is located in Jakarta, and also Padjajaran University and Parahyangan University which both are located in Bandung, West Java. Padjajaran University and Parahyangan University were involved in good governance projects which were designed together with the World Bank and other institutions (state and international business groups). This project focuses on Good Governance in Sustainable Development (GGSD), which started in 2002 and would be completed in 2007, involves two existing partners, the World Bank and the UNDP. The leading partner for this project is the Ministry of Environment. This project proposal mentions that in societies where there is an effective government (governments that govern) within a democratic system, the government is better equipped with adapting to new situations. However, others may be less prepared. Basically what is required by societies at present are the following: (i) effective government (good governance); (ii) meaningful public participation (democratic system); and (iii) adherence to sustainable

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development principles. The objective of GGSD program is to assist societies to develop on effective government within a democratic system, and to implement sustainable development principles to global partnership. Totally, this project would spend US$ 39,000,000 for five years (Partnership Initiative 2002).

What is also important in this context is the role of media in transferring the idea of good governance. The role of media is also important in disseminating the idea of good governance because it is effective in promoting and monitoring good governance. However, most journalists do not understand and are unaware of the idea of the neo-liberalist agenda behind it, and instead they focus on investigating corruption, collusion and nepotism in government institutions.[21] Their perceptions are more concern with the parliament (DPR/DPRD) or the bureaucracy activities whether they are involved in those activities.

Regarding the issue of anti-corruption, there was a project conducted by LP3ES-Jakarta, sponsored by the World Bank, namely the Monitoring Program on Sub-District Development Program (PPK/*Program Pengembangan Kecamatan*). It held training for journalists in order to get knowledge on the issue of corruption. One of the senior staff of AJI (Aliansi Jurnalis Indonesia or Independent Journalist Association) facilitated this training without the knowledge of his alliance. As a resultmany AJI members protested this because of the involvement of a World Bank funded program in that training. This situation has caused an internal conflict within AJI members who questioned the former director of AJI who was involved in the World Bank projects.[22]

In conclusion, the role of NGOs, universities and media are very significant in transmitting the ideas and projects on good governance by raising and pushing the strategic plan of activities concerning on good governance during ‘reformasi’ eras. Indirectly, their roles popularized the mainstream of World Bank projects on good governance, particularly the concept which conforms to market liberalization and neo-liberal legal reform. In countering this project, some NGOs or journalists also confronted the neo-liberalist mainstream on good governance, and it may have possibly caused internals conflicts among NGOs, as what happened in AJI.

[21] Zed Abidien (senior journalist of Tempo magazine/newspaper) and Kukuh (journalist of Tempo magazine/newspaper). Both of them are members of AJI, *interview*, Surabaya, 19/4/2006.
[22] Zed Abidien, *interview*, Surabaya, 19/4/2006.

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2.6 Free Market and Its Influences on Good Governance

> "Economist will be surprised that we have been subverted by the capitalistic economy system that has been globalized with its main actors represented by conglomerates" (Mubyarto 2005: 24).

As we have seen from the explanation above, the role of the World Bank in injecting good governance in Indonesia is very influential. The World Bank has established very strong networks among various groups in operating ideas and projects of good governance, including state institutions, university and study centers, non-governmental organization, media, and also some local donor institutions supported by the Bank.

It would be understood as systematic work in performing good governance, and has been successfully implemented because it has supported the dynamics at the domestic level as well. As mentioned before, the World Bank projects on good governance met with a wave of reform agendas from the domestic level in Indonesia, and the concept and projects have disseminated widely. In this situation, actually the player is not only the World Bank, but also other international institutions, such as the Asian Development Bank and the IMF. They have been (working) together in interfering with economic and political issues, especially on the issue of good governance.

Besides them, other international financial institutions of donor countries are also involved in the same issues and the same time, such as USAID (United States), AUSAID (Australia), CIDA (Canada), and JICA (Japan). Their interests on democratic, economic, and political reform have met at one point. A bit differently, the United Nations Development Program (UNDP) is involved as well in the same issues, even though it says that it uses different perspective and approach on programming good governance. However these institutions are actually interconnected. The establishment of Partnership for Governance Reform (Partnership) for instance showed the founders--The World Bank, ADB and UNDP--

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at the same position for financing their projects. The project of Governance and Decentralization Survey in 2002 was also funded by Partnership, USAID and the World Bank.

Good governance in Indonesia was characterized by the prevalence of two macro trends: (i) economic globalization and (ii) political democratization. Economic globalization has been introduced into good governance projects designed by World Bank scheme, which included privatization, deregulation and competition policy. Loan policy fixed by the Bank has introduced good governance as special prescriptions. Even though Indonesia has very long history on governance based on Dutch legacy, the power of capital can conquer discourse and legal reform. Water resource privatization, (through Act Number 7/2004), privatization of state-owned corporations, and labor market flexibility (Act Number 13/2003), are examples of economic policy driven by market liberalization. From a neo-liberal perspective, good governance in the context of economic globalization can be seen as a progressive model in supporting effective and efficient management in order to strengthen investment and market liberalization. But from the perspective of the marginalized, good governance in the context of economic globalization can be viewed as deprivation of rights, particularly when legal reform is driven to facilitate capitalists, and 'democratically' legitimizes their to plunder of land, monopolization of water resources, and control of the labor market.

The second character, political democratization, has been promoted through electoral democracy, anti-corruption movement, partnership or participation in decision making process, and transparency and accountability of the political leadership. Therefore, these are expected to improve the ability of debtor countries for development and repayment. Political democratization in this context was produced more by global capitalism, which has directly and indirectly subverted the regulatory functions of states and exacerbated a free market economy. Liberal democracy and its processes are often subverted by politicians or elites. In practice, 'one man, one vote' as formal equality which focused on electoral processes of West model is easily and extraordinarily vulnerable to being hijacked by elites (Bello 2005a, 2005b). It does not say about social and economic improvement for the poor in order to have more access in economic system. In the United States for instance, as explained by Bello (2005b),

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the ‘democracy’ in liberal democracy has long been put into question by the massive hijacking of elections by corporate financing that has corrupted both the Republican and Democratic parties and the systematic disenfranchisement of poor people, as symbolized by the Florida elections of 2000 and the Ohio elections of 2004. Electoral democracy also became the prime mechanism for the imposition of stabilization or structural adjustment programs in Jamaica, Haiti, the Philippines, Peru, and Pakistan.

In Indonesia, even though democratization has been shaped for more than seven years after 1997, in practice, there has been elite capture of the local governments and decentralization process after democratic elections. Democratic accountability in this context was driven by an accountability discourse planted by the World Bank, such as good governance, while there has actually been no discourse on cutting the debt burden against privatization and market liberalization (Wiratraman 2006).

The emergence of good governance after the crisis in Indonesia has systematically replaced the previous idea of governance. The notion of free market has been so prevalent and dominant, at the same time that the government has promoted liberal democracy, as seen in ‘fair and democratic’ general elections. However, the legitimacy of elections was hijacked by elites at various levels, and corruption was the most serious problems in this context beside local authoritarianism.

The Indonesian President Yudhoyono said that he would seriously take six agendas as priority at his power. The sixth one is that the measures for good governance should be continued and intensified (Kompas 7/12/2005). He confessed that the implementation of good governance in Indonesia did not reflect in real governance, and he stated that the state was broken (Kompas 6/1/2006). Good governance in this context, again, relates to the importance of free market and neo-liberalism paradigm. Moreover, in a recent visit of the World Bank President to Indonesia, Wolfowitz (2006), said that,

> “You (Indonesian) have passed a key milestone in democratic development, that is, two consecutive free and fair presidential elections … In the last half-century we have developed a better understanding of what helps governments function effectively and achieve economic progress. In the development community, we have a phrase for it. We call it good governance. It is essentially the

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> combination of transparent and accountable institutions, strong skills and competence, and a fundamental willingness to do the right thing. Those are the things that enable a government to deliver services to its people efficiently."

In this situation, Yudhoyono's expectations actually met with the Wolfowitz's statement, and it seemed that the concept or project on good governance will still remain dominant in reconstructing Indonesia in near future. Hence, the existence, continuation, dominance, and the hypocritical discourse of 'good governance' based on market system in Indonesia remains critical questions.

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CHAPTER 3
GOOD GOVERNANCE IN INDONESIAN CONTEXT

The explanations regarding the emergence of good governance in the previous chapter helps to understanding the discourse of good governance in responding to democratic governance and human rights, particularly the World Bank projects on good governance. This chapter elaborates the issue on how actually the idea of good governance is transmitted, transferred or transplanted into dominant discourse in reform in Indonesia. How the texts of good governance and its derivative mantras are dominantly pronounced, debated and projected which can mystify or manipulate 'mutual relation' and 'imbalance position'. And finally, this section deconstructs the discourse, its implementation and major actors (who reproduced the text and context) that synergically deprived the essence of democracy, governance and legal reform.

3.1 Bad and Good Governance: Who Constructed the Discourse?

Good governance in Southeast Asia as conceptually designed by the World Bank is actually the result of its reaction from what critics have said about 'bad governance' practices. Therefore, 'bad governance' or 'poor governance' is often blamed and seen by the World Bank as one of the root causes of the financial crisis, including in the East and Southeast Asia in 1997-1998 (World Bank 2002b); World Bank 2004a: 29; World Bank 2004b: 179; Isham, Kaufmann, Pritchett 1997: 221; Kaufmann 2005). This discourse has influenced many policy makers, including the government after the fall of the authoritarian regime of Soeharto in Indonesia.

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The government has not been paying much attention to the role of international financial institution in contributing economic crisis. In the most current situation, the President of Indonesia, Susilo Bambang Yudhoyono (2004: 14-25) believes that the causes of the crisis and the fall of Indonesia economy is because of the absence of good governance in the previous governments. The failures of previous governments are related to the implementation of rules and/or regulations into practice consistently. According to the World Bank, some of the symptoms of poor governance are the failure to establish a predictable framework of law and government behavior conducive to development, or arbitrariness in the application of rules and laws (World Bank 1992).

As mentioned earlier, 'bad or poor' governance is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, abuse of executive power, unengaged civil society in public life, and widespread corruption (World Bank 1994: vii). 'Bad or poor' governance in this context means the ineffectiveness of foreign aid which to influence economic performance and failure the government to deliver people's needs (World Bank 1997b: 2, 142). Corruption is also seen as a bad practice on governance (World Bank 1997b; World Bank 2004b). Yudhoyono (2004: 19) says a similar thing with the World Bank, by saying weak public control over what had been done by the official in power and the public leaders in the past.

The creation of 'bad or poor' governance in emphasizing sources of economic crisis actually tries to shift the root of the problems. The practice of 'bad or poor' governance which is blamed by the World Bank, actually the World Bank itself knew about 'bad' governance is mainly corruption. In the case of Indonesia, the World Bank has disbursed a large amount of money to Indonesian government for a long time ago, including during the Soeharto regime, and they knew that about 30 percent of their money has been stolen or corrupted by either Indonesian official government or World Bank staff (Winters 2004a).

Although the World Bank knew that systemic corruption has been practiced by undemocratic or authoritarian regime, but the Bank still disburses loan to Indonesian government. Unsurprisingly, financial assistance which is supported by the World Bank during Soeharto has worsened and became a burden as foreign debt to

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the Indonesian people. It is called ‘criminal debt’ (Winters 1999, 2002, 2004a). Criminal debt is the debt which is disbursed, which is systematically corrupted by the World Bank staff and Indonesian official government.

It is hypocrisy and it contributed to the erosion of the credibility of the World Bank and its projects. After the Asian financial crisis, the World Bank stressed the importance of good governance, and it is loudly proclaimed. However, factually this rhetoric is contradicted by the sensational revelations regarding the Bank’s relationship with the Suharto regime in Indonesia. The World Bank had funneled some $30 billion to the dictatorship over 30 years (Bello and Guttal 2005).

In its reports, the World Bank never says anything about ‘criminal debt’ as an important factor in contributing to the tremendous corruption in borrowing countries, such as Indonesia. In this context, the practice of ‘bad or poor’ governance actually is done also by the World Bank, and it cannot be blamed fully on the Indonesian government. In its reports or policy papers, the World Bank tends to isolate and localize the crisis at the level of domestic discourse and it never tries to structurally link its role in such crisis. Unsurprisingly, in order to emphasize new discourse and projects of good governance, the World Bank needs the discourse on ‘bad or poor’ governance to justify it.

The other reason, why the World Bank should be taken into account as a part of bad governance because the Bank is also involved in designing model of neo-liberalism development, particularly in imposing ‘structural adjustment programs’. Structural adjustment in this context means that globally, it pressures on most governments to exercise monetary restraint, budget cuts, repay loans through trade and investment barriers and, in so doing, restore international worthiness and thereby extend the market civilization (Gill 2002: 84). Structural adjustment program is a part of loan conditionalities sponsored by the IMF and the World Bank. Three mains of World Bank achievement in imposing loan conditionalities through structural adjustment programs, liberalization, privatization and globalization (World Bank 1994: 31; Webb and Shariff 1992: 69-98). The effect of these conditionalities is so clear, dependence on structural adjustment tends to become never ending, and more so for countries that have been most faithful in implementing these. It would be a long-life patient-hood in the IMF or World Bank hospital (Dasgupta 1998: 136). While the

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Indonesian government's dependence on 'structural adjustment' which was designed by the World Bank for long time, it means that the neo-liberal economic policy which is assisted by the Bank actually failed. The failure of neo-liberal economic policy contributed to the economic or financial crisis in 1997-1998 and tremendous increase of corruption.

Unfortunately, when we discuss about bad governance, either 'criminal debt' or 'structural adjustment' and how they contribute in worsening corruption and to the economic crisis, the World Bank does not recognize it. This thesis argues that the term of 'bad or poor' governance actually are created and provoked at the same womb of mainstream and parallel with 'good' governance. This is also a text of market friendly strategy. Interestingly, the message construction of blaming 'bad or poor' governance is easily transplanted and accepted by transition government in the third world, including Indonesia. Many scholars through their research which are mostly hired by the World Bank, [24] such as SMERU in Indonesia, says that based on its research, Indonesia is a country that has endured bad governance for a long period, but has also sustained significant poverty reduction. The SMERU study emphasizes, "Prior to the onset of the economic crisis in mid 1997, the problem of bad governance in Indonesia was apparent but mostly ignored because it was compensated for by high economic growth. The advent of the economic crisis, however, has highlighted the seriousness of the problem. By assembling scattered anecdotal evidence on how past and current practices of bad governance in Indonesia have hurt the poor, this study shows that the adverse impact of bad governance on the poor is real, systematically affects many people, and undermines the efforts to reduce poverty in the country" (Sumarto et al. 2004). This view is a kind of acceptance the logic of 'bad or poor' governance.

A design of 'bad governance' above is actually within a global design in promoting good governance which is pronounced by World Bank and other Bretton Woods Institutions. This design generally shapes and influences global governance on

[24] Suryahadi (Vice Director of Smeru), *interview*, Jakarta, 9/5/2006. He has involved on many research projects, such as: "Measurements of Poverty in Indonesia, 1996, 1999, and Beyond", with M. Pradhan, S. Sumarto, and L. Pritchett (World Bank Policy Research Working Paper No. 2438, September 2000); "Quantifying Vulnerability to Poverty: A Proposed Measure, Applied to Indonesia," with L. Pritchett and S. Sumarto (World Bank Policy Research Working Paper No. 2437, September 2000); "Safety Nets and Safety Ropes: Who Benefited from Two Indonesian Crisis Programs - the 'Poor' or the 'Shocked?'" with L. Pritchett and S. Sumarto (World Bank Policy Research Working Paper No. 2436 (2000).

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economic-politic development. In the context of legal reform, especially in drafting legislations, the concept of good governance (by citing World Bank concept on good governance) was simply put as anti-thesis of corruption and arbitrary decision-making (Seidman et al 2001: 8, 339-375). Seidman et al (2001) have written a manual specifically on "Drafting for Good Governance", and in this manual, it noted the importance of legislative drafting in the framework of good governance, because it believed that the widespread of absence of good governance emerged as a central social problem (Seidman et al 2001: 7). In addition, they stated good governance and development march together, and the drafting manual deals with the government's contribution to the processes, made through law formulation (Seidman et al 2001: 8). This manual has also constructed the idea of 'bad or poor' governance in the context of legal drafting, which has argued "to spur the development process, governments must effectively implement policies designed to facilitate development, and if governments make arbitrary decisions, …without rule by law, accountability, transparency, and participation, government decisions become arbitrary, and government rapidly degenerates into a mere kleptocracy…" (Seidman et al 2001: 9).

The serious weakness of this manual is even though it wonderfully explains and details process and methods of drafting, it basically does not say the influence of World Bank that hegemonizes the core concept of good governance. The creation of binary terms of 'good' and 'bad or poor' governance discourse shifts major problems of a central social problem, from globalization hegemony (international context) and its failures to 'poor or bad' governance and a weak and arbitrary legal system at the domestic or internal level. This manual fails to explain the neo-liberalism mainstream in influencing legal reform by pressuring conditionalities, as an important factor why the third world cannot freely design own interests and rights to development.

Now, the discourse on good governance becomes prevalent and quickly dominant, and this is contributed by designing 'poor or bad' governance discourse, in order to justify the logic of 'right' and 'wrong' in terms of governance. Here, the role of World Bank is central and leading through its reports, policy papers, and mainly its loan conditionalities to promote binary discourse on governance reform.

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3.2 Is It Good Governance Possible Without Democracy?

"The spirit of democratic capitalism is
the spirit of development, risk, experiment, adventure"
(Michael Novak 1991: 48)

Tornquist (1999: 133) questions, under what conditions can the so-called 'good governance' emerge? He writes that the new buzzwords of the 1990s are democracy and democratization (Torquist 1999: 123). This question and statement arise because the elements of good governance under the World Bank projects are constructed also in responding to the importance of democracy.

The World Bank dominantly promotes 'democracy' and 'democratization'. As mentioned before, the several principles of good governance are transparency, participation, accountability, and rule of law. In addition, the World Bank is also providing direct support to 'democratic governance' in the frame of service reform (World Bank 2004a: 209) by promoting transparency and participatory processes. In its report, the World Bank mentions that most bilateral donors, particularly the US Agency for International Development (USAID) spends more than $ 700 million in providing direct support of 'democratic governance', which means supporting free elections, fostering civil society organizations, strengthening parliaments, judiciaries, and political parties. Election assistance is the highest profile component of democracy promotion. Aid for promoting democracy has increased from 0.5 percent of total official development assistance in 1991 to 5 percent in 2000 (World Bank 2004: 210).

In its previous World Development Report 1997 the World Bank stated in "The Agenda for Change" by saying that politics provide much of the answer. However, it is not simply a matter of democracy versus authoritarianism. We need to go beyond those broad concepts of political organization to understand the incentives that inspire state organization to work better. We need to understand better how and when the economic and political interests that favor development can be harnessed to bring about institutional change needed to make development happen. The World Bank highlighted that the efforts to restart development in countries with ineffective states must start with institutional arrangements that call for responsiveness,

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accountability and the rule of law (World Bank 1997b: 157). Overall, democracy in the World Bank perspective means greater accountability and responsiveness through participation and electoral participation is the primary manifestation of citizen voice (World Bank 1997b: 111).

Such democracy is actually a part of neo-liberal paradigm that links the free market and democracy, and it is a simplification of what democracy means. It would be clear if we discuss the issue of authoritarianism or undemocratic regimes that have been still supported by the Bank's loan. In the interview, Kaufmaan, Director of Global Program, World Bank Institute (WBI), answered my question about whether it is possible for the World Bank to implement good governance without democracy or under an undemocratic regime? He said,

> "…the issue of authoritarianism is an internal political affairs, the World Bank under its constitution obviously could not intervene."[25]

His frank answer means that good governance under World Bank projects could be implemented regardless of the problem of undemocratic regime or authoritarianism.

The answer also reflects the ambiguity or vagueness between text (World Bank reports) and text implementation (World Bank policies). The problem actually came up when the World Bank money went to be corrupted by such regime, and then the World Bank burdened the people for debt repayment. In the case of Indonesia, Soeharto was involved in legalizing corruption by enacting Presidential Decree to legitimize his business or corporations. In this regard, the governance model that has been continuously injected by the World Bank during the Soeharto regime has contributed to tremendous corruption. Unfortunately and unfairly, the amount money of 'criminal debt' would be paid by the Indonesian people.

The use of 'democratic governance' (World Bank 2004a) does not mean being democratic in managing the country, especially in widening people welfare and protecting rights. Democratic in the World Bank term is more defined in the sense of procedural process, not substantial politic-economic transformation for the people.

[25] *Daniel Kaufmann* stated it when he was presenting good governance under World Bank projects, in Partnership for Governance Reform office, Jakarta, 8/5/2006. I have opportunity to ask him directly for this research purpose.

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‘democratic governance’ is more focused on the process of free elections, check and balance of political institutions, independent judiciary, and civil society participation. The World Bank will cooperate with whomever the country leader as long as he/she is ‘democratically elected’. For the Bank, anyone who is elected through democratic process has legal-legitimacy in making policy. The World Bank does not really care about the character of the regime. In the case of Indonesia’s New Order, it showed that the World Bank did not really care with flawed and fraud elections, and the World Bank has still committed to support Soeharto regime although corruption has been largely occurring both during pre and post election.

The perspective of ‘electoral democracy’ is perceived by the World Bank in designing governance generally, and it becomes a prime mechanism for governance in order to fulfill loan conditionalities. Beside Indonesia, electoral democracy also becomes the prime mechanism for the imposition of stabilization or structural adjustment programs in Jamaica, Haiti, the Philippines, Peru, and Pakistan (Bello 2005a). One key reason for the crisis of democracy in the developing world is that electoral democracies of the kind favored by the West (including the World Bank) have been extraordinarily vulnerable to being hijacked by elites. In the principle of ‘one man, one vote’, there is a formal equality which actually does not guarantee distribution of wealth to the people (Bello 2005a, 2005b; Harriss, Stokke and Tornquist 2004). In the frame of free market policies, democratic governance means democratic legitimacy to impose structural adjustment programs, and the multilateral agencies clearly want the recipient countries to do it.

Good governance in this context does not say much about the importance of human rights and substantial democratization or democratic accountability, even though the World Bank also emphasizes rule of law. In principle, democracy as a pillar of rule of law is actually based on a system of rule, which is tied to human rights and the independent recognition of the law. Therefore, it constitutes the most effective shield against arbitrariness on the part of the state or by uncontrolled social power. The protection of basic human needs is the aim and object of a democracy based on the rule of law (Meyer 2002: 1). However, the World Bank’s good governance also does not mention about the process of democratization, especially empowering the people to enable their participation in claiming rights. Adversely, good governance

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promotes market friendly strategy and reforms, such as deregulation, privatization, reduction of social services, and curtailments of state spending. It is clear that democratization under good governance projects is inimical to imperial mobilization (Brzezinski 1997: 210), and there is no exploration of empowered participation as a progressive institutional reform strategy which advances the conceptual and empirical understanding of democratic practices (Fung and Wright 2003: 3-6).

In Indonesia, as found by Demos researches, the other problem of good governance is that the model of crafting democracy is not a 'bottom up', but a 'top down' process. It is very dangerous because there is substantially no strong political framework and democracy substantially. It means, crafting democracy is not enough as long as people in Indonesia could not be free from depolitisation.[26] For instance, it still can be easily seen from poster and banner on the street which says "don't politicize labor!". This actually is depolitisation, and many political party and government official say similar things. We should try to empower people in order to deconstruct power relations politically. It means, politisation is important to strengthen the role of society in controlling democracy processes.[27]

In conclusion, good governance under World Bank loan conditionalities still needs a 'democracy', but democracy with a logic of electoral model and representative legitimacy which becomes a prime mechanism for market friendly strategy. This kind of democracy is actually contradictory in terms. On the one hand it always provokes the importance of participatory process. On the other hand, in actual situation even though the World Bank knows about the flawed, fraud and corrupt during election process, this is not seen as a serious matter for the Bank. It does not affect the decision to continue or stop the projects. Here, the most importance notion for the World Bank is merely limited to 'election', without much attention to the process or even the substance of democracy itself. In sum, the 'decorated democracy' (*demokrasi yang dibonsai*) in the logic of neo-liberalism framework, and an external subversion of governance, would highly possibly meet with the interest of undemocratic or authoritarian regimes. Good governance as decorative democracy

[26] Asmara Nababan, *interview*, Jakarta, 4/5/2006.
[27] Antonio Pradjasto and Asmara Nababan, *interview*, Jakarta, 4/5/2006.

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which has been systematically applied in this context could be potentially disempowering the substantial means of democracy.

3.3 Poverty Reduction, Combating Corruption and Crisis of Governance

Why are poverty reduction and anti-corruption issues highlighted by the World Bank in the frame of good governance? There are many documents, research policy, or agreement under loan conditionalities which prescribe programs on anti-corruption and poverty reduction, particularly post East Asian crisis (World Bank 1997b, 1999, 2000, 2001, 2002a, 2003a, 2004b, 2005a; 2005b).

As mentioned in projects evaluation done by the Bank, particularly in poverty reduction strategies, it recognizes the importance of good governance in fostering growth and investment, as well as improved service delivery. And, as key elements of its poverty reduction strategy, the Bank supports a range of reform to improve the legal and regulatory environment for private investment and job creation (World Bank 2005b: x). This is a framework regarding the relationship of poverty reduction and good governance in the creation of legal reform for supporting investment and job opportunities. In more obvious message of governance framework, the World Bank states that “because good governance and effective public institutions are critical contributor to poverty reduction, good governance is the first pillar of the Comprehensive Development Framework (CDF), and an effective governance strategy is a key ingredient of Poverty Reduction Strategy Papers (PRSPs)” (World Bank 2003a: 8).

In this perspective, poverty reduction program is actually set up by the World Bank in supporting the poor capacity in order to have stronger access and more competitive market liberalization. Based on its report, the World Bank has seen the importance of economic liberalization for the developing world, especially by improving climate for effective assistance. India and Vietnam are the show-cases of good reform programs in the early 1990’s in that have built environments where foreign aid is likely to have a greater impact on growth and poverty reduction (World Bank 1997b: 140). Based on this idea, it can be said that good governance becomes new conditionalities which is imposed by the Bank through PRSPs.

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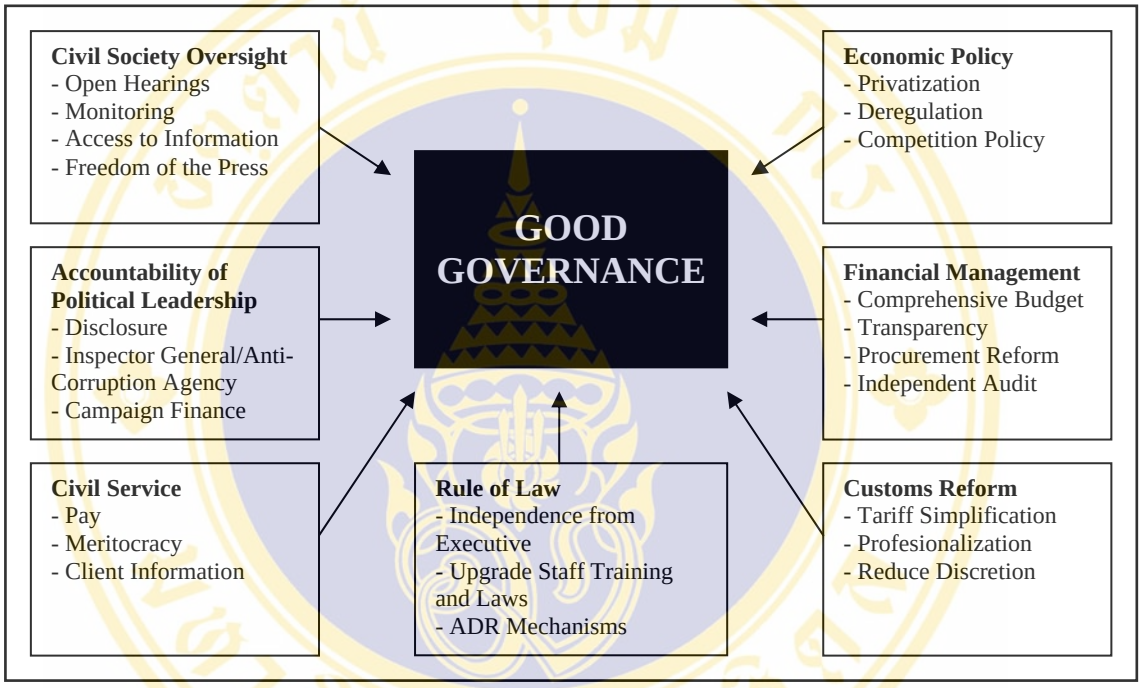
In relation to combating corruption programs, it is also designed similarly with poverty reduction models in the context of market liberalization. Good governance in this regard is an icon covering all of those projects. We can see from the scheme of governance and combating corruption bellow.

Figure 1: **Reforms for Improving Governance and Combating Corruption**



Source: The World Bank (no date)

In its report, the World Bank emphasizes that "good governance also means the absence of corruption, which can subvert the goal of policy and undermine the legitimacy of the public institutions that support markets. Good governance matters for growth and poverty reduction. Through its powerful effects on overall economic growth, good governance is therefore central to the goal of poverty reduction" (World Bank 2002a: 99). In his visit to Indonesia recently, the World Bank President said

> "what the Asian crisis of some 8 years ago shows, and nowhere more clearly than here in Indonesia, is that corruption is often at the very root of why governments do not work. Today one of the biggest threats to development in many countries, including I think here, is corruption. It weakens fundamental systems, it distorts markets, and it encourages people to apply their skills and energies in non-productive ways. In the end, governments and citizens will pay a price, a price in lower incomes, in lower investment, and in more volatile economic

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> fluctuations. That is a lesson Indonesia learned the hard way. Corruption contributed significantly to the economic collapse of 1997-1998" (Wolfowitz 2006).

The strategy of reducing corruption is driven for improving the public sphere which makes a country more attractive to investors. Unsurprisingly, the World Bank worried with its projects because these have been racked by corruption and undermining confidence in both the government and the market economy (World Bank 2000: 17). Combating corruption becomes modern global governance, which designs a 'standard' in the frame of loan conditionalities. 'Conditionality' itself reflects a power to impose, and it could be fine as long as the imposition under conditionality scheme meets or matches with the major interest of people and establishing better democratic governance.

The problem lies on the fact that in the context of anti-corruption projects under World Bank scenarios, it deals with the interest and paradigm behind conditionality. As an important loan projects, the overall effectiveness appears to be limited, or even to be bleaker. It is because this program requires much more complex change in governance. The ambiguity in the nature of the standards themselves leaves room for much debate on compliance. The definition of compliance itself is highly contested (Jayasuriya 2002: 9). The other reason for the ineffectiveness of the anti-corruption program sponsored by the World Bank is because first, it puts too much focus on development projects which are bias in favor of the market interest. Second, the injection of 'standards' (in ensuring legal system or legal certainty) is more like legal transplantation, which is transplanted from a different context and basically not tackling power fragmentation and the oligarchy system.[28] Unsurprisingly, there are still corruption rampantly happening in many ways, in many institutions (judicial, parliament, bureaucracy, private sectors, and political parties), and through legalization of corruption. Even though the Indonesian government has been projecting 'good governance' since the fall of Soeharto under various reform agendas, and it was financed by the multilateral donor institutions, however, in reality the problem of corruption and misuse of power have been worsening year after year (Wiratraman 2006). In this regard, this thesis agrees with Centre for Democracy and

[28] Danang Widoyoko (Indonesia Corruption Watch), *interview*, Jakarta 10/5/2006.

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Human Rights Studies (Demos) in questioning whether 'legal certainty' would strengthen economic and social rights. This was mentioned in criticizing the major problems of democratization, including the opinion which said that we need to focus on the absence of good governance in attacking corruption (Tornquist 2005: 83).

In the context of Indonesia, in the most current policy, the 2006 the Government Annual Work Plan, alleviation of poverty is programmed as first priority, then law enforcement, eradication of corruption and bureaucracy reform as fifth priority. This plan is actually influenced by the multilateral agencies which require the Indonesian government to be consistent in managing market liberalization, and the strategy of poverty reduction and combating corruption have been existing in compliance with its loan conditionalities. The World Bank claimed that Indonesia has achieved remarkable economic development success over the past decade until the Asian economic crisis struck. The Bank has maintained an active presence by financing US$ 23 billion in Indonesia since 1967 to support broad-based economic development with an emphasis on poverty reduction (World Bank 2003c: 1). Then, the relevant question in this regard is why did it collapse in 1997-1998 and therefore extremely increased the level of poverty?

Nevertheless, the World Bank still commits to finance Indonesian government on similar issues, including poverty reduction in the frame of good governance. It is because the Asian crisis is seen as result of political instability and corruption. On a similar track, it promotes governance reform, especially on anti-corruption and its legal reform, which are massively financed through Partnership for Governance Reform (The Partnership). It supports huge projects by facilitating 'multi-stakeholder' or partnership initiatives which involve the government, civil society and donor institution. The World Bank and other donor institutions have financed The Partnership, and because its grants, it would be fashionable or major design of governance in Indonesia.

However, the absence of those projects is the continuation of dominant factors of market economic interest which is based on neo-liberalism perspective. They always pronounce the importance of combating corruption and poverty reduction through all projects funded by the World Bank, but it is extremely bias in favor of World Bank and other multilateral institutions. For instance, water

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privatization which deprived small-scale farmers in rural areas was never considered as a major problem in causing impoverishment. Another example is the labor market flexibility that also caused rights uncertainty for labor, especially their rights in getting better guarantee of work. Justice for the Poor, an institution which is currently established by the World Bank in promoting poverty reduction for the poor in Indonesia, promotes an empowering strategy for the poor through legal assistance. But, it is practically also much focused on participating and/or monitoring of government projects funded by the World Bank. Focusing on the funded-World Bank projects, such as *Kecamatan* Development Project (KDP) and Urban Poverty Project (UPP) is important for the Bank because it will save the projects and assure debt repayment by controlling its projects. The World Bank claims that Community Driven Development initiatives are good and success in delivering resources directly to communities to plan and reinforce transparency and accountability at the village level (World Bank 2005c: 16).

Justice for the Poor could not really respond and tackle the roots of problem of poor people in the field. For instance, how does Justice for the Poor choose the location of its projects on access to justice[29]? They focus and support financially the people or non-governmental organizations which are situated at where the funded-World Bank projects are mostly located or programmed.[30] Through its programs, the World Bank believes that involving the people directly would be useful for them in controlling government projects so that it could be implemented properly.

The problem appears when the people cannot access their rights which are structurally and arbitrarily deprived by the government in the past, such as the issue of land rights, reclaiming/land occupation, and water rights. In rural areas, the landless people will be still poor when the World Bank projects only supporting them for monitoring and controlling the funded-World Bank projects rather than solving the problem of land ownership. It means practically, Justice for the Poor can finance the

[29] Research program of Creating Access to Justice, the World Bank used institutionalism approaches, not based on the structural issues. And most of their researches reports are connected to the case of corruption in the frame of poverty reduction funded by the World Bank, such as PPK (Program Pengembangan Kecamatan/Kecamatan Development Program) (Justice for the Poor 2005: 7). This perspective is also perceived by SMERU, a research NGO which based in Jakarta and working closely with the World Bank, has adopted similar strategy in understanding the poor (SMERU 2004).

[30] Bambang Soetono (Justice for the Poor/Decentralization Support Facility-World Bank consultant), *interview*, Jakarta, 9/5/2006.

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projects which are earlier designed and limited by the Bank concerning its activities, location/areas, and methods. Legal empowerment and legal literacy programs are also encouraged by the World Bank, even though it has an important massage for the poor to get 'access of justice', but again it is designed to control the legal system as an overall requirement of market efficiency. The justice for the poor as new vehicle for the World Bank and its access to justice program have shown new model of human rights discourse and trends, supposedly a market friendly human rights paradigm. Those projects in the framework of good governance in Indonesia are not only promoted by the World Bank, but also supported by many donor institutions, such as ADB (ADB 2000) and IMF (IMF 1997).

The phrase 'access to justice' is unclear, because many donor institutions are involved in promoting 'access to justice', especially the World Bank. World Bank established Justice for the Poor as part of its projects. Although they have different meanings, the phrase 'access to justice' is often intertwined with the term 'justice for the poor'. Substantially, both of them are projects focusing on helping poor people by designing local dispute resolution and institutional mechanism building.[31] In practice, the World Bank offered certain program to Legal Aid Institute (LBH), particularly the program which is dealt with poverty issues, such as 'access to justice'. However, the problem with this program is contradictory with other World Bank's program, such as privatization and or labor market flexibility projects. It also raises a conflict of interest within LBH program if they receive financial assistance from the Bank. The other important reason is concerning beneficiary issue. LBH Jakarta has not seen yet how the World Bank program would touch or affect poor people directly, and how far it would be useful for the poor people. 'access to justice' in the World Bank frame is more interpreted through its program by accessing court process or institutional access. Because those reasons, LBH Jakarta has strongly rejected financial assistance from the World Bank, and did not ever want to be involved in any of the World Bank projects.[32] Nevertheless, the unique one, on the other side, the similar name of project, 'access to justice' is also applied and operated by LBH Jakarta projects. This project

[31] Asep Yunan Firdaus (Chairman of Association for Community and Ecological Based Legal Reform (HuMa), and former Director of Semarang Legal Aid Institute (LBH), *interview*, Jakarta, 5/5/2006.
[32] Uli Parulian Sihombing (Director of LBH Jakarta/Legal Aid Institute), *interview*, Jakarta, 4/5/2006.

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is sponsored by AusAid (Australia), and it is focusing on strengthening the role of legal aid assistance for lawyer and communities.[33]

According to Rinaldi, there is a possibility of changing World Bank priorities in the field, especially in tackling the roots of problem faced by the poor people. He gives an example in Lampung where the World Bank has also concerned and prioritized the land rights issue. Change priority is not the formal World Bank policy, but it could be done at field.[34] It meant that the local issue of the people (the roots of problem), although it is very important and structurally influential to impoverishment, could be an informal policy tackled by World Bank staff, not by the World Bank formally as an institution.

The emergence and role of the Justice for the Poor in Indonesia is inseparable with the global program on Poverty Reduction Strategy Papers (PRSPs) sponsored by the World Bank. PRSPs have applied common projects and mechanism for various problems of the poor in the third world, including Indonesia. PRSPs should be implemented as a condition for receiving loan. According to Focus on Global South report, PRSPs promoted market oriented policies, open trade, investment, financial regimes and seeks to rollback the government's direct roles in the economy by seeking to abolish state-owned enterprises (Chavez and Guttal 2003: 13-14). It shows that inherently contradictory how can anti-poverty projects be measured as conforming to market liberalization and fast economic growth if it structurally deprives and impoverishes structurally for the poor? This is clearly an incoherent and ambiguous project.

Poverty reduction strategy is pretty similar with the neo-liberalism dimension of structural adjustment programmes (SAPs), which tends to serve the capital interest and market liberalization rather than attacking the roots of impoverishment. Although the World Bank's 2000 World Development Report on "Attacking Poverty" sets out some new concerns about the role of equality, security and empowerment in poverty reduction, the overall focus continues to be on liberalization. This is despite the fact that the World Bank has announced that inequality is back on the agenda, because for the Bank, inequality is not the result of liberalization, but as stemming from non-

[33] Erna Ratnaningsih (Vice Director of LBH Jakarta/Legal Aid Institute), *interview*, Jakarta, 4/5/2006.
[34] Tauvik Rinaldi (Justice for the Poor-World Bank consultant), *interview*, Jakarta, 8/5/2006.

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economic factors and it argues that inequality is detrimental to growth because it can cause social unrest, inappropriate government policy, and importantly, can restrict the ability of the poor to invest in education or production (Johnston 2005: 138).

Although SAPs and stabilization policies are changed, and the new lending facilities which is linked to PRSPs still remains based on neo-liberal economic policy recipe. Poverty is used as a window dressing to peddle more or less the same SAPs to low income countries that led them into a state of chronic economic crisis to begin with, and we can see easily that both SAPs and PRSPs remain same, the old wine in the new bottle (Guttal 2000; Jubille South et al. 2001; Chavez and Guttal 2003; Johnston 2005: 138).

In sum, the discourses in the Indonesian government policies on poverty reduction and combating corruption are actually sort of assortments of legal-economic prescription categorized as 'good governance'. They appear as good discourses while hiding contradictory terms and fundamental crisis of governance.

3.4 Participation and Partnership: Mystification of Power Asymmetry

For the Bank, participation is intrinsic to good governance, and it is the way of improving accountability and effectiveness in the Bank's sector lending operations (World Bank 1994: 42, 56). Participation is always combined with loan projects conditionalities, which strongly promotes government accountability through public participation and building partnership with civil society. It was earlier noted that, twinned with 'democratic governance', the World Bank also emphasizes an "electoral participation" as indicator of public involvement politically (World Bank 1997b: 111-120). It is measured in the context of participation quantity rather than quality of democracy. This perspective is also perceived as an important factor for enabling environment of market.

There has been an explosion of interest of participation, a movement from 'margins to mainstream', stated by the World Bank in its report, "We enter the new millennium with a better understanding of development. We have learned that traditional elements of strategies to foster growth – macro-economic stability and market friendly reforms – are essential for reducing poverty. But we now also

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recognize the need for much more emphasis on laying the institutional and social foundations for the development process and on managing vulnerability and encouraging participation to ensure inclusive growth" (World Bank 2001: vi).

As lending operations, in its development project documents, participation means information sharing, consultation, decision making and initiating action (World Bank 1994: 47). In governance reform discourse, the expression 'citizen participation' or 'participatory governance' appears on the World Bank's document to ensure the role of public in democratic processes. It is used interchangeably, and always pronounced in the frame of partnership roles under World Bank's projects (Pozzoni and Kumar 2005: 1). In addition, a critical factor in the promotion of enabling environment for participatory governance initiatives is the provision of an appropriate legal framework to enable citizens to engage directly in policy making (World Bank 1994: 47; Pozzoni and Kumar 2005: 22).

The World Bank also sees the role of government and participation of civil society is vital, as are the importance of sequencing and the complementarities among development projects (World Bank 1997b: 20; World Bank 1998b: 26-29). These lessons point to the importance of identifying bottlenecks – the economic or governmental weakness that stand in the way of a wide range of development objectives. Such lessons are humbling and have come at great cost over the last 50 years. They alter the framework in which the development enterprise should be approached, and they cannot be ignored (World Bank 1997b: 20).

In this regard, the World Bank projects encourage greater roles of community in accompanying every approved project. For instance, community takes decisions on planning, implementation, operation and maintenance, and in some cases exerts direct control over investment funds. The typology of Community Driven Development (CDD) intervention is primarily referred as a form of participation. It is closer to the notion of participatory governance, as it promotes partnership and collaborative decision making between government and communities (Pozzoni and Kumar 2005: 1).

But if we look at the projects closer, it seems that participation is only designed to legitimize World Bank projects and fulfill its loan conditionalities. Participation is designed narrowly and based on projects rather than listen to the

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people's input. For instance, based on document of Initiatives for Local Governance Reform (ILGR) Projects, the World Bank disbursed loan facility to Indonesian Government through Ministry of Home Affairs and Bappenas. This project was aimed to promote participation and civic engagement, but it covered only 'designated sectors': power, irrigation and drainage, general transportation, water supply, sub-national government administration. This project described that the proposed project as supporting advancement in good governance initiatives at the district level through the project rewards good governance at the district level by providing incremental investments funds to districts that complete a set of prescribed reform in areas of public participation, transparency, financial management and procurement, as well as giving visible recognition to these reform initiatives (World Bank 2003b). It clearly shows that what the World Bank's projects have designed is actually a 'projects-based designated participation' rather than democratic participation. It is too far from meaningful participation.

The other critical problems on project participation are also found. It is often narrow in scope, rushed, superficial, and mostly ineffective. In detail, it happens because: (i) The Bank's Information Disclosure Policy limits informed participation; (ii) Participation usually does not occur until project preparation and appraisal; (iii) Participation has also been weak during monitoring and evaluation; (iv) Participation processes have often been poor quality; (v) Social analyses are not integrated with project decision making; (vi) Public participation is hindered by a number of external and internal constraints, particularly insufficient funding and inadequate support from management; (vii) Insufficient capacity in communities and local CSOs has limited their abilities to participate; (viii) Systematic improvements in the quality of participation are constrained by inadequate benchmark, standards, and learning systems in the Bank; (ix) The Bank's accountability mechanism for ensuring meaningful engagement are inadequate (Herz and Ebrahim 2005: 44-51).

Critics of the World Bank buzzwords on participation are increasingly stated by many scholars and institutions (Cooke and Kothari 2001; Herz and Ebrahim 2005; Chaves and Guttal 2003: 9-11; Williams 2004; Mohan and Stokke 2000; Hickey and Mohan 2005). One criticism is that participatory mechanism introduced by the Bank does not address unequal power relations in a ways transfer decision making

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authority, and the ability to hold other decision makers accountable, to those who will be affected by the decisions (Cooke and Kothari 2001). Participation is one of the main buzzwords of the PRSP strategy, and allows manipulation of civil society by the World Bank, IMF and bilateral donors (Chaves and Guttal 2003: 9-11). The danger of participation in this context is because participation can be easily interpreted as practice of the active citizen and linked to a 'softened' neo-liberalism that sees empowerment in narrow market terms (Mohan and Stokke 2000: 255; Birdsall 2004: 19; Munck 1995: 68). Participatory approaches often fail to achieve meaningful social change, largely due to a failure to engage with issues of power and politics (Hickey and Mohan 2005: 237).

In legislation process, practically, public participation can be considered as part of legislation process. As mentioned under article 53, Act Number 10/2004, "Society has the right to give oral or written input in order authorization as well as study of bill draft and local regulation draft." However, these are often pressured by external factors in fulfilling its interests. For instance, the corporations often facilitate the decision makers or legal drafters to earn more money, accommodation facilitations, and others. Ironically, they can finalize the legislation process by lobbying and compromising draft secretly.[35] In reality, mostly, it has been too far from the ideal process of legislation, which should be practiced openness and participation.

Although there are increasing criticisms of the participation approach, the World Bank tries to manage its critics from civil society via 'constructive engagements' and 'multi-stakeholder dialogues.' Most prominent among these were the Structural Adjustment Participatory Review Initiative (SAPRI), the World Commission on Dams (WCD) and the Extractive Industries Review (EIR) (Bello and Guttal 2005).

Closely linked to participation discourse, partnership is also the current idea in proposing development projects sponsored by multilateral agencies. For the World Bank, effective development requires partnerships among different levels of government, the private sectors, donor groups, and civil society. It requires national government to seek agreements with partners. Countries need institutions that

[35] Bambang Wiyono (Public Relation of Law and Human Rights Department, Republic of Indonesia), *interview*, Jakarta, 31/5/2006.

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strengthen organizations and promote good governance, whether through laws and regulations or by coordinating the action of many players, as international treaties and public-private partnerships do (World Bank 2000: 3). The goal of partnership is not only to provide knowledge and build skills but also to bring together clients to share their knowledge and empower them to analyze and address their own countries problems (World Bank 2003a: 33-36).

In Indonesia, the World Bank chairs the annual Consultative Group on Indonesia and works closely with UNDP and ADB, as founding sponsors of the Partnership for Governance Reform (the Partnership) (World Bank 2003c: 2; World Bank 2003a: 36).[36] The Partnership main objective is to help establish strong institutional building blocks for governance in Indonesia. It will function as a knowledge-sharing arena, a consensus-building forum, and a vehicle for strategy development and coordination of the various critical facets of the reform process. It will pursue this aim by: (i) generating and disseminating knowledge on good practice in governance from Indonesia and abroad; (ii) coordinating the governance reform efforts of Government, donors, and civil society; and (iii) funding initiatives to promote reform of governance in Indonesia (UNDP 2006).

The Partnership will help to identify effective approaches by promoting a broad-based national consultation process that will involve participatory assessment and wide dissemination of results. The aim will be to reach consensus on a realistic strategy to affect and monitor key reforms. The governing structure of the Partnership is an innovative arrangement between the World Bank and the UNDP. The Partnership's activities will fall under two components: the Facility for Policy Dialogue and Analysis, and the Trust Fund to support capacity-building for good governance. The partnership is not intended to be a permanent structure; It is seen as a transitional mechanism to engender a longer-term governance agenda that will eventually be sustained by national institutions (UNDP 2006).

In addition, financial assistance has been given by donor institutions since 2000. Based on a Project Information Sheet, "Enabling the Partnership for Governance Reform in Indonesia", mentioned about Bappenas as Executing Agency

[36] In the context of partnership, the World Bank has also sponsored The Network on Good Governance and Capacity Development (a network of donors organized by OECD's Development Assistance Committee)

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for a 6 year project period (2000-2005), with a total amount of US$ 19,295,781, to be sponsored by Australia, Canada, Denmark, The European Union, Finland, France, Japan, the Netherlands, New Zealand, Norway, the Republic of Korea, Spain, Sweden, Switzerland, the United Kingdom and the World Bank (UNDP 2006).

This case of the Partnership is unique, especially the involvement of the World Bank in promoting 'partnership' through multilateral cooperation in Indonesia. In its executive summary, the World Bank stresses that the partnership will only be entered into with 'committed developing country governments' that meet 'a minimum level of performance'.[37] In the case of 'ownership', The World Bank President said that,

> "Not the old technical assistance approaches of the past that relied too heavily on foreign consultants, but helping countries to design and implement their own development. Our goal is to support the fit and help make the unfit fit. This is all about inclusion" (Wolfensohn 1997: 10).

In addition, greater degree of national ownership is always provoked through a form of dialogue on development effectiveness, and the recipient countries are ultimately responsible for their own development processes (OECD 1996: 14; World Bank 1998a).

The Partnership in Indonesia emerges in the transition context post-Soeharto, and it becomes a new vehicle for donor institutions in promoting a neo-liberal framework, including good governance. It popularizes the terms of 'partner' rather than 'recipient or debtor' countries. It tries to provide an equal and mutual respect among partners and donor institutions, but of course it shows actually an imbalance in the relationship in terms of power and influence because of the nature of aid. For instance, the absence of multi-annual financial agreements means that recipients are constantly under the review of donors and the IFIs (Abrahamsen 2004: 1456). Or, in the case of poverty reduction although it promotes partnership, the issue of macro-economic framework of the PRSPs is clearly non-negotiable and under the Bank's supervision (Pender 2001: 397-411; Panos 2002; Chavez and Guttal 2003: 2).

[37] Similar provision is concerned in deciding partners, such as OECD and UK government. OECD states that developing countries must to 'commit to basic objectives of social development and increased participation' and 'carry out sound financial management' (OECD 1996). The UK also defines that partner governments must 'have a commitment to the principles of the agreed international development targets and pursue policies designed to achieve these' (DFID 1997).

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In this regard, the relationship between IFIs and recipient countries seems to be domination relationship. But the use of words that are reproduced by the World Bank in the case of the Partnership Indonesia, such as 'partners', 'freedom and ownership', 'representatives of domestic civil societies', 'multi-stakeholder processes'[38], 'dialogue', 'active creators of their own future and development' and 'inclusion', basically discourses which are closely linked and produced for serving the interest of powerful institutions. These discourses do not carefully separate major actors –state institution, market, and community- and its character governance matters. And it always assumes that they are connected each other, and therefore these is a need to be established a 'mutual understanding' and 'closely cooperative agreements' in this relation.

Surely, these discourse stresses to promote the ideal text of partnership, but basically it has a context of power discourse which influences the text and involves contradictions. Borrowing Foucault thought who said that the power has reproduced 'knowledge' and 'truth' resulted by a system of ordered procedures for the production, regulation, distribution, circulation and operations of statement (Foucault 2002, 1980, 1979). This perspective performs intellectual and academics/scholars inside the Partnership to legitimize the truth of those 'myths' words. This thesis agrees with the argumentation which states that partnership is 'mystification of power asymmetry' (Abrahamsen 2004: 1456). In the context of those discourse and relations, the donor institutions who drive market liberalization process, and state role as facilitator are having stronger and much higher position than the community to determine 'mutual understanding' and 'closely cooperative agreements'.

Actually, this driving discourse model is continuously articulated while the donor institutions, including the Partnership, continue in promoting and transmitting the ideas of reform in the context of good governance in Indonesia. The World Bank through the Partnership has been successful in mystifying the imbalanced position and the softening of donor's intervention. Criticism about the Partnership in Indonesia is highlighted also by Crawford (2003a, 2003b), who states that the decision making

[38] Multi-stakeholder processes are not aimed as consultation forum, but more than that, it aims for driving technical route to intervene projects. In the case of USDRP (*Urban Sector Development Reform Program*) for instance, it showed driving forces of donors rather than community at grassroots level (Fahmi and Zakaria 2004). Other criticism over multi-stakeholder processes is also highlighted by *Minu Hemmati* (2002).

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bodies in the Partnership Indonesia are constructed so as to ensure that reform agenda of international agencies remains relatively unchallenged.[39] Issues of crucial importance to Indonesian civil society, such as constitutional reform and civil military relations were kept off the agenda because such reform would not benefit international agencies. The Partnership could not give financial assistance if there is a contradictory program with its main objectives, including the interest of international financial institutions in liberalizing market principles. Sahetapy, a law professor who lead National Law Commission (KHN) and sits as a board member of the Partnership, also complained the existence of 'partnership' particularly in the sense of law reform program which tackles the issue of formal reform, but it does not touch the issue of reform internally within the judicial institution, particularly in the Supreme Court which has been highlighted by the public because of continued corrupt system. He explains,

> "I was very upset with Professor Bagir Manan (the Head and Judge of Supreme Court) because in the reformation era, Manan has currently evaluated, recommended and awarded himself for extending his position as the Head of Supreme Court. And uniquely, even though there have many projects supporting the Supreme Court, the Partnership has not really serious criticized this adverse situation of judicial reform in Indonesia.[40]

Participation and partnership is used as working or technical terms for making equal cooperation between donor communities, state or government, non-governmental organizations, academics, and other civil societies. It blurs the essence of substantial reform which should be accounted for particularly in deconstructing and stopping corrupt system in government as well as judicial institutions. It is not just a matter of installing artificial 'truth' reform projects which are driven by own designated agendas and 'experts' behind the Partnership.

By criticizing the absence and mystification of power asymmetry of participation and partnership in the framework of neo-liberalism, we can see easily that the World Bank tries to design global governance through 'myth' discourses and

[39] This criticism was replied by representatives of the Partnership Indonesia (see, Mallaranggeng and Tuijl 2003).
[40] Prof JE. Sahetapy, *interview*, Jakarta, 30/5/2006.

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blurs power sub-ordination. In this regard, similar to Abrahamsen's (2004: 1464) position in arguing partnership or participation which says that the power of partnership (and participation) in global governance cannot be captured through a conceptualization of power as domination alone, it requires attention to the manner in which power produces its effects, its technologies and rationalities. These are the current ambiguous and inimical phenomena of 'softened' neo-liberalization.

3.5 Subordinating Human Rights: The Absence of Good Governance

This section will examine whether the World Bank concept and project on good governance integrates human rights aspect in decision making throughout the policy formulation and whether there is complementation or contradiction as regards human rights?

There are principles or fundamental values in human rights, which are inherently applied to ensure the existence of human rights for human beings, namely: (i) principle of universality; (ii) principle of equality and non-discrimination; (iii) principle of human dignity; (iv) principle of indivisibility; (v) principle of inalienability or untransferable; (vi) principle of interdependence; and (vii) principle of responsibility (Hastrup 2001: 4; Flowers 2000; Ravindran 1998; Winston 1989: 9).

In defining the content of rights, the concept of core content and minimum core content are important as framework. The core content of human rights refers to the entitlement or the set of guarantees that constitute the rights. The minimum core content is the non-negotiable foundation of a right to which all individuals, in all contexts, and under all circumstances are entitled. It is intangible baseline level that must be guaranteed for all persons. It indicates a minimum below which no government should perform, even in unfavorable conditions (Cheria et al. 2004: 22; Orend 2002: 23-24).

The concept of 'good governance' in this section will be reviewed closely in dealing with state responsibility as a principle in protecting and fulfilling rights. Thereby, state obligation to respect, to protect and to fulfill can be used to measure whether the concept of 'good governance' achieve the state obligation framework. State obligation framework includes the concepts of 'progressive realization', 'to the

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maximum of its available resources' and 'undertakes to take steps'. In assessing 'good governance' project by using human rights perspective, it uses a systematic process to ensure the integration of human rights aspect in decision making throughout the policy formulation, implementation, checking, and adapting process (Raadstake 2002; Raadstake & de Vries 2004: 8).

In this context, it would be also relevant to check whether the concept of good governance use a rights-based approach, which means that it is 'a justified and entitlement', founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. A right entails an obligation on the part of the government to respect, promote, protect and fulfill it. The legal and normative character of rights and the associated governmental obligations are based on international human rights treaties and other standards, as well as on national constitutional human rights provisions. Thus, a rights-based approach involves not charity or simple economic development, but a process of enabling and empowering those not enjoying their ESC rights to claim their rights (Cheria 2004: 9; IHRIP-Forum Asia 2000).

Rights-based approach does not use normative approach only or base on legal imperative of human rights instruments, because it will limit the people rights and claims outside the formal legal instruments and institutions (Cornwall & Musembi 2004:1418). The use of human rights-based approach is to assess dimensions of World Bank projects on 'good governance'. The following dimensions of rights-based approach will be tackled (i) As a set of normative principles to guide the way in which development is done; (ii) As a set of instruments with which to develop assessments, checklists and indicators against which interventions might be judged; (iii) As component to be integrated into programming; and (iv) As the underlying justification for interventions aimed at strengthening institutions, whether to develop the advocacy skills of organizations representing marginalized people (Cornwall & Musembi 2004: 1430-1432). By using those dimensions, it will answer whether the projects on 'good governance' enable people to empower themselves to overcome obstacles to the realization of social and economic rights.

As mentioned earlier, the World Bank projects on good governance, referred to in its publication Governance and Development (1992), the Bank develops four

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principal components of governance: (i) Improving public sector management; (ii) The Legal Framework for Development; (iii) Accountability; and (iv) Information and Transparency (World Bank 1992).[41] As financial-banking institution, the World Bank's interest on governance derives from its concerns for sustainability of the programs and projects, including financial assistance. Nevertheless, the role of World Bank on good governance is a dominantly political concern. Law or legal reform in the legal framework for development is a political product or instrument representing the interest of policy makers. According to Kjoer and Kinnerup (2004: 7), the World Bank's stance on human rights issues has changed from being regarded as a political topic outside the mandate of the Bank to an issue that is of relevance for the economic policies of the Bank when they affect the economic situation of a country. This statement could be right in the sense of World Bank's document constitutes human rights through its development projects and financial assistance. For instance, the World Bank states that creating the conditions for the attainment of human rights is a central and irreducible goal of development (World Bank 1998b: 2).

The World Bank claims that it contributes directly in implementing Universal Declaration of Human Rights through its support of primary education, health care and nutrition, sanitation, housing and environment. Allegedly the Bank has helped hundreds of millions of people attain social and economic rights. In other areas, by helping to fight corruption, improve transparency and accountability in governance, strengthen judicial systems, and modernize financial sectors, the Bank contributes to build an environment in which people are better able to pursue broader range of human rights (World Bank 1998b: 3).

[41] Improving public sector management deals mainly with civil service reform (strengthening personnel management, efficiency and effectiveness public agency, rationalize and privatize public enterprise sector), public expenditure management (improve public investment programming and budget process). The legal framework for development entails supporting the development of a set of rules securing property rights, governing civil and commercial behavior, and limiting the power of state (World Bank 1992: 29-30). Accountability focuses on financial accountability, capacity and willingness of governments to monitor their overall economic performance. At the micro-level, the primary concern is investment and in the production and delivery of goods and services in the public sector (World Bank 1992: 13-14). As competitive market requirements, information is needed for private sector calculation, reducing uncertainty and risk. And transparency is aimed to prevent corruption, the importance of information in the analysis, articulation, and acceptance of policy choices (World Bank 1992: 39). Good governance for the World Bank is synonymous with sound development management, effort to develop privatized production and market-led growth (World Bank 1992: 1).

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From its documents, it seems that the World Bank has been campaigning for and programming human rights through its projects. However, if we look at it more deeply, the absence of human rights in the World Bank policies are related to the design of rights itself in facilitating market liberalization which is inseparable with selected human rights provision. There is limitation of rights and contradiction innate. For instance, reform programs which are designed for economic growth and capitalists interest, sponsor in cutting subsidies, the adoption of trade liberalization, and privatization, caused structural impoverishment which are very painful for poor people. Privatization of social services is also expensive and inefficient, but highly profitable for companies (Amin 1997: 32). Privatization means marginalization in the sense of monopolizing water resources for the capital interest, even though the capitalist invokes 'water for all', factually the poor people have not only lost their access to get water, but they should also pay for getting water. In this context, we can see that privatization of water causes the limitation of rights particularly for the poor. The slogan 'water for all' is simply shifted to 'water for whom can pay'.

Rooted in the universality of human rights, it is asserted that meaningful and sustainable development is possible only when all people have full access to and are able to enjoy all human rights. Human rights approach maintains that poverty and marginalization are primarily the consequences of human rights violations and the process can be reversed only when people are able to reclaim their rights (Parasuraman 2004: 47). Privatization which can lead to monopolization contradicts to human rights principles, especially the principle of non-discrimination and equality.

Then, the next question in this regard, is whether good governance approach used rights based approach to respect, protect and fulfill rights? Good governance contains general principles in recommending to the government the conduct of proper or clean governance, including being responsive to demand or claim for human rights. In relation to this context, political recommendations may lead to greater fulfillment of human dignity, but it does not necessarily lead to increased respect for human rights. There is a difference between being given something and being entitled to something (Eide and Rosas 1995: 15-20; Kjoer and Kinnerup 2002: 1-18), and in human rights perspective, rights are entitled to everyone. Many of World Bank projects are programmed to respond to the needs/interests of corporations, majority of

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shareholders, or expertise/advisers at the Bank. Or might be, these are designed for serving the needs of recipient countries or people, but these are not really based on rights that are innate in every human, for instance, the project on legal framework that requires the reform of several legislations under Consultative Group for Indonesia (CGI) briefing papers. The World Bank projects on good governance potentially disables people to empower themselves to overcome obstacles to the realization of social and economic rights, because legislation scenarios are projected and designed in the frame of foreign debt conditionalities. Economic dependency has made the government blindly follow what the donors wanted. The government rejection in making legislation can cause the debt or grant be postponed or cancelled (Juwana 2006: 10).

If the World Bank project on good governance above does not use "rights based approach" in managing governance, it automatically means that its perspective on human rights is also highly questionable. In this context, there are at least three perceptions in responding to the relationship between the World Bank projects on good governance and human rights. First, it is seen as a contradictory concept. The World Bank project of good governance is seen as part of the neo-liberal paradigm, which designs North/donor based governance for third world or poor countries, with the ultimate goal of achieving market liberalization. Using this perspective, one sees that the problem of good governance under this paradigm is the role of state should be retreated and the role of market would be dominant. Even though human rights are expressed by the Bank, it is reluctant to support and implement human rights and it does not talk much about human rights. Privatization, deregulation, liberalization, flexibility of labor market, strengthening market liberalization, and tax cuts, are aimed to help market effectiveness, but for the poor, it could be marginalizing them (Wiratraman 2006; Parasuraman 2004; Amin 1997: 149). In this context, particularly at the implementation level, the World Bank project on good governance potentially deprives and subordinates rights of the people.

Secondly, there is actually no contradiction and good governance and human rights can be mutually supportive. Contrary to the previous one, this perspective sees that there is no contradictory provision, or the relationship between human rights and good governance need not to be seen as a conflicting one. The idea of good

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governance and human rights can help and support each other. A research indicates that political/civil liberties and good governance are not ‘luxury goods’, and the process of economic development does not in itself automatically ensure improving governance, provision of civil liberties and control over corruption. The causality direction is from improved governance (including political/civil liberties) to economic development and not vice versa (Kaufmann 2004: 23). Good governance as donor practice today is running on a different track than human rights, and the challenge is how to make these tracks run parallel so that they support each other and the development of the recipient countries (Kjoer and Kinnerup 2002: 17-18).

Thirdly, the concept of good governance and human rights is overlapping and complementary with each other. In this perspective, there is no serious conflict between good governance and human rights. Ideally, human rights have and should continue to become an integral element of ‘good governance’ programmes, but factually there are overlapping as well as complementary concerns of good governance and human rights aspirations (Sano 2002: 142). It is because these two standards have different ‘departures’. While good governance is managerial model, and in its more recent aims of empowerment, human in its orientation, the human rights laws are foundational and human in their orientation. These two standards are thus operating at different levels, but they converge in their human perspective, such as they converge in identifying goals, standards and rights to which the human person is entitled in relation to power holders (Sano 2002: 142).

These perceptions could be right in the sense that they use different point of view in looking at the relationship of good governance and human rights. This is right that human rights as standard can be used to apply good governance, or good governance principles can be strengthened in promoting human rights. However, the concept of good governance which is sponsored by the World Bank cannot be generalized or simplified as ideal principles, because it is very clear that ideologically it is promoting neo-liberalism or market liberalization principles rather than defending the rights of the people. The danger of this project is that the World Bank believes that good governance is possible only through a retreating state in order to ensure efficient

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management of resources.[42] The primary aim of good governance for the World Bank is to design laws and regulatory mechanism through a legal framework for development and its legal reform that ensures the protection of the interest of corporations or the capitalists. For the Bank, it could not act or react to human rights violations occurring in certain countries especially if it has commitment or working with cooperation with such countries. In the case of Indonesia after 1998, the World Bank has maintained inaction or kept silent to gross violation of human rights in the East Timor case in 1999 or in Aceh, the case of disappearance people, the Trisakti tragedy case in Jakarta and many other cases that involve violation of human rights. These cases were not considered important enough for the disbursement or cancellation of debt or financial assistance, and the human rights violations were not considered as World Bank business; such human rights violations are seen separately from its projects. KontraS, a non-governmental organization for defending victims and disappeared people, held a workshop on good governance in Indonesia[43]. They said that there has been no positive correlation between good governance and human rights, because human rights violation has been still rampantly occurring and worsening. Concerning human rights issues, good governance is good in textual matter, but fails and inconsistent at implementation level.[44]

With its financial power, the World Bank can require and drive certain regulations under legal framework for development in flourishing the interest of market. The integration of human rights aspects is only written in governance text or documents only, and it has nothing to do with implementation of rights. The State, slowly but surely, should retreat from its role of facilitating economic liberalization. If we have seen the case of marginalization, market based legislation and privatization that deprive people rights, the projects of good governance do not only contradictory,

[42] In reflecting the case of Africa countries, *Woodman* said that the responsibility of the state has been shifted to the market, and it promoted competitiveness in the frame of economic liberalization. Good governance has been used to control the role of state, whether they comply or not with developmental pills injected by donor institutions. In this context, he was wondering the human rights values would be hijacked by dominant actors who do not representing most of people interest. Gordon Woodman, *interview*, Jakarta, 2/8/2006.

[43] There was a Seminar ”Good Governance in Indonesia: Searching Indicators from Human Rights Perspective”, sponsored by KontraS, Kodemo, International NGO Forum on Indonesian Development (INFID), The Netherlands Humanist Committee on Human Rights (HOM), in Jakarta, 2nd July 2002. This seminar was trying to answer ambiguity of good governance practices in Indonesia, by designing very fundamental question: “clean government for what, and good for whom?”.

[44] Nining Nurhaya (Public Relation, KontraS), *interview*, Jakarta, 10/5/2006.

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but also subordinate, subvert and violate human rights. If the state roles and responsibilities will be minimized and shifted to the private sectors, good governance is not only in different track with human rights aspiration, but it is also hijacking the track of protection and fulfillment of rights.

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CHAPTER 4
LEGAL REFORM AND OPPRESSIVE TEXT OF LAW

4.1 Legal Reform and Legal Framework for Development

The development of modern legal system cannot be separated with the emergence of capitalistic-industrialization, because modern legal system is required for normative order that can support rational framework. In this regard, it needs a doctrine to emphasize law as rational framework, namely, Legal Framework for Development.

The emergence of legal framework for development is inseparable with the role of World Bank in introducing structural adjustment programs. Law and its implementation are seen as important factors to strengthen economic growth and development. In supporting economic growth and free market system, one of the principal elements of good governance is legal framework for development (World Bank 1992). The legal framework for development entails supporting the development of a set of rules securing property rights, governing civil and commercial behavior, and limiting the power of state. In this framework, the Rule of Law is the primary concept which is instrumentally and substantially important, because it concentrates on justice, fairness and liberty. The World Bank emphasizes a 'fair' legal system which tries conducive to balanced development (World Bank 1992: 29-30).

What is the rule of law under the good governance concept? Rule of law as one of the elements of good governance has strongly promoted the legalism concept. Legalism is the ethical attitude that holds moral conduct to be a matter of rule, following, and moral relationship to consist of duties and rights determined by rules (Shklar 1986: 1). Referring to Bankowski, he notes that legalism dominates the entire moral universe, and it has three aspect of legalism: (i) rules are not contingent; (ii)

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there is no normativity outside the realm of the rules (or comprehensiveness of the normative system), and (iii) the relationship between rules and values is hidden (Witgens 2002: 12-13).

There are various problems as regards legalism, the first one being the decision makers (legislator), the ruler, and law enforcement actors narrowly interpret the doctrine of rule of law, and it is called as legalist. Secondly, conceptually, the rule of law is transplanted in many countries as general (good) concept for law application, including in Indonesia. Does rule of law have universal values in describing the use of power or explaining governance model? It is assumed that rule of law is neutral and does not have sociological values.[45] Thirdly, as emphasized by Rahardjo (2003: 16), rule of law tries to dominate the concept of law or rule more than the essence of law, such as 'rule of justice', 'rule of moral', or 'rule of just law'. In a similar perspective, Nonet and Zelsnick (1978: 4) attacks 'liberal legalism', on the idea that the ends of justice can be served by a purportedly detached, impartial, impersonal, and autonomous system of rules and procedures. Trubek and Galanter (1974: 1062) refer to 'liberal legalism', as law (and doctrinal system) could be easily transplanted to the developing countries. Turkel writes that the rule of law is a vital factor in the construction of the transition from competitive capitalism and classical liberalism to corporate capitalism and corporate liberalism, and it deeply shapes political and social conflict as well as basic patterns of economic and political action (Turkel 1996: 64).

In this situation above, the danger in using monolithic interpretation of a doctrine, particularly rule of law is that it can become potentially instruments of domination. This perspective is based on non-doctrinal perspective, which sees that rule of law is not neutral institution and does not propose legalism of law. It believes that rule of law has sociological structure and roots which contain important values in shaping the relationship among human, society, and state. Law is also a political product, representing political configuration as power authority institutions that drive its interest into legal norms and its reform direction.

[45] Indonesian Rule of Law conceptually is mentioned under UUD 1945, and it contains several character which importantly referring to the concept of *asas kekeluargaan* (family principle), together with the *keadilan sosial* (social justice) and *kemakmuran masyarakat* (society welfare) not individual welfare.

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The World Bank emphasizes a 'fair' legal system under structural adjustment program and as a required element of good governance, it tries to systematically shape the relationship among human, society and state. Liberalism of legal framework for development is constructed through various legal reform projects.[46] Legal reform in this context can be institutional reform (structure of law) and substantive reform (product of law). This raises the question, what is dominant character of legal reform as part of World Bank framework for development?

The Bank's concern is with the law's procedural and institutional aspects (World Bank 1992: 51). Judicial reform, as one of institutional reform projects, is sponsored by the World Bank and aimed solely at enhancing a nation's economic performance. The Bank is enjoined by its article of agreement from interfering in the political affairs of its member, a prohibition it interprets as preventing it from supporting judicial reform, unless the project "is relevant to the country's economic development or growth, and to the success of the Bank lending strategy for the country (Shihata 1995: 170; Armstrong 1998). Similarly, judicial reform is seen as part of a larger effort to make the legal systems in developing countries and transition economies more market friendly. These broader legal reform movements encompass everything from writing, or revising commercial codes, bankruptcy statutes and company laws through overhauling regulatory agencies and teaching justice ministry official how to draft legislation that fosters private investment (Messick 1999: 2). As legal machinery, it consists of competent, ethical and well paid professional judges who administer rules that are well designed for the promotion of commercial activity (Posner 1998: 1; Severino 1999). Since 1994, the World Bank, the Inter-American Development Bank and Asian Development Bank have either approved or initiated more than $ 500 million in loan in judicial reform projects in 26 countries (Armstrong 1998).

These institutional reforms above focus on supporting a healthy financial system. Meaning, it needs an enabling environment with well governed institutions, where market participants would perform their functions of mobilizing resources,

[46] Liberalism, in both economics and politics, now spans immensely diverse nations, regimes, and cultures- thanks mainly to the powerful influence of the world capitalist market-with far less difficulty than before. Liberal hegemony is strengthened on a global scale by sustained economic growth, prosperity, political freedoms, and the modernizing requirements of science and technology (Boggs 1995: 12).

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allocating credit and managing risk in an efficient manner. In this context, legal framework which ensures creditors rights and a functional court system to enforce them, information flow based on sound accounting and auditing and strong and independent regulation and supervision of financial institutions (World Bank 2005d: 8).

The World Bank also encourages the borrowers to make new laws and regulations. For instance, the Bank supports in promoting: trade and investment law, labor law, anti-corruption law, and institutional reforms in supporting the effectiveness of debt disbursement. The idea of legal reform in this context is to minimize risk or uncertain property rights and to strengthen market processes which are urgently solved by designing legal framework with substantial means. The World Bank assists countries with legal reforms projects, including: (1) Communicating laws more effectively; (2) Ensuring the consistency of laws; (3) Addressing constraints to the implementation of laws; (4) Updating legal systems; (5) Training the judiciary in business and economic laws; and (6) Encouraging extrajudicial alternatives when legal systems are overburdened, such as commercial arbitration and other disputes settlements mechanisms. These legal sectors reviews are also being undertaken at the request of borrowers, with a view to removing impediments to private sector activity (World Bank 1992: 49).

The principle of market liberalization in this reform described above becomes so important for the World Bank, particularly in ensuring market efficiency.[47] In legal thought, there are assumptions behind the market. First, everyone participates with an initial set of property rights. They cannot trade if they are uncertain about what they own. Second, each of them is an idiosyncratic individual, each having different tastes and preferences. Third, each is capable of consenting to voluntary transfers that will transplant their property rights to others (Fletcher 1996: 157). This legal thought illustrates how the market and the legal system interact, or in other words, without a legal regime or legal authority that ensures a functioning legal system, the market cannot easily operate.

[47] Market efficiency in this context is the Bank's concerns because based on a survey of 3,600 firms in 69 countries more than 70 percent of respondents said that an unpredictable judiciary was a major problem 'in their business operations', and this report also found that the overall level of confidence in the institution of government, including judicial system, correlated with the level of investment and measures of economic performance (World Bank 1997b: 36).

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4.2 How Does Neo-Liberal Paradigm Influence Indonesian Legal Reform?

In the case of Indonesia, as explained by Baird (2000), the development of a strong economic legal infrastructure and effective enforcement of the law is central to this agenda because there is a strong correlation between ratings on the rule of law and the level of economic development. As in other East Asian countries, the crisis prompts Indonesia to take a serious look at its economic laws and the institutional framework within which they operate.

During two year, 1998-2000, a lot of progress were made in legal reform: (i) a new bankruptcy law has been enacted; (ii) a new commercial court established – with its first order of business being application of the bankruptcy law; (iii) a pro-competition law was passed and an institutional framework for administrating the law is being assembled; (iv) a new banking law has been issued and the central bank has been made legally independent of the government; and (v) a secured transactions law is currently being prepared and the company law is being formally reviewed. (Baird 2000). If such legal system was targeted by the World Bank to ensure market principles, then, why it was so important for good governance and why designed it as legal framework for development?

In its report, the World Bank concerns itself about governance for two kinds of reasons. First, from a broader perspective, both history and the Bank's own experience show that good governance is central in creating and sustaining an enabling environment for development. Second, sound development management is inextricably linked with the efficacy of the investments that the Bank helps finance and thus should be related with the Bank's goals, namely, to assist countries in reducing poverty and increasing sustainable growth (World Bank 1992: 47). In a more detailed provision, the World Bank emphasizes the importance of a stable macro-economic environment, a liberalized domestic business service sector and legal frameworks that induces transparency and protect investor's rights is advantageous (World Bank 2000: 32). To support this framework, the World Bank provides loans to host governments to fund their obligations under political risk guarantees that are in turn issued to foreign investor. In 1992, at the request of the Development Committee, the World Bank Group issued a set of guidelines embodying commendable

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approaches for the legal framework for the treatment of foreign investment. The guidelines cover the main areas dealt with in investment protection treaties: the admission, treatment, and expropriation of foreign investment, and the settlements of disputes between government and foreign investors (World Bank 2000: 83). The Bank's believes that sound governance, competition and markets, and free entry for multiple agents, whether government, non-government and private are essential for effective service delivery, especially to poor people. (World Bank 2001: 85)

Legal framework for development under good governance elements, through its legal reform projects are seen as an important factor in the sense of 'driving or designing' policy or instrumentation of political commitment of the debtor countries like Indonesian. It is called 'government debt management', which should be considered and operationalized for debt repayment.

In an obvious statement stated by Wheeler, the Vice President and Treasurer of the World Bank, who says that in the context of government debt management, governance refers to the legal and managerial structure that shapes and directs the operation of government debt managers. It includes the broad legal apparatus (statutory legislation, ministerial decrees and so on) that defines goals, authorities and accountabilities. It also embodies the management framework, covering issues such as the formulation and implementation of strategy, operational procedures, quality assurance practices, and reporting responsibilities (Wheeler 2004: 49). Government debt management legislation, along with laws covering the operation of fiscal and monetary policy and the government's auditing functions is a central element of governance framework aimed at generating sound financial policies and clear accountabilities (Wheeler 2004: 50).

If we have seen such legal framework, actually it is not encouraging legal framework for 'development', but corroborating the idea of legal framework for 'debt management'. The primary target of legal framework stresses the importance of economic growth (macro-economics reform) through performing market liberalization rather than empowering the poor or reducing poverty. Although the World Bank has specific program on reducing poverty, such as PRSPs, the prescribed macroeconomic reforms (that are underpinned by legal framework for development) to achieve them are 'undiscussed' and are indistinguishable from the previous macroeconomic

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frameworks focused on deregulation, trade liberalization and privatization (Eurodad in Bello and Guttal 2005). Tshuma (1999: 93) also argues that the World Bank designs a legal framework for development which revolves around a procedural and institutional version of the rule of law and this version emphasizes formal equality in the market place which is appropriate for liberal capitalism. Legal reform in this framework has negative impact or a disempowering effect on the livelihoods of large sections of society in developing countries.

In Indonesia, the programs on good governance become influential to judicial and legal reform, and it is well recognized by major decision makers in parliament and bureaucracy. Nevertheless, good governance in this context, as mentioned earlier that it favors the importance of the role of free market. This can be seen from how the World Bank injects the model of governance through Consultative Group on Indonesia (CGI). The investment climate and improving service delivery and were frequently mentioned during the CGI sessions. The World Bank, as one of the most influence institutions, welcomes the clear commitment of the administration of President Susilo Bambang Yudhoyono on the issues of governance, legal and judicial reform, and anti-corruption. This commitment has been at the very center of the new Government's platform for the future. The World Bank also welcomes the Government's strong commitment to improve the investment climate which is a key step in improving the overall governance environment (Hellman 2005).

Then, what is the primary message in understanding the element of legal framework for development? For the World Bank, legal development framework is primarily designed for global integration of economies. Taxes, investment rules, and economic policies (privatization, deregulation, and labor market flexibility) must be ever more responsive to the parameters of a globalized world economy. These changes have meant new and different roles of government, no longer as sole provider but as facilitator and regulator (World Bank 1997b: 2).

Contrary to the neo-liberalism perspective constituted by the World Bank, the legal development framework is not different from the strategy to control and impose on the debtor or borrower countries, to implement and strengthen free market principles. By controlling debtor countries, the World Bank can dominate through legal reform which should be applied and enacted by state, and it is tremendous

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ascendancy of finance (Bello 2005c: 101-128) and inextricably linked to global capitalism system. Doctrine of rule of law is proposed to shape market friendly legal system, underpinning economic imperialism through good governance as political-economic architecture. In this position, I fully agree with Zinn who said that the rule of law is a kind of conspiracy, and the rule of law masked the true sources of power in society (Zinn 1971). Legal framework for development, through its legal reform has shown as power exercise of international financial institutions or the Bank and exacerbated tremendous inequality and impoverishment. In this context, the hidden agenda of good governance which is accelerated by promoting the element of legal framework for development is actually not the 'rule of law', but promoting (and imposing) the idea of 'rule of neo-liberalism law'.

4.3 Legal Reform Projects: The Politic of 'A Clean Brush' Regime

During the military-authoritarian New Order regime of Soeharto, legal reform was mostly designed to secure his and his cronies' interests, including in the political, social and economic spheres. In the political field, Soeharto imposed three legal Acts of political packages: Act on Political Party, Act on Order and State Institutions, and Act on Society Organization. Only three political parties were allowed under this regime, the Functional Group Party (*Golongan Karya*) as single majority party vehicle of Soeharto vehicle, and the smaller, Development Unity Party (*Partai Persatuan Pembangunan*) and Indonesian Democratic Party (*Partai Demokrasi Indonesia*).

By controlling parliament members, designing political party, and handling the military command, he has easily built monopolistic business, and exploited natural resources for his and his family's businesses. He allowed multinational corporations to invest in Indonesia on corrupted concessions, and raised the national debt in the name of 'development' by borrowing money from donor institutions, especially from the ADB, the IMF and the World Bank. All political-economic resources and power were in his hands. In this context, legal reform and its enforcement has been no serious challenge for Soeharto and he enriched himself through this process. This

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political configuration under Soeharto has historically influenced character of legal reform in Indonesia until 1998, which pushed a market-based legal reform.

Legal reform during Soeharto can actually be understood as a state obligation to fulfill and serve the interest of donor institutions, and laws were reproduced to facilitate the liberalization of the market. Theoretically, the legal character always changes depending on the configuration of political development. The responsive character of legal products is influenced by the country's democratic political configuration, but conservative/orthodox/elite character of legal products are influenced or made to appear by the authoritarian/ bureaucratic political configuration (Mahfud 1998: 355). The responsive character of the legal product is shown in its reflection of justice and accommodation of the people needs. The substance of conservative/orthodox/elite legal products reflects the political elite's vision, and it also reflects the state interests. It has a positivist-instrumentalist character, and became an implementation of state ideology and program, instead of participation (Mahfud 1998: 25).

In the post-Soeharto transition period, political configuration significantly changed, at least in terms of an authoritarian character to a less authoritarian one. This section will scrutinize what character has actually been shaping legal reform in the post-Soeharto period, and whether it has been democratically reflecting the needs of society.

Indeed, there have been many legal reforms done by transition regimes in the sense of law enforcement, and the establishment of new judicial and other independent institutions. Also, the recruitment or selection process of officials is more transparent than in the previous regime. In addition, many trainings--comparative studies to experiences abroad, workshops, and many other activities--are conducted and sponsored by many donor institutions, including the World Bank through the Partnership and Justice for The Poor.

Since the fall of Soeharto in 1998, there were at least six 'impressive institutions' that dealt with law and its enforcement established by the transition government, (i) Human Rights Court; (ii) Ombudsman; (iii) Constitutional Court; (iv) Judicial Commission; (v) National Law Commission; and (vi) Corruption Eradication Commission. Unsurprisingly, these programs and newly established judicial

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institutions have increased favorable the public perceptions on law enforcement image in Indonesia and its legal reform.

However, behind prospective figures on law enforcement and its accompanying legal reform, those perceptions and images could not meet with the fundamental problems of systemic corruption, , culture of legal obedience, failure to deliver justice, and lack of independency and just laws. These are the weakness of legal reform after 1998, and it shows that the problem of notorious predatory corruption could not be solved through a neo-institutionalist approach, that merely changes institutions without deconstructing power relations behind these institutions that actually still maintain and secure its strong oligarchic network.

It is indicated by four things: First, there are easier to see corruption cases at local or national level which are done collectively and legalized, such as in the case of DPRD (local parliament) and *Bupati/Gubernur* (local/province executive), General Election Commission, Police, and Religious Affairs Department. Those cases have extremely damaged legal reform images in the post-Soeharto Indonesia. Second, current legal reform still could not tackle the case of Soeharto that is actually the largest case of systemic corruption in Indonesian history. It is because his cronies still have strong networks and connections in parliaments and business groups. His oligarch network has been strongly influencing transition periods, included judicial system process. Predatory alliances of states and business oligarchies have retained the stamp of their ascendancy in the economic and political spheres (Hadiz and Robison 2003: 2).

Third, judicial processes that address human rights violation always face serious challenges from various institutions, because legal reform cannot touch politically sensitive issues in the past, as it can potentially harm ‘stability’ of the recent transition. For instance, the case of May 1998, gross violations of human rights of the military, Munir case, labor and peasant cases, and many others could not be tackled progressively by judicial and political processes. Ironically, these cases are not reflected in many legal reforms. Fourth, the substance of law is more aimed at fulfilling the interests of donor countries or institutions, as debt conditionalities. Then, it has caused impoverishment and unjust law. This last indicator is a consequence of

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the free market driven economic model that has been chosen and has influenced Indonesian policy.

These indicators actually reflect two pillars of the role of political institutions that work in the current situation. First, although there are many institutional changes, the oligarchic structure is still working at political economic spheres, particularly reflected in Soeharto's legacy of corruption, and influence on decision making on process and policy. Second, ironically, this legacy is combined with the role of the liberal market economy in pushing neo-liberal legal reform. Generally, it can be stated that legal reform could not yet resolve the problem of corrupt judicial processes and unjust law, and it is still far from the ideal of legal reform initiated soon after the fall of Soeharto (Suryaningtyas 2006).

Then, we can look at whether legal reform democratically reflects the needs of people, by checking the legal reform has adapting the imposition pushed externally by the World Bank. As mentioned in the previous chapter, the World Bank has imposed neo-liberal legal reform under a legal framework for development as one of the elements of good governance. Many aspects of legal reform have been oriented towards fulfilling the interest of multilateral donor institutions rather than the needs of the people. And more seriously, similar with the World Bank, the Indonesian government was forced to agree to extensive IMF demands for reform. These included more deregulation, dismantling the state-owned business sector, introducing institutional reforms in banking and public management, and significantly diluting central state authority (Hadiz and Robison 2003: 1).

Under the World Bank scheme, legal reform is adapted through direct or indirect programs on legislation and the judiciary. These programs involve many donor institutions which are grouped in the Partnership. Since its establishment, the Partnership has prioritized programs focused on promoting legal and judicial reform, and launched it in 2002 through the Law Summit 1. By focusing on enforcement institutions, the reform agenda is seen as requiring the presence of a committed leadership with high integrity (Partnership of Governance Reform 2005). The Partnership uses the law enforcement analogy of using 'a clean brush' (*sapu bersih*) to clean up the 'the dirty floor' (*lantai kotor*). 'The dirty floor' in this regard is referred as systemic corruption.

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'A clean brush' in this context means the promotion of the judicial institution reform agenda, in which the Partnership uses various approaches to (Partnership of Governance Reform 2005):

1. Convince the heads of relevant state legal institutions (Chief Justice, Attorney General, Minister of Justice & Human Rights, Head of National Police and Head of newly established Anti Corruption Commission) of the importance of having a comprehensive reform agenda;
2. Facilitate the relevant enforcement institutions to formulate and publicly announce their reform agenda;
3. Involve the relevant civil society groups in the process of formulating reform agenda;
4. Facilitate effective coordination among enforcement institutions and relevant civil society groups;
5. Facilitate the relevant civil society groups to build their pressure power and lobby capacities;
6. Facilitate the transparent, participative and accountable selection process of newly established external enforcement institutions and supervision agencies;
7. Build capacity of the relevant enforcement officers;
8. Study and advocate concepts which promotes reform with and within enforcement institutions; and
9. Promote and finance the strategic reform agenda.

Judicial institution reforms are underpinned through certain legal reforms in the framework of the Partnership. Although it is supposedly designed mostly by Indonesian experts, scholars and activists, but it is actually a legal imposition which is injected by a framework of donor institutions. Unsurprisingly, the legal reform always hews closely with the interest of donor institutions, and it is never against them. The Partnership for instance, has very rarely criticized and mostly kept silent on privatization, legal reform under aid conditionalities, and the adoption of principles of a market driven economy or market liberalization, all of which are pushing the direction of Indonesian legal reform. It is pushed through special mechanisms such as the Consultative Group on Indonesia (CGI) meeting or special forum with the donor

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institutions. And, it can be read from documents such as IMF Letter of Intent, World Bank-Poverty Reduction Strategy Papers or World Bank Briefing Papers for CGI.

After promulgation of the Act No. 10/2004 on Legislation Making, National Legislation Program (*Prolegnas*) was introduced as a national priority on legal reform (Article 15-16). The priority of national legislation agenda does not only consist of the draft list, but is also showing the character of legal reform that is being shaped by the transitional regime.

Basically, according to several researches and as explained in previous chapter, the post-Soeharto Indonesian legislation program has been primarily prioritized on a policy of neo-liberalism and of disciplining the social-politic (Susanti et al 2003a, 2003b: 13-15, 2006: 63-64; Hadiz and Robison 2003: 1-2). The neo-liberalist character has been strongly influencing the legal reform processes. It means that much of the legislation have been aimed towards a flourishing market liberalization. The target of legal reform in this context proposes a grand design of governance which is imposed by the World Bank and other donor institutions. This is very clear that without prioritizing legal reform based on people's needs, then such legal reform contributes to the deficiency of rights. This thesis argues the character of such legal reform is pretty similar with era of Soeharto regime, which expresses an undemocratic character.

Is it possible for 'a clean brush' to be used effectively in an undemocratic manner? 'A clean brush', as a tool or legal instrument in this legal reform, can be easily hijacked by the political-economic power that has a strong authority to interpret, play and control 'clean' discourses. Claims of 'clean' can recover a dirty image an transform it into a good or clean image. In the name of 'a clean brush', the corrupt actors can permissibly enter new legal reform.

An interesting case related to the ambiguity legal reform above can be referred from the Ginandjar case, which happened in October 1998, when Jeffrey Winters was doing a press conference in cooperation with INFID (International NGO Forum on Indonesia Development), concerning the 'criminal debt' of the World Bank. The World Bank initiated an investigation on the 30 % corruption on its lending, by forming a team led by Minister Ginandjar Kartasasmita. A journalist asked Winters, "Is Ginandjar improper or unfit to be a chairman of anti-corruption commission?"

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And he answered, “There were many preliminary evidence that the Freeport case is very serious; that Ginandjar is involved with his partner, Aburizal Bakrie. This is better investigated firstly by the prosecutor. Only after his name is cleared, can he be convincing as figure who can fight corruption in the World Bank projects in Indonesia.” (Winters 2004b: 67). This case shows the lack of seriousness of the program to combat corruption.

It proposes ‘a clean brush’ for ‘the dirty floors’, but in reality the actors (structure and its system) who were involved in dirtying the floor and are themselves never brushed. In the legal reform context, legal reform is only focused on enforcement problems, but not in more serious attempts focusing on corrupt people and their cronies who structurally cause corruption. As a result, unjust laws cannot be brushed as well.

4.4 State Obligation or Good Governance: The Approaches for Legal Reform

What are the differences in approach of the concepts of state obligation and good governance? Are these connected in a complementary or confrontational manner? Then, do good governance principles replace state obligation principles in approaching legal reform? These questions are important in raising a conceptual comparison between the frameworks of state obligation and good governance. Also, its implementation will be checked through several interviews.

Legal reform is basically proposed to apply better regulations, as mandated to protect for vulnerable people. In essence, law is subjected to design justice; it means protection for the people from arbitrary actions of authorities. In this regard, philosophically, law is also formed to limit power, and transformed for the interests of citizens, especially advancing human rights. In understanding legal reform, it is increasingly seen in this section as intimately connected with the internally dynamics of a political economic order. Political economic order has influenced the legislation process, including the interpretation of state obligation and good governance responsibilities.

The legislation process also represents the role of State in examining its power and responsibility, through various policies and its implementation of law. It is

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stated also as the human rights concept of state obligation, such as those provisions in Article 2 Section (3)b of the International Covenant on Civil and Political Rights[48] or Article 2 Section (1) of the International Covenant on Economic, Social and Cultural Rights.[49] The primary concept of state obligation is the responsibility to respect, protect and fulfill rights. These must be fully understood, not only for those who have authority in the decision making process, but also those who implement or operationalize rights in real terms. The establishment of new institutions or enactment of new legal products should be put in the frame of state obligation in progressing human rights. But, Silanes (2002: 17) stresses that legal reform may be slow and complicated, particularly if it involves the amendment of national laws and drastic changes in legislation. Therefore, market based mechanisms should be designed to temporarily substitute or complement the reform of laws and regulations.

In Indonesia, especially after the Constitutional reform period of 1999-2002, new provisions on state obligations in progressing human rights were introduced, under article 28i section 4 and 5.[50] This constitutional provision is also stated in the Act Number 39/1999 concerning human rights, particularly Article 8.[51] After ratifying two international covenants on civil and political rights, and economic, social and cultural rights in October 2005, the provision of state obligation or responsibility on human rights are normatively stronger as legal basis.

Good governance in Indonesia is also articulated by normative foundation or legal basis. It can be seen from People Representative Assembly Decree Number XI/MPR/1998 concerning on Clean Government and Freedom from Corruption,

[48] Article 2 Section (3)b ICCPR: To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

[49] Article 2 Section (1) ICESCR: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

[50] Article 28i section (4): "The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government." Article 28i section (5): "For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations."

[51] Article 8: "Protection, advancement, upholding, and fulfillment of human rights are primarily the responsibility of the State."

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Collusion, and Nepotism, and Act Number 28/1999 concerning on Clean State Governance and Freedom from Corruption, Collusion and Nepotism. In the context of legal reform, under Act Number 10/2004 concerning on Legislation Making, especially article 53 states "Society has rights to give input orally or written in the framing of decision or the discussion process of draft Acts and draft regional/local regulations."

Elaboration of good governance approach to legal reform in Indonesia has been studied by Wairocana in his PhD dissertation. He explained that the implementation of good governance in legislation and regional/local regulation was measured and approached from administrative perspectives, particularly democracy and 'Negara Hukum' principles.[52] Democracy principles include the openness principle (procedural aspects and people participation), carefulness principle (careful preparation, careful investigation, careful hearing, careful publication and careful reasoning). The 'Negara Hukum' perspective in his dissertation means the principle of legal certainty (Wairocana 2005: 198-199). In his dissertation, he argues that good governance principles are based on Article 3 of Act Number 28/1999, which is also adopted in Article 53 Section (2)b of Act Number 9/2004 concerning on Administrative Court.[53] This is a normative text that connects between legal reform and good governance principles.

He emphasizes two things about the problem with this legal argumentation: First, the use of administrative approach will only focus in procedural views. It is because good governance in the legal reform process will only be examined in terms of whether the principles of openness and carefulness are implemented. Second, in mentioning the 'Negara Hukum' doctrine, legal positivism is interpreted only in terms of a legality principle, which basically argues that the state regulates all of social life through positivised legislation. Then it would have legal certainty as there is only one existing regulation for all citizens in such country. In this regard, his analyses are very

[52] In Indonesia, the concept of *Negara Hukum* cannot be interpreted similarly with the concept of Rule of Law, because it has specific character from a different sociological and historical context. It is usually translated from the Dutch concept of "rechtstaat", similar with the German concept of "Rechtstaat", and is translated into English as "the law state" or "the state of law" (Wignjosoebroto 471).

[53] Act Number 9/2004 article 53 section (2)b mentions about the reason for suing Administrative Decision (included Local/Regional Legislation), by using good governance principles.

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strong in proceduralist discourse and mechanistic views of legal reform. The danger of this perspective is that it does not say much about the substance of legal reform, including human rights perspectives. As long as a legislation reform is processed through legal-procedural, it would be seen as a good process, even if there is no legal obligation for the decision makers to progress human rights.

The dominant discourse of legal reform emerged soon after Soeharto stepped down. It was mandated on 2nd June 1998, through the Justice Ministry Decree Number 28/1998 concerning the Establishment of the Legal Reform Team. This Legal Reform Team was referred to in the President's speech in the First Cabinet Meeting of Development Reform, and in the materials for General Coordination Meeting on Politic and Security, 25th to 27th June 1998. Then, in relation to good governance and legal reform, it was discussed in the BPHN (National Law Development Agency), one year after the Justice Ministry Decree concerning the Establishment of the Legal Reform Team. Through its national seminar, "Reformasi Hukum Menuju Masyarakat Madani" (Legal Reform Goes To Madani Society)[54], Jakarta, 12-15 October 1999. In that seminar, two main themes were discussed by many scholars and law professors from many universities in Indonesia, namely: "Good Governance Concept on Implementing Madani Society" and "Social Change and Legal Reform". This seminar was actually designed to better understand the concept of good governance in the legal reform process. It was also demanded indirectly by donor institutions, including the World Bank and IMF which proposed many legal reforms dealing with politic and constitutional reform, and also economic reform.

Interestingly, in their opening ceremony speech at the seminar, the President of Indonesian (B.J. Habibie) and Justice Minister (Muladi) both emphasized the importance of legal reform for a flourishing market economy. Legislation development and reform should be focused on the needs of democratization and human rights, and the development of a market-oriented economic system (Habibie 1999). These legal reforms should be prepared to face the challenges of global competition, particularly modernization, privatization, and the deregulation of the mainstream economy, mainly to prepare for waves of free trade (Muladi 1999). The

[54] *Masyarakat Madani* is the common Indonesian terms used to denote 'Civil Society'. *Madani* word is an Arabic word, a name of place where society, particularly Islamic society.

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other interesting element of the seminar was the Final Group Report on Social Change and Legal Reform, which concluded that good governance on legal reform requires check and balances among the following components: (a) representative institutions capable of upholding effective control functions; (b) independent and professional judiciary; (c) responsive governance in social plurality; (d) strong civil society; (e) equally respecting the local communities (BPHN 1999: 32).

The effect of this seminar greatly influences the design of legal reform, and has involved many individuals, organizations, donor institutions and other stakeholders. Legal reform in the good governance framework is focused more on neo-institutionalism, such as promoting legal and judicial reform through anti-corruption strategy. It can be seen from its program agreed on Law Summit's agenda. But, different perspective actually was highlighted by Professor Maria Farida, an Indonesian expert on legislation making, who said that this design model of legal reform was a consequence of Indonesia as a debt recipient country, which would eventually face many difficulties if law has always been framed under loan conditionality schemes. As we have seen in the case of current labor legal reform that potentially marginalize a large section of society, particularly the workers.[55] Or similarly, this is an unsurprising consequence of the neo-liberal agenda, which is adopted and consistently chosen by neo-liberalist economic team under Yudhoyono.[56]

Neo-institutionalist approaches were evident after the promulgation of Act Number 30/2002 on Anti Corruption Commission which provides the legal basis for the establishment of KPK (Corruption Eradication Commission) and Anti-Corruption Court. In another project, for instance, the Partnership facilitated the selection process and training programs of the investigators, prosecutors and judges. On other hand, the problem of corruption in judicial process has not been described as an 'emergency' situation, in which basically it could be tackled by 'extra-ordinary measures', such as radical mechanism for punishing bureaucrats, judges, police, and prosecutors who have been involved in corruption, as well as pressing the World Bank to stop loan disbursement. In responding to corruption on World Bank projects, a legal-technocratic approach is always used, rather than debating the role and commitment

[55] Prof. Dr. Maria Farida, SH., *interview*, Jakarta 31/5/2006.
[56] Bivitri Susanti, *interview*, Jakarta, 8/5/2006; Alex Chandra, PhD and Lutfiyah Hanim, *interview*, Jakarta, 5/5/2006.

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of the World Bank in its responsibility over ‘criminal debt’. This approach is also unsuccessful to deconstruct the legacy of authoritarian, legalistic and feudalistic laws, because the strategy of legal reform is undemocratic and incomprehensive.

Legal reform in neo-institutionalism is not primarily designed for progressing rights of the people, but for emphasizes the importance of institution and legal reform which supports market-driven policy. There is, of course, no rights-based approach in the concept of good governance because it is a more normative approach, based only on a legal imperative. Because of the absence of rights-based approach, it will limit the people’s rights and claims outside the formal legal instruments and institutions (Cornwall & Musembi 2004:1418).

Unsurprisingly, many state institutions and non-state organizations that brought the discourse on good governance in approaching legal reform did not say that corruption adversely violated human rights and deficient for the poor. They are also uncritical on the issue of how new institutions established, such as the establishment of Industrial Relations Court, threatens labor rights. In sum, legal reform is not really seen as a tool of state obligation to respect, protect and fulfill human rights, and in the framework of good governance, it becomes a neo-institutionalist mainstream strategy.

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CHAPTER 5
LABOR REFORM PROJECTS AND ITS IMPACT ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

5.1 Indonesian Labor Reform: Why is It Subjected as Legal Reform Package?

The legal framework for development as proposed under good governance elements requires several legislations to be created and reformed, including the issue of labor. The World Bank has urged to borrowing countries under loan conditionalities to change labor regulations, in accordance with promoting a market-friendly strategy (World Bank 1997b; World Bank 1999; World Bank 2002a). In the context of Indonesia, the World Bank has also been involved in shaping reforms on labor issues through many documents, before and after Soeharto stepped down in 1998 (World Bank 1997b; CGI 2003). In this context, labor reform as law projects is analyzed as an instrument of the ruling classes, also as an expression of the economic interests of classes that own the means of production and dominate the society (labor) through legal products. Then, by analyzing the instrumentation of ruling classes, we can use Marxian perspective to check or examine whether labor law reform as an instrument of class oppression (Collins 1982: 17).

The key question in here is why the labor sector has been subjected by the World Bank as part of the legal reform package, and how it is adapted to Indonesian labor policy reform.

ILO Jakarta published a report, the title is “Free From Poverty: ILO Contribution on Poverty Alleviation Strategy in Indonesia” (2004). In this report, ILO very clearly supports the neo-liberalist position, because its report mentioned a strategy to empower poor people by raising good governance in labor market (ILO 2004: 25-36). Generally, as we have seen in globalization phase, labor law reform has

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become a neo-liberal policy in supporting market-friendly strategy. In this strategy, the labor law reform has become a means to promote economic efficiency by, among other things, reducing costs through labor market flexibility. By promoting an efficient labor market, labor-intensive industries will be automatically expected to accumulate capital, investment, production, reproduction and profit-making.

For the World Bank, labor reform designed to support economic growth and to ensure efficiency would lead to better competitiveness conducive for market liberalization processes. Greater investment, economic growth, and debt repayment are targets in labor legal reform. As mentioned before, the World Bank report said, "Legal minimum wages, for instance, may be set too high. Unintentionally it makes more difficult for unskilled and low wage workers to find jobs in the formal economy." (World Bank 1997b: 48). It is intended to maintain a liberal trade, capital market and investment regime, as essentials for growth.

Labor legal reform was among its loan conditionalities, briefing papers, or documents, because it was a part of a global strategy in maintaining macroeconomic stability. After the financial or economic crisis in 1997, the World Bank scheme mentioned labor reform as one of second generation instruments (see table below).

Table 3: **First and Second Generation Reforms**

	First Generation	**Second Generation**
Main Objectives	Crisis Management: Reducing inflation and restoring growth	Improving social condition and competitiveness, maintaining macroeconomic stability
Instruments	Drastic budget cuts, tax reform, price liberalization, trade and foreign investment liberalization, deregulation, social funds autonomous contracting agencies, some privatization.	Civil service reform, labor reform, restructuring of social ministries, judicial reform, modernizing of legislature, upgrading of regulation, capacity improved tax collection, large-scale privatization, restructuring of central-local government relationship.

Source: World Bank (1997b: 152)

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As stated previously, labor law reform has become neo-liberal policy in supporting market-friendly strategy. It needs legal reform as an imposition for a flourishing market. The most basic feature of neo-liberalism is the systemic use of state power to impose (financial) market imperatives, in a domestic process that is replicated internationally by 'globalization' (Filho-Johnston 2005: 3).

In Indonesia's experience, the importance of labor reform has been argued by the World Bank. In 1996, the World Bank evaluated and criticized Indonesian government on labor policies, by stating that "the (Indonesian) workers are overly protected" and that "the government should stay out of industrial disputes" (The Jakarta Post, April 4, 1996). This statement was issued before the financial crisis in Indonesia, and it was a very clear statement that reflects the World Bank pressure to reform labor legislations that are unfriendly with the market. In responding the World Bank statement, Indonesian government has passed new law, Act Number 25/1997 concerning Manpower (Labor). This marked the first wave of labor reform since the economic crisis, and it was passed because of pressure by the World Bank and IMF.

When the new legislation was passed, the market-friendly strategy in deregulating labor particularly labor market flexibility in the context of labor reform in post-Soeharto Indonesia, has actually shown a political configuration of how neo-liberalism influences legal reform. It also eschewed state intervention to support labor rights, proper wages, support to labor unions, and human rights-based regulation. Unsurprisingly, problems arising from the new legislation led to widespread protests from labor unions throughout Indonesia against labor reform passed by the government and parliament. The most serious problem of new labor reform (Act Number 25/1997) was that it legalized deterioration of labor rights.

Even though it has been passed by the House of Representatives, the implementation of Act Number 25/1997 has been postponed. Not only were the World Bank and other donor institutions responsible for the pressure for labor reform in Indonesia, also investor and corporations have involved. For instance, many investors have voiced their unpleasant policies about manpower regulations and high minimum wage (ILO 2004: 25).

Similar with World Bank statement, in other document released by the World Bank through its report for CGI in 2003 (World Bank 2003d), under the scheme of

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'legal framework for development' announced by CGI Policy Brief, particularly in proposing the improvement of Indonesia's investment climate, it states about the importance of labor reform (CGI 2005). Susilo and Kusfiardi say similarly that if the reform policies have been designed by World Bank through CGI, it meant that Indonesia should obey its policies in order to maintain economic cooperation with – particularly the World Bank and other development agencies. Here, the interest of capital was obviously preferred rather than accommodating what the people worry about liberalization projects, and the current case of labor reform is definitely showing this design.[57]

In this policy brief, CGI strongly encourages the new administration to announce as soon as possible a plan for improving Indonesia's investment climate, which should include two elements: (i) a short-term package and (ii) a more comprehensive roadmap of medium-term prioritized action. Then, CGI stands ready to support the Indonesian government as it designs and implements such a plan (CGI 2005). In this frame of planning, labor reform is the third among 'High Priority Policy Areas' that should be complied by the government. Specific areas suggested by the Bank for improvement includes: (i) dismissal regulations; (ii) severance allowance; (iii) contract workers (CGI 2005). In clearer message, the World Bank designed an 'Action Matrix for Labor', that can be viewed from table below.

Table 4: **Action Matrix for Labor**

	Short-Term Actions (Within the first year)		Medium-term Actions (2-5 years)
A	Announce results of the review of the Manpower Law	A	Seek legislative approval of reforms to the Manpower Law designed to increase job growth
B	Establish more constructive mechanisms for determining minimum wages	B	Establish a national licensing system of specific skills through standardized national test.
C	Compile a "Customs Rule Book," a collection of laws and regulations in force to be updated annually	C	Establish public facilities and services including a public job information center to improve labor productivity and flexibility.

Source: CGI (2005)

[57] Wahyu Susilo (INFID), *interview*, Jakarta, 9/5/2006; and Kusfiardi, *interview*, Jakarta 9/5/2006.

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By explaining this framework, which was sponsored by the World Bank, it became clear that after financial crisis, labor reform was prominently targeted for the sake of market liberalization. CGI believes that opening market principles will ensure that Indonesia has an opportunity to benefit from world economic integration and the government should strip off its protectionist policies, because it would affect investor confidence (CGI 2005). This situation is actually expected by the World Bank in maintaining liberalization through labor market flexibility.

The absence of labor market flexibility makes social guarantees uncertain for the poor, particularly labor who always be structurally victimized by the process of development or large-scale industries, national or trans-national corporations, and undemocratic policies. Protection is not basically intended for labor, but for the flourishing open market. This absence is very unfair in neo-liberalism which only focuses on market and economic growth. Counter-argumentation against labor reforms that has been forwarded by several scholars who believe that neo-liberalism paradigm results in deteriorating and exploiting labor in market. Filho and Johnston (2005: 5) said that under-neoliberalism, economic growth rates have declined, unemployed and underemployed workers have become widespread, inequalities within and between countries have become sharper, the living and working conditions of the majority have deteriorated almost everywhere, and the periphery has suffered greatly from economic instability. And as Munck (2005: 68) has written, neo-liberalism is not just a set of economic policies, or even an ideology, as focused on by its critics, but much more a strategy for governance of the complex global world we now live in. In sum, labor legislation reform within the development framework projected by the World Bank would be reflecting law as a power or governance machinery that oppresses and enslaves the people smoothly. This is what is usually called as a “modern slavery”, with labor is only seen as small screw in market machinery.

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5.2 Three Waves of Labor Reform since Crisis

As explained earlier, there have been three waves of labor legal reform since crisis which were simply mapped and examined in terms of two aspects: First, the role of international financial institutions in injecting reforms, particularly the World Bank; and second, the regime adapted labor legal reform into its policies, particularly legislations, after external pressures.

From this categorization, reform can be viewed three waves from first wave in 1997-1998; second wave in 2000-2003; and third wave in 2004-2006. By focusing on these periods and legislation proposed during these times, a comparative analysis of certain provisions among them can be viewed, particularly on four issues: outsourcing, contract workers, minimum wage policy, and labor union rights. These issues are specifically chosen in order to know how far the government tries to encourage the important aspects of labor rights protection.

Article 27 Section (2) of Indonesian Constitution (1945), mentions about the right to work and decent living, and it is a constitutional basis of labor rights in Indonesia In Article 28, the right to form unions and right to gather are guaranteed constitutionally.

Before the wave of labor reform, Indonesia had various regulations on labor. In 1947, two years after Indonesian Proclamation of Independence in 1945, the government enacted Act Number 33/1947 concerning Accidents as the first labor regulation that has protective provisions, and originally made by Indonesians.[58] Then a year after, in 1948, the government announced two legislations: Act Number 12/1948 concerning Work and Act Number 23/1948 concerning Labor Affairs Monitoring. From the perspective of labor rights protection, Act Number 12/1948 was regarded as the most progressive in Southeast Asia at that time. For instance, the provision of work time of 40 hours a week was much better than neighboring countries which had between 44 and 48 hours a week. And also Act Number 22/1957 concerning labor dispute settlement was a very protective labor law produced under *Undang-Undang Dasar Sementara-Republik Indonesia Serikat*/Indonesia Republic

[58] This Act replaced private legal system under Dutch legacy, especially article 1601-1603 *Burgerlijk Wetboek.*

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United Constitution (UUDS). Those regulations were produced before the Soeharto regime.

In Soeharto era, labor policy was designed to conform with economic and political stability under developmentalist projects. In this context, in 1970s, *Pancasila Industrial Relation* (HIP) has been developed, as a concept of 'harmony') in industrial relations. Harmony in this regard was more conceptually focused on reducing the conflict intense of labor-employer relationships, and in which the State could intervene through its repressive instruments (military-police) for resolving industrial problems. Nevertheless, misuse of power often happens when the state intervenes in order to maintain conflict in the name of guarding 'development' or 'economic growth'. Those people who participate in a mass strike or protest, although it is done inside company, it is to be 'against development or involved communist party'. The Marsinah case in 1994 is the most famous case that showed how this policy resulted in human rights violations.

In short, before reform waves in 1997, even though provisions in labor protection better protected labor, there have been still many human rights violations in its practice. Also during the 1997 economic crisis, the New Order government announced new legislation on labor (Act Number 25/1997), which was released after the World Bank evaluation of Indonesia's labor legislation in 1996. This Act has been enacted, but it has never been implemented because of the rejection movement led by labor unions, until the fall of Soeharto. The labor reform in this context was the first wave reform systematically injected by the World Bank and many other donors since crisis. However, they had failed, because Soeharto regime had stepped down, and authoritarian rule has weakened.

The second wave of labor reform actually started when ILO assigned to evaluate Indonesia's labor legislation, then the Indonesian Government and the House of Representative passed a package of 'three labor laws'. Tjandra wrote that three labor law reform policy launched by the government was supported by the ILO in 1998, in replacing Act Number.25/1997 concerning Manpower Affairs and the entire body of labor legislation in Indonesia.[59] The endorsement only went through about a

[59] The involvement of ILO in redrafting labor reform was actually since the first pending for the enactment of Act Number 25/1997. *Tjandra* (2003) explained that in August 1998, the government

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month after Daniel Citrin, senior adviser to the International Monetary Fund (IMF), questioned its delayed ratification (Tjandra 2003). The second wave was not far different from previous legal provision. It still emphasized market liberalization paradigm, and ILO was an institution that involving much in initiating and designing three labor laws.

In December 1998, the labor law reform program was adopted by the Ministry of Manpower with the signing of the Letter of Intent (LoI) with the ILO, and witnessed by then president B.J. Habibie (Jakarta ILO press release, Dec. 23, 1998, in Tjandra 2003).

The involvement of ILO is so influential and significant for labor law reform in second wave reform in Indonesia, but in the context of paradigm, it is still based on similar or in the line with the World Bank paradigm, namely 'labor market flexibility'. For instance, ILO emphasized the importance to recover market trust in pushing healthier competitiveness and supporting climate investment in Indonesia. Behind this provision, according to its report, ILO also promoted and escalated good governance as a consensus, particularly strategy to reform labor regulations.[60] ILO stressed that law and justice reform should be the most essential of strategy in creating sustainable climate investment development (ILO 2004: 26).

Three labor laws in this scheme are Act Number 21/2000 concerning Trade Union, Act Number 13/2003 concerning Manpower, and Act Number 2/2004 concerning Labor Dispute Settlement.[61] These laws were recommended by World Bank through CGI forum in the line with market friendly strategy. In its report was said that "Government must ensure that labor regulations balance the interest of employers and employees, while maintaining labor market flexibility. The

received a direct contact mission from the ILO assigned to evaluate Indonesia's labor legislation and draft a program for the country's labor law reform (Jakarta ILO press release, August 25, 1998). According to a 1999 ILO report, the labor law reform program covers "the review, revision, formulation or reformulation of practically all labor legislation with a view to modernizing and making it more relevant to and in step with the changing times and requirements of a free market economy". Earlier an ILO official in Jakarta said: "The ILO stands ready to provide technical assistance requested by the government redrafting its labor legislation" (Jakarta ILO press release, August 18, 1998).

[60] Good governance also was greatly concerned by the ILO in reforming labor regulations. In its report (2004), good governance was highlighted especially in "Chapter II: Empowering the Poor: Improving Good Governance in Labor Market.".

[61] The original name of Act Number 2/2004 is *Undang-Undang Penyelesaian Perselisihan Hubungan Industrial* (Act of Industrial Relation Dispute Settlement), but in this paper translated as Labor Dispute Settlement. The use word of "Industrial Relation" is blurred and mystifying real conflict between labor and employers.

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Government should also consider how it could give more guidance to the regions in their decisions on minimum wages" (World Bank 2003: iii). These new legislations were also protested by many labor unions because these Acts provided number of articles which potentially deteriorated labor rights, particularly responding to the issue of unsecured contract workers and outsourcing. According to labor union and labor rights defender, labor rights would be deteriorated or worsened after those legislations which basically only promoting the interest of investor or capitalists.[62]

During the second wave of labor legal reform, in order to provide regulation for labor rights protection, the Government of Abdurahman Wahid through his cabinet enacted *Kepmenaker* (Manpower Ministerial Decree) Number 150/2000. These regulations strengthened the provision of labor union rights, provided by Act Number 21/2000. This ministerial decree outlines a settlement mechanism of labor dismissal processes and better allowances. Better provisions that can be seen from its articles include giving labor who resigns the rights to get an allowance based on his/her work tenure and remuneration. Labor who is dismissed because serious contravention of the law has right to get remuneration also based on his/her work tenure.

However, this ministerial decree was changed with the enactment of two new decrees, *Kepmenakertrans* Number 78/2001 and Number 111/2001. The reason was, the old *Kepmenaker* was viewed as unfriendly towards foreign investment, as mentioned by Abdurrahman Wahid himself. He said that *Kepmenaker* Number 150/2000 weakened investment, and he did not want to change his mind (Kompas 13/6/2001; 24/6/2001). Wahid made this statement after facilitating SPSI (Indonesia's Labor Union) in Istana Merdeka, Jakarta, 12 June 2001. The influences of investors were very powerful, particularly in pressuring the government for releasing new regulations supporting its interests.

The claims stating that *Kepmenaker* Number 150/2000 threatens foreign capital or investment are insufficient argumentation. It is because investment has been more influenced by insecurity, legal uncertainty, political instability, systemic corruption, and unsynchronized coordination among ministries responsible for

[62] Jamaludin (FBS/MBH), *interview*, Surabaya, 11/4/2006; Ahmad Dimyati (SBPD), *interview*, Surabaya, 26/4/2006; Bambang Wirahyoso (SPN), *interview*, Jakarta, 3/5/2006; Herry (Labor grougp, MBH), *interview*, Surabaya, 11/4/2006; FGD, Surabaya, 21/6/2006; Andie Hermawan (MBH), *interview*, Surabaya, 2/4/2006.

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deciding policies. *Kepmenakertrans* Number 78/2001 and Number 111/2001 were the real conspiracy between the government and corporations relations in securing “trust” of free market and foreign investment in Indonesia.

After these controversial policies in 2001, the Indonesian government passed new legislation on Manpower and Industrial Relation Dispute Settlement. This legislation, particularly Manpower Act Number 13/2003, deprives rights provisions against labor, such as the most serious concerns, outsourcing and contract labor status. These provisions potentially threaten labor protection. Act Number 13/2003 clearly legalizes outsourcing which will relieve the employing company of the need to bother about wages, allowances, insurance and other social security for labor, which will be easily commercialized as commodities in transactions between the first company and the firm recruiting outsourced labor. This is what the KAPB and other labor unions describe as a tendency toward ‘modern slavery’ (KAPB 2006; Judicial Review against Act Number 13/2003). Market labor flexibility, in the context of outsourcing and contract labor status, is a strategy for responding new world economic order which emphasizing the global cheap labor economy (Chossudovsky 2001: 75-98).

On the other hand, Act Number 2/2004 concerning on Industrial Relation Dispute Settlement also contained problematic provisions or weaknesses. As analyzed by Tjandra (2003), the weakness of Industrial Relation Dispute Settlement is, that the manpower Act shifted the mechanism of labor dispute settlement from the central and regional settlement committees (P4) to the industrial court -- a branch of the public courts of justice. Thus, employers will no longer need permission to dismiss employees. Labor unions and employers are accommodated through a bipartite ad-hoc judge system, while most complaints will be handled by ‘voluntary arbitration’ through a ‘bipartite forum’ between employers and workers as individuals in their workplaces. If the process of settlement uses ‘bipartite forum’, the role of labor unions will automatically be reduced, especially collective negotiations which is their main function. Also the existence of the joint working consensus will be weakened, as in the case of South Korea (Tjandra 2003; KAPB 2006:138-143; Mizuno 2006: 143-149; FGD Surabaya 2006; Tavip 2006).

These two legislations were actually influenced and sponsored by the World Bank in its brief report for CGI (Consultative Group on Indonesia). The World Bank

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report stated, "The government should resolve the current impasse between labor and business on the pending labor laws because it has resulted in a lack of clear rules for handling industrial relations and increased legal uncertainty for business…. The Government must consider what type of labor conditions it wants to the negotiating table between employers and employees, realizing that labor market flexibility has been one of Indonesia's strengths in the past." (World Bank 2003: 26). Then, this policy was adopted by Bappenas (National Development Planning Agency) through its analysis report,[63] a 'white paper' with title "Employment Friendly Labor Policies". According to this report, "…required labor market policy is flexibility labor market policy in supporting employment opportunity through labor intensive industries" (Bappenas 2003). In supporting this reform, Widianto, Director of Manpower and Economic Analysis of Bappenas, says that major causes of labor inflexibility are the following: wages increase too fast, recruitment regulation, dismissal regulation, and excessive protection (Widianto 2004). But for Tjandra and Pranowo, the 'white paper' which was designed by Bappenas actually followed the model of 'market-friendly labor regulation'.[64]

In this second wave reform, the interest of investment, free market reform assistance, and labor market flexibility are more preferred than the protection of labor rights. Although it has been viewed as important factor in deterioration of labor rights, the Government has never changed its position to facilitate free market policies, and still adopted labor market flexibility.

A widespread movement was being occurred again when the new Manpower Act proposed in 2006 is found by labor unions. This was designed in 2005 when the World Bank and investors required the government to reform Act Number 13/2003.

They have pressured the government to reform regulation concerning Act Number 13/2003because it was seen still unfriendly with labor flexibility, and in influencing investment interest. Not different from the second wave reform, this third wave reform is also using the role of international financial institutions, particularly the World Bank through CGI. As discussed previously in this sub-chapter, the report

[63] Originally in *Bahasa* is *Laporan Analisa Pasar Kerja*. This report resulted from research studies done by the Directorate of Manpower and Economic Analysis, which mentioned "working and dialogue results with many parties during two years".
[64] Surya Tjandra (TURC/Trade Union Research Center), *interview*, Jakarta, 2/5/2006. Liest Pranowo, *interview*, Jakarta, 3/5/2006.

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"Creating Jobs through Investment: Suggestions from Donor Community on Improving Indonesia's Investment Climate" clearly stated the interest of donor community to reform labor regulations, especially Act Number 13/2003 concerning on Manpower (CGI 2005).

It can be seen more detail from the importance of labor reform among the 'High Priority Policy Areas' that government should comply with. Specific areas suggested by the Bank for improvement includes: (i) dismissal regulations; (ii) severance allowance; (iii) contract workers (CGI 2005).

In that report, the Indonesian government is required by the CGI to announce results of the review of the Manpower Law. After this meeting, in 2005, Bappenas has been involving non-governmental organizations and labor unions through its 'research' and 'meetings'. It was published the report entitled, "Suggestion for Manpower Policy Reform" (Bappenas 2005). Bappenas suggestions in reforming labor law were made in facilitating most CGI members, particularly in creating labor market flexibility. It contains a matrix for labor regulation reform, in which the most significant reform exacerbates the rights of labor through provisions on outsourcing and long term contract workers.

The role of non-governmental organizations in this context is also interesting. SMERU for instance, it was being involved during the process of labor reform, especially in revising Labor Act (Act No. 13/2003). Wirahyoso said that when he have meeting with Bappenas, SMERU was involving during consultation process. The revision draft was also based on SMERU's research. Bappenas often quoted SMERU documents or researches.[65] After these processes, finally, Bappenas has continued the result of consultation process into recommendation draft.[66] The Bappenas draft was really bad in terms of labor protection. Almost all of suggestions try to improve investment rather than labor protection. Wirahyoso says that he and his union

[65] SMERU was established in 1998 with Aus $810,000 at first sponsored by Australia in order to monitor the impact of economic crisis and policy recommendation making. Now SMERU is continuously making assessment on poverty and economic program implementation in urban and rural in order to give current information and suggestion for policy maker, program planner, foreign donor institution, non-governmental organization and civil society. It can be seen at http://www.indo.ausaid.gov.au/bi/projects/smeruresearchinstitute-indo.html, or complete profile of Smeru at http://www.smeru.or.id (accessed on 7/5/2006).

[66] The original document in *Bahasa*, "Usulan Reformasi Kebijakan Ketenagakerjaan" (Suggestion for Labor Policy Reform), Bappenas 2005.

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suspected the role of Bappenas and its interest behind the revision, including 'think tank' behind Bappenas.[67]

This significantly marked the third wave labor reform in Indonesia since crisis. Ironically, these provisions were adopted and suggested in Presidential Instruction Number 3/2006 concerning on Policy Package of Investment Climate Recovery (intellectually supported by Coordinating Ministerial on Economy). Then, it has been followed by drafting new revision of the Manpower Act (Revised Draft of Act Number 13/2003). Uniquely, this revised draft—which comes up from the government initiation, particularly Bappenas, Coordinating Ministerial on Economy, and Manpower and Transmigration Minister (Erman Soeparno)—is not include in the National Legislation Program on 2006 Priority Legislation Draft (DPR 2005).

Table 5: **Three Waves Labor Reform 1997-2006**

	1st Labor Reform	**2nd Labor Reform**	**3rd Labor Reform**
Regime	Soeharto	Abdurahman Wahid & Megawati	Susilo Bambang Yudhoyono
Legislation Machinery	Act Number 25/1997 [68]	Act Number 21/2000; Act Number 13/2003; Act Number 2/2004	(2006) Revised Draft of Act Number 13/2003 [69]
Pre-Drafting Documents/		Bappenas White Paper: "Employment	Investment Climate Reform in Indonesia:

[67] Bambang Wirahyoso (Chairman of National Labor Union/Serikat Pekerja Nasional-SPN), *interview*, Jakarta, 3/5/2006.

[68] This Act was postponed by several legislations, namely: Act Number 28/2000 concerning on Decree of Government Regulation of Act Substitution Number 3/2000 concerning on The Revision of Act Number 11/1998 concerning on Revision of the Existence of Act Number 25/1997 concerning on Manpower.

[69] Actually this Act is targeted in April 2006, but because of many protest movement from many parties, especially labor unions and NGOs, the president through his minister postponed the enactment of Revision Draft of Manpower Act. The latest status of revision plan, the President has given direction to review the revision of Manpower Act, by pointing 5 (five) universities (University of Indonesia, University of Padjajaran, Gadjah Mada University, Hasannudin University, and Sumatera Utara University) to do academic review or study. It was decided during a meeting on Coordinating Minister of Economic, 17 April 2006 (Indonesia's Coordinating Minister of Economy 2006). But, *Siregar* (2006: 6), a Vice of General Secretary ASPEK (Banking Workers Association) argues that the instruction for 5 universities to review academic study concerning on Revision Draft of Act Number 13/2003 raises many questions. Why is it only 5 universities chosen? Why Airlangga University is not involved, although larger industrial basis situated in Surabaya and Sidoarjo? He disappointed with Padjajaran University which have studied on allowance matters under Act Number 13/2003, but one of its recommendation stated that allowance in Indonesia is too high and need to be reformed in order to improve investment in Indonesia.

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Regulations		Friendly Labor Policies" [70]	A Progress Report Presidential Instruction 3/2006; Bappenas document on "Suggestion for Manpower Policy Reform"; RKP/Government Work Plan 2006, Chapter XXII. [71]
Legal Framework designed by donor through its documents/ statements	World Bank (1995) World Development Report: Workers in an Integrating World, Oxford University Press, New York; World Bank statement: "the (Indonesian) workers are overly protected" and that "the government should stay out of industrial disputes" (The Jakarta Post, April 4, 1996)	World Bank Briefing Paper for CGI (2003)	World Bank-CGI Briefing Paper (2005); IMF Statement for CGI (2005)[72]
Objectives	Labor market flexibility in the frame of reducing inflation and restoring growth	Labor market flexibility in the frame of maintaining macroeconomic stability	To create more flexible labor market
Exacerbating major reform	Outsourcing and contract workers	Outsourcing, contract workers, reducing the role of state on labor	Reducing pension rights; allowing and liberalizing foreign workers; long-

[70] *Pranowo* said that Bappenas has published a 'white paper' which proposed labor market flexibility, such as cutting minimum wage, firing arbitrarily, and allowance compensated on wage. After reading this 'white paper', FPBN made counter-draft for protecting labor rights. Liest Pranowo (Chairman of National Labor Defender Forum/FPBN-Forum Pendamping Buruh Nasional), *interview*, Jakarta, 3/5/2006.

[71] According to *Juanda*, Directorate of Manpower Bappenas, said that the process of revision on Labor Act No. 13/2003 has strongly influenced by RKP (Rencana Kerja Pemerintah/The Government Work Plan 2006). Jhony Juanda, *interview*, Jakarta 5/5/2006.

[72] In CGI Meeting 19-20 January 2005, IMF Representative has supported Indonesia's economic policy priorities, by stating that IMF agreed with government focuses on improvements on the investment climate, which the government was rightly focused on good governance, legal and judicial reforms, and competitiveness of labor market issues that are critical to improve the investment climate (IMF 2005: 3).

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		dispute settlement, rights limitation of strike	term/more flexible outsourcing and contract workers; flexible minimum wage and reducing state roles in determining wage
Status enactment	Passed by Parliament, but postponed and could not be implemented	Passed and exist (except Act Number 2/2004 will take effect in 2006)	Drafting process

The table above shows that the role of international financial institutions, particularly the World Bank, has as always significantly influenced labor reform in Indonesia since the crisis. Three labor reform waves has performed labor market flexibility models, by legalizing outsourcing, long-term contract work, reduced state role in dispute settlement, and flexible minimum wage. These were major labor reforms required in the context of World Bank's legal framework.

In this legal framework, the actual connection between good governance and its project design is the policy of 'conditionality', under which the World Bank "approves financial support on the condition that the members make an explicit commitment to a set of policy measures aimed at correcting its economic and financial imbalances (Thomas 1999). Three labor legal reforms in Indonesian experience have shown clearly the connection between the global design of governance through good governance and its legal framework for development. Inevitably, these are basically expected and injected as a package of market-friendly strategy that much provoked and pronounced by the Bank. In this regard, the World Bank has successfully shaped legal reform in Indonesia since crisis until the fourth transition post-Soeharto regime.

5.3 The Impact on Labor Rights Protection

One of the studies of this thesis is, whether the role of World Bank in injecting good governance programs through legal framework or legal reform, has affected human rights. Even though the World Bank always emphasizes the 'rule of law' as major framework in its legal reform, the idea of this doctrine under World

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Bank perspectives should be deconstructed in the sense of power relations between donor institutions and borrower countries, such as Indonesia. For instance, in the case of labor, what is the most serious impact of the World Bank legal framework in designing labor regulations in Indonesia? How is the discourse of labor market flexibility, such as outsourcing, liberal minimum wage and labor dispute mechanism perceived by the World Bank, and what is the impact of those reforms to labor rights protection? If there is a serious impact, is it possible for Indonesian government to reform labor regulations without adopting the World Bank projects on labor market flexibility principles?

In international human rights instruments, labor rights are provided or secured by numerous declarations, covenants, conventions, and many others provisions. Article 23 of the Universal Declaration of Human Rights (1948) has strongly emphasized the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment. And also everyone, without any discrimination, has the right to equal pay for equal work, everyone has the right to just and favorable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Also, protection concerns the right to form and to join trade unions.

This general provision appears in more detailed under Part III (Article 6-8) International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Under this covenant, labor has the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and to take appropriate steps to safeguard this right. To achieve the full realization of this right, State Party to the present ICESCR take steps including technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms of the individual.[73]

Based on the covenant, the States Parties should recognize the right of everyone to the enjoyment of just and favorable conditions of work which ensure, (a)

[73] Article 6 ICESCR

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Remuneration which provides all workers, as a minimum, with: fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and a decent living for themselves and their families; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[74] And under the same covenant, labor has the right to form trade unions and join the trade union of his choice, and also right to strike.[75] As stipulated in Article 2 Section 1 of the ICESCR, the State should undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Beside provisions mentioned above, there are numerous specific ILO Conventions that provide labor rights protections that the Indonesian government has ratified, including ILO Convention Number 87 and 98 (Freedom to associate), ILO Convention Number 100 and 111 (Discrimination), ILO Convention Number 29 and 105 (Forced Labor), and ILO Convention Number 138 and 182 (Child Protection). Indonesia, before the waves of labor reforms, had progressive and protective labor rights under Act Number 12/1948 concerning Work, Act Number 23/1948 concerning Labor Affairs Monitoring and Act Number 22/1957 concerning labor dispute settlement. Under new constitution (post-amendment 1999-2002), especially article 28D section (2) mentions that every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.

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[74] Article 7 ICESCR.

[75] Article 8 ICESCR, and also Article 22 Section 1 ICCPR/International Covenant on Civil and Political Rights. Right to mass strike is important in Indonesian context. It is because in the early reformation in 1998, *Lasimo*, a worker at the PT. Maspion electrical goods factory in Sidoarjo, East Java, was killed by the military when a mass strike was violently repressed. The five-day strike has been involving 25,000 workers from all five plants at PT. Maspion. Many workers were seriously injured, including *Lasimo*, who was severely beaten in the stomach with a gun. He was immediately taken to the hospital by his fellow workers, but died three days later.

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Based on those protective regulations, international as well as national/domestic legal instruments, basically labor rights are guaranteed and secured. But in the context of Indonesia, the World Bank has powerfully influenced to the first Indonesian labor legal reform in 1997, through projects initiated from it's reports, "Workers in an Integrating World" (World Development Report 1995) and "From Plan to Market" (World Development Report 1996), "Workers in an Integrating World" was authored by a team led by Michel Walton, promoted what a more market-driven and integrated world meant for workers. It provided practical policy recommendations for major areas of labor policy, which should be applied to domestic labor market policies. In this report, it also argues about Indonesian labor policy,

> "as in Indonesia, they have responded to pressures for independent unions by directly raising standards, such as minimum wage, potentially at cost of employment. Government do need to establish the rule of labor management negotiations, spelling out the rights of workers and firms, establishing disputes resolution mechanisms, and promulgating basic health and safety regulations, which unions can monitor" (World Bank 1995).

This report seemed good, but in detail provision would be driven to the major goal of liberalizing trade and labor policy which conforms to a market-friendly strategy environment. Unsurprisingly, the Indonesian government has followed and changed labor policy in response to these major requirements of a market-friendly strategy. And it was marked by the enactment Act Number 25/1997 on Manpower,[76] and then it has been followed through labor reform waves until the recent policies in 2006.

As mentioned before, the exacerbating major reforms are the long-term/more flexible outsourcing, contract workers, reducing the role of state on labor dispute settlement, flexible minimum wage, limitation of right to strike, and reducing state

[76] Actually, it was not only Act or legislation passed by the parliament, but also the Manpower Minister has also promulgated *Permenaker* (Manpower Regulation) Number 3/1997 concerning on Wage Suspension. This regulation has violated labor rights to get fair wages or right to just and favorable remuneration ensuring for himself and his family. But the government position was more committing to encourage firms in the name of better investment. Wage suspension is a provision which potentially come up with legal uncertainty, and in this context, labor rights have been marginalized (Wiratraman 1998: 98)

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roles in determining wage. According to labor unions, those reforms would potentially reduce their legal rights, and it violates human rights provisions which are recognized under many international human rights laws.[77]

The outsourcing in Indonesia is not a new provision, but this working system has been practiced by using the *Permenaker* Number 2/1993 concerning Working Agreement. Although it has a slightly different system, but the practice of outsourcing has already been happening before the enactment of Act Number 13/2003. And Act Number 13/2003 legalized this action for the first time under Indonesian laws.[78] The practice of outsourcing is adopted in the frame of labor market flexibility, which uses a perspective that labor is seen as commodity or 'goods' in a labor market.

There are three parties involved in an outsourcing working system: firstly, labor (outsourced labor), second, the 'supplier agent' or the firm which recruits outsourced labor, and third, 'the user' or the firm which uses outsourced labor, which has contractual agreement only with the supplier agent. In this working system, the responsibility over outsourced labor is laid on the 'supplier agent', but working conditions and impositions are based on the 'user' interest. Problems arise when outsourced labor are not given allowances, pension rights, and other social security rights. Although the outsourced laborer work hard for many years, he/she will not get promotion to achieve higher position, and the firms can easily recruit and fire the labor, as long as his/her status remains as outsourced labor. Outsourced labor can be easily fired if his/her services are not needed anymore by the 'user'. Ironically the outsourced labor will not be paid his/her allowance because even though he/she works with the 'user', and there are actually no contractual relations between the 'user' and outsourced labor. It is because the outsourced labor is recruited by the 'supplier agent', and mostly 'supplier agents' do not give allowance, pension rights, and other social security rights. Moreover, the problem of outsourced labor is that remunerations or minimum wage are usually uniformed by 'the supplier agent', even though they work in a different place with 'the user'. Remunerations are often set without considering the capacity and effort or hard-work of outsourced labor at all.

[77] Jamaludin (FBS/MBH), *interview*, Surabaya, 11/4/2006; Ahmad Dimyati (SBPD), *interview*, Surabaya, 26/4/2006; Bambang Wirahyoso (SPN), *interview*, Jakarta, 3/5/2006; Launa and Timboel Siregar (ALNI/Asian Labor Network on International Financial Institutions), Jakarta, *interview*, 9/5/2006; FGD, Surabaya, 21/6/2006;

[78] It was legalized by DPR/Parliament on 25 February 2003.

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The essence of outsourcing is the use of a flexible working system that shifts responsibility over working conditions to a third party. It transforms labor cost from being a fixed cost to a variable cost, which depends much on the needs or interests of 'the user' and 'the supplier agent' (vide: Table 6). This working system is showing and legalizing exploitation of outsourced labor, and a new kind of 'modern slavery' in the context of globalization.

Table 6: **Outsourcing Working System**

System	The Outsourced Labor	The Supplier Agent	The User
Working Agreement	Contractual working only with the supplier agent	Contractual working both with the outsourced labor and the supplier agent	Contractual working only with the supplier agent
Working Relation	Working for the user, but no relation with the user	Responsible for supplying (read: selling) labor for the user	No responsibility for outsourced labor, but can define working terms for outsourced labor
Remuneration system	Earn minimum wage from the supplier agent	Responsible to hire outsourced labor, based on contractual working with the user	No legal responsibility to hire outsourced labor (included allowance and pension rights)
Recruitment and fire system	Based on supplier agent requirements and contractual working between the supplier agent and the user	Based on contractual working with the user	Flexible, based on necessity of production

Ironically, under the framework of improving investment, the new revised Act Number 13/2003 will apply long-term outsourcing, and allowing outsourcing for many work areas. The practice of outsourcing is extremely being questioned by labor groups because it will deny social safety net and economic rights of outsourced labor. Moreover, outsourcing is basically against human rights law which protects the rights

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for everyone to be promoted in his employment to an appropriate higher level, and the right to just and favorable remuneration ensuring for himself and his family.[79]

However, although it is clearly violating human rights and legal normative provisions, but the government as well as its agencies still adopted legal reform to accommodate outsourcing. Within the internal bureaucracy, particularly in the Manpower Department or District (at regional level), officials believe that the problem of outsourcing has become rampant because labor 'does not understand much' about outsourcing. For instance, in the interview about 'outsourcing', Widagdo (a PhD graduate, and also Director of Manpower District in Sidoarjo) says that many labor unions do not know yet the meaning and objectives of 'outsourcing',[80] and it is actually very effective. Yet, if it is implemented consistently, he believes that there is no chance for doing 'outsourcing'. And he adds that people wrongly interpret outsourcing because they do not understand it yet. And interestingly, in his view, an individual strike provision does not conform to the industrial relations climate in Indonesia. And, although it is explicitly provided by Labor Act (Act No. 13/2003), it is contrary to ILO Convention No. 87 and 98 (Jawa Pos 30/12/2005).[81]

Act Number 13/2003 also limits the rights of staging mass strikes, under article 137, which states that "Working strike is basic right of labor and unions, conducted legally and orderly, and peaceful as caused by the failure of consensus". This article is obviously contrary to international labor standards, because it limits the reason of mass strike as 'caused by the failure of consensus'. In practice, the labor and its unions should have right to strike in defending and protecting their economic and social rights, such as in mass strikes to express solidarity over labor rights violations in other places, including in other states. On this issue, ILO also recognizes these

[79] These provision are clearly stated in Article 23 Section 3 of the UDHR; and Article 27 Section 2 ("Every citizen shall have the right to work and to earn a humane livelihood") and 28D Section 2 ("Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment") of the Indonesian Constitution; Article 7 ICESCR (ratified by Indonesian Government under Act Number 12/2005). Reforming wage structures has been a common strategy in many countries, which has been imposed by multilateral agencies. Rationalization of the remuneration structure has also been popular, particularly in reducing the proportion of non-wage benefits in remuneration, for examples housing, transportation, and food ratios. The World Bank in its report is little progress in this area of reform (Turner and Hulme 1997: 121).

[80] Drs. Bambang Soehartono Widagdo, *interview*, Sidoarjo, 25/4/2006.

[81] According to Article 8 (1d) ICESCR states, "The right to strike, provided that it is exercised in conformity with the laws of the particular country." It does not mention any distinction between mass strike and individual strike, but right to strike is guaranteed by law.

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rights. As long as article 137 still exists, labor will face difficulties when they want to protest government policies affecting them, such as bargaining for minimum wage, law-making processes, and social-economic policies which affects labor's daily life. These rights were emphasized by ILO in stating that labor interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions, and to labor problems of any kind which are of direct concern to the workers (ILO 1983). That is why the provision under article 137 Act Number 13/2003 is against human rights laws and Article 28 of the Indonesian Constitution, and Article 8 Section 1d of ICESCR/Act Number 12/2005.

Concerning to industrial dispute settlement, the problem is mainly with reducing the role of state in settling labor disputes, and with shifting the mechanism to the court system. For the laborer, the court mechanism will limit the role of labor union in defending their members in negotiating rights or dispute resolution. Furthermore, it needs specialized legal skills which are not easy to find, and otherwise it is expensive for labor to hire lawyers. Act Number 18/2003 concerning Advocate stipulates that persons advocating a case should have an advocate's certificate or a law profession. Therefore, the labor union cannot defend their members in the court process, and labor dispute will be an individual rather than a collective strategy. Finally, the defending functions which originally borne by labor unions will be eroded by the court mechanism in settling industrial relation dispute.

It is believed that if the government could guarantee a cheap and quick mechanism for settling industrial relations dispute, it will improve investment interest. But from a laborer's perspective, this Act is not a cheap mechanism because it requires them to pay amount of money to hire an advocate.[82] It will require an expensive amount of money and potentially spend a lot of time for resolution. And ironically, Article 56(a) of Act Number 2/2004 states that the "Industrial Relation Court has the duty and authority to examine and give a verdict at first level on rights disputes." A rights dispute in this context is a dispute arising from failure to fulfill one's rights due to different understanding or interpretation in the implementation

[82] Article 34 section (2c) Act Number 2/2004 relates to the amount of money which should be paid, particularly for the Arbiter and his honorarium

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labor laws, works agreements, company regulations, or collective labor agreements. Tavip (2006: 2) argued that rights disputes as based on normative or legal rights are actually clear that the company should fulfill labor legal rights. This is why this provision has been brought for appealed to the Supreme Court.

A different perspective is given by Widagdo who says that the labor dispute mechanism through an industrial relation court is very progressive and more effective than previous one. It is *in abstracto* (theoretically or ideally) very clear in terms of mechanism and time frame for a labor dispute. The previous one was found to be ineffective and was widely misused in terms of implementation, and it has influenced the investment climate in Indonesia.[83] However, absence from this perspective is the role of state, which actually has a very important role to protect labor rights. This mechanism will be of greater benefit for the employer who has better capability to hire professional lawyers. It is adversely limiting the role of labor union in defending their members in the court process, and shifting the mode of resolution from collective bargaining to individual cases. Also, the problem of this mechanism concerned the paradigm which assumes that parties in an industrial relation dispute are on equal positions. But factually, they have different standing because labor's position is in a weaker position. Therefore, it needs a progressive paradigm which recognizes and protects labor rights legally, through state responsibility principles. From a human rights perspective, this mechanism has eroded state obligation in respecting, protecting and fulfilling labor rights, as mentioned under article 2 section 1 ICESCR (ratified by Indonesia's government under Act Number 12/2005), and against human rights chapter of the Indonesian Constitution, particularly Article 28i Section 4.[84]

Actually, labor prefers the previous mechanism in which there is a strong role of the state. But according their experience, the state or government has been not serious in tackling labor disputes. As reported by district parliament and labor unions in Sidoarjo, many labor rights have been normatively violated, to such an extent that

[83] . Drs. Bambang Suhartono Widagdo, *interview*, Sidoarjo, 25/4/2006.

[84] Article 2 Section 1 ICESCR states that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.". In similar provision under Indonesian Constitution Article 28i Section 4, states "The protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government. "

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about 40 percent of the 1,700 corporations in Sidoarjo violate normative or legal rights, especially the issue of minimum wage and *Jamsostek* (social security for labor). Ironically, it was found that the Manpower District could not seriously investigate and monitor normative or legal rights. DPRD suspected the role of Manpower District in solving labor dispute, in questioning the slow process and inconsistent law enforcement.[85] Labor unions have made similar statements saying that it responds slowly and was unserious in protecting labor rights.

Dimyati said that Manpower District as monitoring institution on labor conflicts should work consistently in helping labor if they find normative or legal rights violations by corporations. But, in several cases, he and his organization have been disappointed with the role of Manpower District in Sidoarjo because they did not fight any violation. He has found that the weakness of legal provision in Labor Act (Act No. 13/2003) could abuse labor rights, such as the provision putting legal obligation on the corporation but without a sanction or punishment provision. Moreover, according to his experience in helping labor union members, the interpretation of those provisions is biased on the interest of capital owner rather than rights protection for labor. He says that the performance of Manpower District is not yet optimal in protecting labor, and found that the government abandons the legal rights violation such as suspension of *KKB* (Common Employment Agreement). In his conclusion, the Manpower District governance still seems to have no serious response based on human rights perspective, and is technically trapped to protect the interest of investment only.[86]

Interestingly, the ILO position in responding to labor reform in Indonesia, particularly in its report “Free from Poverty: ILO Contribution over Poverty Reduction Strategy in Indonesia”, also significantly promotes labor market flexibility in the line with the World Bank, IMF and CGI reports. In this report is ILO said that the most necessary step to recover market stability, push healthier competition and support investment in Indonesia is good governance. There is growing consensus from a wider spectrum that Indonesia should adopt good governance. Justice and legal reform should be the most important element of all strategies in creating an

[85] Syarif Muhtarom (member of Sidoarjo Parliament), *interview*, Sidoarjo, 25/4/2006.
[86] Ahmad Dimyati (SBPD), *interview*, Surabaya, 26/4/2006.

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investment climate to develop sustainability (ILO 2004: 26). In addition, concerns is continuously given to secure decentralization, in place of a complicated and unstable legislation frame which can influence investors; and, the elements of good governance agenda is an important thing, we need to give greater concern on good governance in labor market (ILO 2004: 26). Muhamad (2006), an ILO Program Officer in Jakarta, says that it is obvious that credible industrial relations and designing a formal system of social protection for coping with labor market risks that target both the formal and informal sectors is a necessary condition for the effective implementation of labor flexibility.

UNDP, as the closest friend of World Bank in the reform of the legal and judicial system in Indonesia, also argues that an emerging consensus among development, labor and growth economies vets governance as the crucial determinant of rising living standards and contributing to poverty reduction efforts. At the same time, there is increasing recognition that more transparent, accountable, and predictable government institutions and delivery systems are a precondition for choosing and effectively implementing policies that remove restraints inhibiting investment and economic growth, and providing a conducive environment for ensuring productive and decent employment opportunities for all (UNDP 2004). From the UNDP perspective, good governance has central role as a public good, that makes for a just and equitable society and acts to manage globalization better by effectively harnessing the forces of change at global, national, and local level so as to create enabling conditions for pro-poor, job-led growth.

In a very clear message based on the document which is closely linked with the World Bank project on good governance, UNDP found a relationship as well between good governance and the importance of legal reform on labor issues. In its action agenda which relates to governance at national level for instance, the government is expected to build a model of development that is inclusive, treats productive employment as central to macro-economic policy, and connects economic reforms, structural adjustments and macro-economic stabilization to the goal of full employment. The other agenda expects government to pursue an active labor market policy in order to achieve the right institutional and regulatory balance between

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flexibility and security, and to put in place a framework of regulation and governance that is appropriate for the development of informal sector (UNDP 2004).

Besides the World Bank as main actor behind Indonesia's legal reform, these perspectives above on the three waves of labor legal reforms since crisis, have shown striking similarity. And ironically, although it deteriorated labor rights and human rights, there has been no serious effort in countering new labor reform in Indonesia. The big question is why these groups (ILO and UNDP) have kept silent on the issue of labor market flexibility, which really threatens labor rights, even though there have been very large movements protesting this policy. Moreover, they have maintained their silence while the government increased fuel prices in October 2005 which has tremendously affected to the labor conditions. The World Bank has dominantly influenced the CGI, UN agencies, donor institutions, the Indonesian government and also the ILO. It is quite difficult for the Indonesian government to keep away from reforming labor regulations under this framework. And in this regard, this donor driven policy has extremely punched rights of labor and human rights generally, and can be said to be systematic violations of human rights. I agree with Alai and Odekon (1998) who said that it is an evident that economic liberalization has eroded, if not eliminated, workers' social protection.

5.4 Legisprudence: What is Wrong with Legal Reform?

Legisprudence, a new theoretical approach to legislation, studies legislative problems from the angle of legal theory. It has as its object legislation and regulation, making use of the theoretical tools and insights of legal theory (Wintgens 2002: 2). Legisprudence is concerned with the creation of legal rules by the legislator, in the issue of what sense the legislator has to take the systematicity of the legal order into account, what counts as a valid norm, and what meanings can be created and how (Wintgens 2002: 2). This approach, of course, has been neglected under Kelsenian approach or dogmatic-legal normativism, which left legislation and regulation as theoretical study, especially when it is touching a matter of politics. For Kelsen (1967: 200), a rule is legally valid when it is promulgated in accordance with the prevailing norms of legal system.

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But the legisprudence approach to law does not only study rules based on the norms of legal system, but also scrutinizes extra-legal elements which can possibly be introduced into a legal system. Therefore, legisprudence will try to find extra-legal explanations in understanding legislation and its reform. And also, it will criticize legalism perspective which disappear context and relationship between rules and values.

As promoted by the critical legal studies movement, legisprudence always sees law as political product, and it is always reflected as a result of dynamics of political-economy over the law making process. The presence of a text or rule represents the dominant power--this is why there is always a 'rule' behind the rule that shapes rules as values and legal normativity. It could be from a hermeneutic point of view of the legislator (internal point of view), or could be an external point of view in influencing legislation and its reform.[87]

In his article, Wintgens (2002: 39) concluded that legisprudential approach to law is the study of rational legislation. Legisprudence has both a theoretical and a practical aspect. The theoretical aspect involves questions on the concept of sovereignty, and the relation between legal system and social reality, both from a judicial and legislative perspective (or coherence of a legal system). The practical aspect of a legisprudential approach to law concerns the elaboration of concrete criteria of rational legislation, which gained from within the legal system relying on its own dynamics according to the hermeneutic point of view of authoritative actors (Wintgens 2002: 39).

Based on this explanation above, this section will review extra-legal explanations or argumentations and its dynamics on Indonesia's legal reform, particularly in responding to labor reform. Then, it will question the existence and meaning of labor legislation in promoting and protecting human rights. This will be elaborated also in the terms of the role of legal or legislation projects that have been academically injected by donors-driven projects, particularly in the framework of good governance.

[87] The internal and external point of view is well known articulated by *HLA Hart* in understanding law (Hart 1981: 87-88).

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The key word for labor reform in this thesis is 'labor market flexibility'. It is reflected in the three labor reforms, particularly in the provisions concerning outsourcing, long-term contract workers, reducing state role in determining minimum wage and labor dispute settlement, and reducing pension and allowance rights for labor. For legislators (and supported by the government also), labor market flexibility is believed to improve investment climate and economic growth. These provisions have been injected more and more into labor legal reform in post-crisis Indonesia.

In questioning this belief, whether labor market flexibility could result in improve investment climate and economic growth has to be studied, proven, and finally linked. What is the rationality behind labor market flexibility, and what are the values behind it?

The relationship of labor market flexibility and the improvement of investment climate has been much elaborated and provoked by those people or groups who profess belief in the market liberalization paradigm.[88] The neo-liberalist mainstream has been pressuring domestic policies through packages of loan conditionalities. The World Bank, as one of hegemonic actors in designing market-driven policies, has been pronouncedly promoting 'good governance' for the South countries. Good governance has been articulated and reproduced as 'the truth' for enabling countries to frame its economic policies in the frame of market-friendly strategy.[89] In disseminating 'the truth', the World Bank has collaborated and involved with other financial or donor intitutions, transnational corporations, United Nation agencies (particularly UNDP on the issue of good governance), and civil society groups. In implementing projects, the World Bank has also established a global partnership and special task force in order to look seriously into tackling poverty and human rights. In the Indonesian context, the Partnership and the Justice for the Poor

[88] This paradigm actually has promoted the ideology of (neo-) liberalism, which was brought by the World Bank, IMF and US Treasury Department, which is also well-known as the 'Washington Consensus' (Robison 2004; Gill 2003: 15, 2000; Silver 2004; Khor 2000: 30). It refers to the collection of neo-liberal economic policies, such as trade and financial liberalization, privatization, deregulation, labor market flexibility, fiscal discipline, tax reform, and macro-stability of the world economy. It unites multilateral institutions representatives of the international arm of the U.S. state and associated G-7 countries that enable corporate globalization. The dominant presence of neo-liberalism is promoting market liberalization and withdrawing the role of state.

[89] Daniel Kaufmann, *interview*, Jakarta, 8/5/2006.

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are institutions established to promote World Bank projects, including good governance.

Going into more detail of the projects, good governance addressed certain projects which dealt with supporting grand scenarios of market liberalization, namely judicial and legal reform under a legal framework for development. It has influenced legal reform in Indonesia, such as electoral reform, decentralization, privatization of state enterprises, water resource management, investment, legal drafting, business competitive dispute settlement, anti-corruption, and also labor law. Through loan conditionalities and the CGI forum, these legal reform designs have been injected and legalized.

In legal drafting projects, there was a dominant project which has influenced the schools of law throughout Indonesia universities, so called ELIPS Project (Economic Law Institutional and Professional Strengthening).[90] This project entailed legislative drafting skills, legal education for gaining Masters of Law in US universities, and specific projects on competition law, money laundering law, and anti-terrorism. Particularly in legislative drafting training, legal drafting for good governance was introduced and promoted through an influential book written by Seidman et al (2002), and disseminated among many law schools in Indonesia. The project purpose was to oil the wheels of commerce and generate new wealth, especially in the private sectors, and with an eye to the global market (Thompson 2004: 2). The ELIPS project was expected to support 'economic law' reform in Indonesia. As we have seen in labor legal reform experience, the political voices of parliament and government institutions have been easily co-opted into market-driven designs. It was reflected from the current debate on reform over Act Number 13/2003. This pressure has drawn a political-economic configuration which unsurprisingly influenced legislators.

From the bottom at domestic level, labor legal reform has been resisted by numerous labor union movements, rejecting the major idea of labor market flexibility

[90] The original ELIPS Project began near the end of 1992, and continued after Soeharto stepped down in 1998, ending on October, 7, 2004. This project focused on strengthening the legal system in regard to "economic laws", and it was sponsored by the Government of Indonesia and USAID. ELIPS offered at least 13 projects on legal education, included developing a Masters in Law program in the US for junior law faculty members, provide training for law teachers and legal personnel in the government and public sectors, and provide model of syllabi on economic law subject (Thompson 2004: 4-5).

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in many ways. In the case of the enactment of Act Number 25/1997 concerning Manpower, the government (and parliament) had failed. But surprisingly after Soeharto stepped down or during 'reformation' eras, donor-driven policy has successfully driven labor legal reform, which happened when the parliament passed a package of labor reform (Act Number 21/2000; Act Number 13/2003; Act Number 2/2004). Judicial review through Constitutional Court has been proposed against Act Number 13/2003, but unfortunately, the labor group network failed after the Constitutional Court judges refused the argumentation against 'labor market flexibility'.[91] It is interesting that a judge's argumentation concerning the involvement of market-driven designs was accepted as normal or proper as long as it promotes national interest without pressure, manipulation, and direct power intervention. It cannot be deemed as an intervention of sovereignty as along as the law making authority is still freely and independently done by legislators.[92]

The interpretation of 'no pressure, manipulation and direct power intervention' is important in reviewing the context of labor legal reform. In responding to the judge's interpretation, is it not enough to label the CGI recommendation, World Bank briefing papers and legal framework for development, World Bank[93] and IMF statement[94] in asking labor legal reform, and also loan conditionalities, as 'pressure and direct power intervention'? Unfortunately, this extra-legal argumentation is still not accepted because most judges used a legal positivism approach in understanding legal reform, wherein the validity of law is still based on norms of legal system. Legisprudence as legal theory has been never used to deconstruct text and context of law, and its dynamics, particularly the strong influence of donor institutions in legislation reform in post-crisis Indonesia. Without

[91] Although the formal complaint of plaintiff are partly accepted by the judges, the major labor reform issues such as outsourcing, contract workers, limitation of mass strike are refused or unaccepted. Only two judges made Dissenting Opinion, *Prof H. Abdul Mukhtie Fadjar, SH., M.S.* and *Prof. Dr. H. Laica Marzuki, SH.* (Constitutional Court Verdict, Case Number 012/PUU-I/2003, 28 October 2004).

[92] Constitutional Court Verdict, Case Number 012/PUU-I/2003, 28 October 2004, page 102.

[93] World Bank stated: "the workers are overly protected", and "the government should stay out of industrial dispute" (Jakarta Post, 4/4/1996). Legal imposition in the context of reform has been always tremendously promoted by World Bank. *Sadli* (2003: 193), an Indonesian liberal economist, agreed to this by mentioning that the main document for CGI meeting was a report of the World Bank, called "Indonesia, The Imperative for Reform", written under the supervision of *Vikram Nehru*, the resident economist at the Jakarta office. This report was also a part of assessment in order to disburse loans to Indonesian government.

[94] *Daniel Citrin*, Senior Adviser of IMF, questioned the Act concerning manpower that was not immediately legalized (Jakarta Post, 20/1/2003).

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understanding legisprudential approach to law, the dangers of legalistic interpretation will come up with mechanistic views and lack attention on the major substance of law and the underlying paradigm. For instance, labor law paradigm has basically progressive regulation because it is created to protect and fulfill labor rights based on its weak position in industrial relation. But the judges in their verdict have shown their bias for the capitalists (the firms or corporations) as the party that should be protected also under labor law. Tjandra comments that the essence of labor law is progressive, because it starts from the premise of an imbalanced relation between labor and the company. It shows an asymmetric relation, that is why the role of labor law cannot be neutral but it should protect labor rights. Ironically in Indonesia, many scholars and including those from government often mention that labor law should be neutral and should accommodate industrialization and investment. This proposition is totally against the essence of labor law.[95]

In the drafting process mechanism, it is possible for the government to not involve the DPR (People Representative Body) if there is 'an emergency situation urgently requiring an immediate response' (*hal ikhwal kegentingan yang memaksa*). It is named as Substitute Government Regulation of Act (PERPU). The PERPU and its contextual situation are interpreted by the Government in order to facilitate efficient and rapid response to tackle the problems. But in fact, the Government has used 'an emergency situation that pressuring' to pass number of legislations that were very controversial and crucial for most of the people, such as PERPU Number 1/2000 and 2/2000 which were enacted to facilitate establishing free trade areas and free port. The appropriate question in this regard is to ask what are the indications that that establishing a free trade area and free port are facing 'an emergency situation that pressuring' that the government has invoked in not involving the DPR to draft together? In the case of labor dispute settlement, the drafting process of Draft Act on PERPU Number 1/2005 concerning the Suspension of Industrial Relation Court has been passed without involving the related institutions, such as Supreme Court as judicial body, Committee of Industrial Relation Dispute Solving (P4D/P), and labor unions. Interestingly, Draft of Act on Authorization PERPU Number 1/2005 has been discussed once in the Special Committee on 7th July 2005 before enacting in General

[95] Surya Tjandra (Trade Union Research Center), *interview*, Jakarta, 2/5/2006.

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Meeting (*Rapat Paripurna*) on 8th July 2005 (Susanti et al. 2006: 64). Unsurprisingly, by using two indicators, the political sense in accommodating people aspirations and technical capacity in managing its aspiration to improve legislations, PSHK concluded that the legislation work of the DPR (parliament) in 1999-2004 was of worse/poorer quality (Jentera 2004: 159).[96]

By using legisprudential approach to law, the most important notion in human rights discourse is whether labor legislation through three labor reform has been used to legitimize the oppression, particularly legalizing human rights violations. As we have previously seen that labor legal reform as conditionalities of 'good governance' under governance reform tremendously exacerbated labor rights and human rights. The practice of selling human labor power in outsourcing is one example of the most serious human rights violation, which is ironically legalized through three legal labor reforms.

If such legislation has resulted in human rights violations, then it can be called a 'legislation-based human rights violation', since this legislation has adopted and represented the dominant power, rather than securing the weak position of labor in industrial relations. There are three possibilities in this context: first, majority of the legislators are people who have interest in creating oppressive labor law. Majority legislators in this role are also involved as oppressors. Second, legislators are pressured by a systematic process of oppressing machine and hegemonic power, which legislators could not resist their authority in making or reforming legislation freely and independently. In this notion, oppressor defeats and hijacks the role of legislators. Third, this is a combination of both legislators-as-oppressors and extra-legislators (oppressing machine and hegemonic power) in designing oppressive labor law.

By exploring the emergence of good governance in Indonesia which involves the role of state and non-state, market and its power, mainly in the framework of neo-liberalist mainstream, and also by deconstructing discourse under this mainstream as binary discourse of bad and good governance, the absence of democracy and human

[96] Concerning technical capacity, the member of parliament has limited ability to make legislation. Sometimes, legislator does not know the consequence of legislation which has been made. Ironically, they mostly do not have the sensibility to respond to the impact of neo-liberalism agendas under legal reform or other critical policies, such as the rise of fuel price last year (2005). Rival Gulam Ahmad, *interview*, Jakarta 8/5/2006.

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rights issues in good governance , and the mystification of asymmetrical power through participation and partnership, this thesis argues that legislation-based human rights violation is characterized by combination both oppressor within legislators and extra-legislators (oppressing machine and hegemonic power) in designing oppressive labor law.

Unsurprisingly, the dynamic of legal reform in the case of labor, particularly in current situation has met with widespread resistance from the labor movement throughout Indonesia protesting the new revision draft of Act Number 13/2003. Interestingly, labor union movement was supported also by local parliament after few months (March-May 2006) labor strikes occupied several public buildings. For instance, after long process labor mass strike had pressured parliament for many days in Sidoarjo, Komisi D – Sidoarjo Parliament (Welfare Commission in District Parliament)[97] supported the labor protest and refused the new draft of revised Act Number 13/2003, by sending formal letter to People Representative Assembly in Jakarta.[98] This step was also taken by Parliament at the Provincial level in East Java. But on the other hand, Tjandra said that the dynamics are also responded to by the corporations association and central government. For instance, through mass media, they always make pronouncements that the labor movement should be seen as a self-interest movement-and this pronouncement has been made by them many times, like an advertisement. The firms always say, “Whatever the situation, investment is necessary for economic growth, and labor reform is also necessary.” These statements are actually hegemonic discourse practiced by state and corporations, in order to pressure legal reform on industrial relation issues.[99]

This situation is actually the extra-legal explanation interpreting legislation dynamics between text and context of legal reform in the case of labor in Indonesia. Legisprudence approach to law is significantly used to search deeply the reason, existence and meaning of labor law, which actually has progressive character in

[97] *Komisi D* is the commission concerns with welfare issues, including labor rights. This commission is a part of District Parliament in Sidoarjo.

[98] DPRD Letter 5 April 2006, signed by Bupati (Head of District Government), *Drs. H. Win Hendarso, M.Si.* and Head of DPRD, *Drs. H. Arly Fauzy, SH.* This letter was sent to Head of People Representative Assembly in Jakarta. Syarif Muhtarom, *interview*, Sidoarjo, 25/4/2006.

[99] Surya Tjandra, *interview*, Jakarta, 2/5/2006. See also: TURC Press Release Number 81/SK/TURC/V/2006.

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protecting and fulfilling human rights. Legislation-based human rights violation can be arguably known and understood in reviewing labor reform, and finally we can answer the mystery question: what is really wrong with legal reform in Indonesia (?).

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CHAPTER 6
CONCLUSION:
CHALLENGES FROM A HUMAN RIGHTS PARADIGM

As emphasized in the earlier chapter, this thesis aims to study the causal link between the World Bank's projects on good governance and legal reform and, the promotion and protection of human rights in Indonesia. This is the main objective of this thesis. In trying to understand this causal link, there are three questions raised to deconstruct 'good governance' as the major mantra of development in shaping political governance in the age of globalization. The questions are related to the emergence of good governance, discourses, and the subordination of the promotion and protection of human rights. There is no single interpretation of the answers to these questions, which always raises debates and controversies as challenges from a human rights paradigm on the current situation.

This concluding chapter highlights several key challenges in responding the issue of good governance and legal reform in the context of human rights and social development.

6.1 The Emergence of Market Friendly Human Rights Paradigm

Many scholars believe that good governance and human rights will contribute to and strengthen each other, and hence, good governance has been campaigned massively through many channels. This thesis argues differently: good governance and human rights do not always contribute to and strengthen each other. This is much

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dependent on the construction of the discourse of both, especially by looking text and context, and its text-context dynamic.

What we have seen until today, particularly good governance in the third world practices is inseparable from the historical context of the emergence of the new model of disciplining democracy. From a historical perspective, good governance globally emerged predominantly after the collapse of communism or the Cold War. It then became a major development agenda which was systematically promoted primarily by primarily the World Bank and other neo-liberal co-proponents. In the Indonesian experience, although the Dutch colonial legacy had been the root of the governance or administration systems which had been in place for many decades, the dominant process on globalizing governance has only begun at a tremendous rate during and after the financial crisis hit East and Southeast Asia in 1997. In this context, the neo-liberal ideology became easily hegemonized through many of the World Bank's projects with their discursive powers. These were exported to many borrower countries, including Indonesia.

The emergence and prevalence of good governance texts were insisted by the World Bank in the creation of its text, but also its hegemony was ensured through project designs under the legal framework for development. This thesis argues that the role of state as well as non-state actors (including development activists, civil society groups, journalists, academics) brought and transmitted similar ideas and pronouncements of good governance (and its derivative mantras) through many channels, but actually they had different perceptions or interpretations of what good governance means.

Even though the idea of World Bank concept and project on good governance became major post-crisis discourse in Asia, it has a different historical context, character, motive and paradigm behind it. In law schools for instance, good governance was introduced in the context of administrative and constitutional law from historical and normative texts since Dutch colonialism until the present. This thesis fully agrees with the Derrida's thought on 'difference'. By using a Derridanian perspective, this thesis believes that even though good governance uses similar terms,

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but the essence, history and substantial agendas behind good governance agenda could possibly be very different. Chapter 2 earlier overviewed the historical context, concept or principles, role of institutions in transmitting ideas, and its narrative differences.

However, when it comes to which dominant discourse of good governance influences to many policies, this thesis argues that the role of neo-liberalism mainstream which is dominantly supported by powerful capitalists can design and construct particular discourse. Because this thesis only focuses on World Bank roles, it analyses how the Bank as a powerful institution can systematically drive and force its own agenda and interests into the adoption of certain policies. The discourse of good governance and its derivative texts are designed, promoted, exported and injected through many projects, the establishment new institutions, and including the construction of human rights discourse that deals with good governance.

The last part of Chapter 2 argues that, in operating ideas and projects of good governance, the World Bank plays very strong network with various groups such as state institutions, universities and study centers, non-governmental organizations, media, and also some local donor institutions supported by the Bank. It would be understood as systematic work for conforming to good governance was successfully implemented because of supporting dynamics at domestic level. Therefore, good governance in Indonesia is characterized by the prevalence of two macro trends: (i) economic globalization and (ii) political democratization. Economic globalization has been introduced into good governance projects designed by the World Bank scheme, including privatization, deregulation and competition policy. Political democratization has been promoted through electoral democracy, anti-corruption movement, partnership or participation in decision-making processes, transparency, and accountability of political leadership. This thesis shows that these programs are mostly accepted as part of reform agendas.

The emergence of good governance with these characters after crisis in Indonesia systematically replaced the previous idea of governance, and it is terrifying to see the how the notion of free market has become so prevalent and dominant. Unsurprisingly, human rights discourse was designed also in the framework of market

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friendly strategy. This is conclusion explains why the emergence of good governance, particularly from the World Bank, has become so prevalent and dominant.

6.2 Technologies and Rationalities in Mystifying Power Asymmetry

In transmitting the idea of good governance, the World Bank did not work alone. The discourse mainstream and vehicles were established, especially among neo-liberal proponents. In the context of Indonesia's post-crisis experience, the World Bank has reproduced 'the truth' and 'knowledge claims' projects through multi-stakeholder a forum, namely, the Partnership for Governance Reform (the Partnership), and also has imposed 'market friendly strategy programs' through the Consultative Group for Indonesia (CGI), by publishing briefing papers and certain reports. In order to transplant the idea of access to justice for the poor, the World Bank also established the Justice for the Poor which focuses on promoting poverty reduction through legal assistance. These institutions come up as new machine of the World Bank to shape a new model of human rights discourse and trends in Indonesia: the so called market-friendly human rights paradigm.

This machine does not only show the establishment and normative role of new institutions, but it also functions to construct and drive the way which should be obeyed and followed for the sake of neo-liberalism. The World Bank in this regard is the dominant actor driving the development agenda. The Bank has strong power in determining loan conditionality schemes, and only an ambiguous promotion of numerous 'sexy' discourses, namely: democracy, anti-corruption, rule of law, participation and partnership, access to justice and other derivative buzzwords. Responding to 'access to justice' projects for instance, Chapter 3 argues that, although the Justice for the Poor as an institution focuses in work for the poor and other poverty issues, this thesis finds that access to justice is trapped within the World Bank's loan disbursements projects and biases towards in promoting market liberalization rather than addressing the roots of structural impoverishment. This thesis finds that

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privatization and labor market flexibility are the primary elements absent in the Justice for the Poor's list of structural impoverishment causes.

In this machine, what the World Bank promoted through those 'sexy' discourses and its projects are in the name of the poor and of legalized justice. These are basically limited to institutionalist perspectives, and more of flourishing market friendly strategy. However, the most significant and exacerbating influence of the World Bank discourses and projects is the mystification of power relationship through its machinery institutions. This is because by mystifying the power asymmetry, the World Bank as the most powerful institution could easily interfere into projects for their own agendas. Finally, it could potentially subvert the promotion and protection of human rights.

Chapter 3 argues that the notion of participation and partnership has become the dominant discourse in promoting neo-liberalism agendas. This discourse tries to project an equal and mutual respect among partners and donor institutions under aid relationships. But this is never done because as Abrahamsen (2004: 1456) said that the absence of multi-annual financial agreements means that recipients are constantly under the review of donors and the IFIs. Also, in the promotion of partnership under poverty reduction projects, the issue of macro-economic framework of the PRSPs is clearly non-negotiable and under the Bank's supervision (Pender 2001: 397-411; Chavez and Guttal 2003: 2).

Ironically, in the case of the transmission of good governance in Indonesia, the Partnership and the Justice for the Poor blur power sub-ordination, between donor institutions; especially with the World Bank, it is Indonesian government as recipient country and the poor people as the majority in society are the ones who have been affected. This thesis finally concludes that the mystification of discourse and the engineering of institutions are specific machine technologies and rationalities, which are systematically produced through the conceptualization of 'truth and knowledge' of powerful institutions as a means to soften neo-liberalization.

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6.3 Governance and Its Legal Reform Machinery

Initially, good governance should have been performed under the structural adjustment program. But currently, it has been shifted to scenarios under the involution of adjustment project, namely, the poverty reduction strategies. In this scenario, legal framework for development is stressed as one of the elements of good governance stipulated in the rule of law. Unsurprisingly, good governance and rule of law are always pronounced together in the context of legal reform.

This thesis agrees with Tshuma's (1999) proposition that the legal framework for development is actually the evolution of the World Bank projects, when the Bank promotes good governance as synonymous with sound development management. And, the doctrine of the rule of law as a precondition for economic development is used to justify market imperialism that disciplines governance and legal reform. In this context, the primary aim of good governance for the World Bank is to be tools or machinery to design laws and regulatory mechanisms through a legal framework for development and legal reform that will ensure protection of the interest of corporations or capitalists.

Then, the question highlighted here is whether the World Bank concept and project on good governance, especially under legal framework for development and its legal reform, integrates a human rights aspect in decision-making throughout its policy formulation. As Chapter 4 argues, that the World Bank concept and project cannot be generalized or simplified as ideal principles, because it is very clear that these are ideologically promoting neo-liberalism or market liberalization principles rather than defending rights of the people. The danger of this project is in the World Bank's belief that good governance is possible only through a retreating state in order to ensure efficient management or resources

This thesis concludes that because of the absence of good governance in this context, the importance of human rights promotion and protection has been eroded and subverted. Ironically, legal framework for development and its legal reform do not pay much attention to the promotion and protection of human rights, and ideologically

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these are locked in market liberalization. As stressed in its principle of restraining state responsibilities, and in shifting state's role to private sectors, this thesis argues that legal reform under good governance project is not only on a different track from human rights aspirations, it also hijacks the track of protection and fulfillment of rights.

6.4 Labor Rights and Legalized Human Rights Violation

Last part of this thesis (Chapter 5) explains why legal reform projects are stipulated and funded under good governance projects. It also finds that there are three waves of labor legal reform in Indonesia since financial crisis in 1997. The three waves of labor legal reform are components in the promotion of good governance, particularly in supporting market-friendly strategy which is aimed to improve Indonesia's economic growth. Scenarios of legal reform are easily found in many World Bank's documents, and also its briefing papers for Indonesia's priorities.

The idea of labor legal reform under good governance transplants 'labor market flexibility' as a major reform agenda for the sake of investment and other economic growth considerations. This labor policy clearly deprives some human rights provisions because it contains several painful elements for the laborer and unions, especially -- as scrutinized by this research -- on the provisions for outsourcing, long-term contract work, reduction of pension rights and allowances, flexible minimum wage, limiting mass strike rights, and minimizing the role of state in industrial dispute settlement.

Three labor legal reforms in Indonesia has brought a clear message that as a systematic way to erode labor rights protection from year to year through legislation, imposing a framework for the better development of investment climate. It shows the connection between the global design of governance through good governance and its legal framework for development. The World Bank has successfully shaped legal reform in Indonesia since the crisis until the fourth post-Soeharto transition regime. Hence, the inimical legal framework for development should be carefully considered

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as a challenge for human rights advancement in the context of underdeveloped and or developing countries. As this thesis states through a deconstruction method, the World Bank's mention of 'framework' in legal framework is actually a legal imposition. And what the World Bank means about 'development' is merely 'debt management'. In practice, it disempowered a large section of society, particularly laborers and unions in the case of labor legal reform.

The World Bank asserts that good governance promotes rule of law and legal reform, but in effect it weakens and subverts state obligation in the promotion, protection and fulfillment of human rights. There is a systematic structure and function in the legal reform process involving various elements of state, non-state actors, universities, multi-stakeholder bodies and international agencies, which consciously or unconsciously underpin the deprivation of labor rights through 'legislation based human rights violation' or 'legalized human rights violation'.

This notion of legalized human rights violation above is the primary concern of this thesis. It explains that this is done by promoting a 'market-friendly human rights' paradigm which necessitates the importance of good governance and its legal reform machinery (vide: Figure 2).

Finally, the conclusions of this thesis can be summarized into three main points: first, it has textually found a strong and systematic causal link of good governance and legal reform as a conditionality of the legal framework for development, which seriously negates the promotion and protection of human rights. Second, the relationship of good governance and legal reform in Indonesia is softly injected through the mystification of asymmetry power which involves numerous actors and institutions. It is softened through the discursive text of 'mutual understanding' and 'closely cooperative agreements'. In this regard, good governance and legal reform have become mask over the deprivation the rights of people. Thirdly, good governance and legal reform are structurally used as oppressive texts to facilitate neo-liberalism's grand scenarios or the free-market paradigm, and it is obvious that labor and its union's rights are extremely violated, as shown in the three waves of labor legal reform in Indonesia post crisis.

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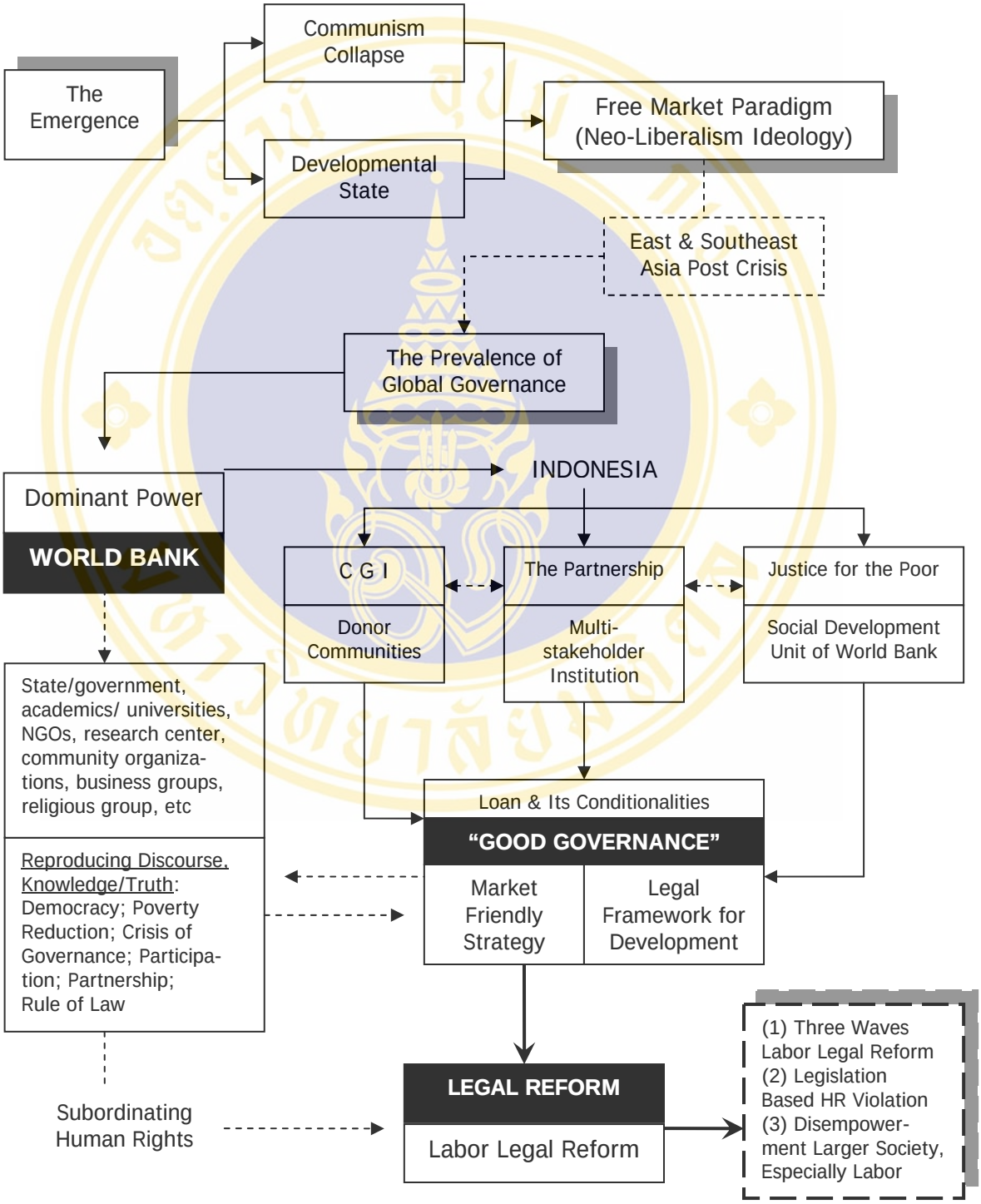
Figure 2 The World Bank Roles in Transmitting Neo-Liberalism Projects of Good Governance: Indonesian Legal Reform Experience 1997-2006



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Unsurprisingly, there is a widespread labor movement throughout Indonesia that continuously fights against ‘labor market flexibility’ because of the role and effect of neo-liberal development agendas in eroding the rights of labor. Finally, this thesis expects in the succeeding process that because there is a sinister intention behind the good governance mantras, and we need to continue searching for a form of popular governance which is more respective and responsive to the human rights promotion and protection, especially in this age of terrifying political-economic imperialism. This is one of the main challenges for improving human rights movement in the future.

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ICCPR (International Covenant on Civil and Political Rights)

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Act Number 25/1999 concerning National Development Program 2000-2004

Act Number 28/1999 concerning Clean State Governance and Free from Corruption, Collusion and Nepotism

Act Number 39/1999 concerning Human Rights

Act Number 20/2001 concerning Revising Act Number 31/1999 on Combating Corruption

Act Number 21/2000 concerning Labor Union

Act Number 30/2002 concerning Commission of Combating Corruption

Act Number 31/1999 concerning Combating Corruption,

Act Number 13/2003 concerning Manpower

Act Number 18/2003 concerning Advocate

Act Number 2/2004 concerning Industrial Relation Dispute Settlement

Act Number 7/2004 concerning Water Resource

Act Number 9/2004 concerning Revising Act Number 5/1986 on Administrative Court

Act Number 10/2004 concerning Making Legislation

Act Number 12/2005 concerning Ratification ICESCR

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APPENDIX

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APPENDIX 1: LIST OF INTERVIEWEE

No	Name	Position/Organization	Group	Location	Date of interview
1	Bambang Wirahyoso	Chairman of SPN/National Worker Union	Labor Union	Jakarta	3/5/2006
2	Launa	Asian Labor Network on International Financial Institutions	Labor Union	Jakarta	9/5/2006
3	Timboel Siregar	Asian Labor Network on International Financial Institutions, and also ASPEK activist (Banking Workers Association)	Labor Union	Jakarta	9/5/2006
4	Jamaludin/Jamal	FBS/Surabaya Labor Union	Labor Union	Surabaya	11/4/2006
5	Ahmad Dimyati	Chairman of SPBD	Labor Union	Sidoarjo	26/4/2006
6	Herry	Chairman of MBH, and also worker group member in Maspion, Sidoarjo.	Coalition of Grassroots People Organizations	Surabaya	11/4/2006
7	Andie Hermawan	Public Interest Lawyer, Coordinator for Advocacy Division of MBH	Coalition of Grassroots People Organizations	Surabaya	2/4/2006; 5/4/2006
8	Surya Tjandra	Chairman of Trade Union Research Center	NGO for Labor	Jakarta	2/5/2006
9	Liest Pranowo	Chairman of FPBN/ National Labor Defender Forum	NGO for Labor	Jakarta	3/5/2006
10	Bivitri Susanti	Chairman Law and Policy Study Center (PSHK)	NGO for Legal Reform issues	Jakarta	8/5/2006
11	Rival Gulam Ahmad	Senior Staff of Law and Policy Study Center (PSHK)	NGO for Legal Reform issues	Jakarta	8/5/2006
12	Asep Yunan Firdaus	Chairman of HuMa, former Director of LBH Semarang	NGO for Legal Reform issues	Jakarta	6/5/2006
13	Kusfiardi	Chairman/Coordinator of KAU (Coalition for Anti-Debt)	NGO	Jakarta	9/5/2006
14	Wahyu Susilo	Senior staff of INFID	NGO	Jakarta	9/5/2006
15	Alex Chandra, PhD	Research Coordinator, Institute for Global Justice	NGO	Jakarta	5/5/2006
16	Lutfiyah Hanim	Senior Researcher, Institute for Global Justice	NGO	Jakarta	5/5/2006
17	Danang Widoyoko	Indonesian Corruption Watch	NGO	Jakarta	10/5/2006
18	Mudji Kartika Rahayu	Indonesian Corruption Watch (ICW), former Operational Chief of LBH Surabaya	NGO	Jakarta	10/5/2006
19	Antonio Pradjasto	Researcher of Demos	NGO	Jakarta	4/5/2006

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APPENDIX 1: LIST OF INTERVIEWEE (CONT.)

20	Asmara Nababan	Chairman of Demos	NGO	Jakarta	4/5/2006
21	Nining Nurhaya	Public Relation of KONTRAS	NGO	Jakarta	10/5/2006
22	Firmansyah	Chairman of KRHN (National Law Reform Consortium)	NGO	Jakarta	10/5/2006
23	Asep Suryahadi	Vice Director of SMERU (Research Institute)	NGO?	Jakarta	9/5/2006
24	Daniel Kaufmann	Director of Global Program, World Bank Institute (WBI)	World Bank	Jakarta	8/5/2006
25	Tauvik Rinaldi	Justice for the Poor-World Bank Consultant	World Bank	Jakarta	8/5/2006
26	Bambang Soetono	Justice for the Poor & DSF/Decentralization Support Facility-World Bank Consultant	World Bank	Jakarta	9/5/2006
27	Dr. Drs. Bambang Suhartono Widagdo	Chairman of *Disnaker* Sidoarjo (Manpower District Office)	Government	Sidoarjo	25/4/2006
28	Rini Gunawati	Staff of *Disnaker* Sidoarjo	Government	Sidoarjo	25/4/2006
29	Achmad Ali, Prof. DR.	Commissioner, National Commission of Human Rights, Indonesia	Government	Jakarta	17/6/2006
30	Jhony Juanda	Directorate of Manpower Bappenas	Government	Jakarta	5/5/2006
31	Eko Sasmito	Commissioner of KPU, Director of YPSDI, and former staff of LBH Surabaya	Government	Surabaya	20/4/2006
32	Bambang Wiyono	Public Relation Staff, Law and Human Rights Department, Republic of Indonesia	Government	Jakarta	31/5/2006
33	Prof. JE Sahetapy, SH., MA.	Chairman of National Law Commission (KHN)	Government	Jakarta	30/5/2006
34	Syarif Muhtarom	DPRD Sidoarjo (Member of District Parliament)	Parliament	Sidoarjo	25/4/2006
35	Prof. Gordon Woodmaan	Law Professor at Law School, Birmingham University, UK.	Expert	Jakarta	2/8/2006
36	Prof. Maria Farida	Law Professor at Law School, Indonesian University	Expert	Jakarta	31/5/2006
37	Zed Abidien	Senior Journalist of TEMPO	Media	Surabaya	19/4/2006
38	Kukuh	Coordinator of AJI (East Java)	Media	Surabaya	19/4/2006
39	Emanuel Lalang	ISAI (Information Flow Studies Institute)	Media	Jakarta	4/5/2006
40	Uli Parulian Sihombing	Director of LBH Jakarta	Public Interest Lawyer	Jakarta	4/5/2006
41	Erna Ratnaningsih	Operational Chief of LBH Jakarta	Public Interest Lawyer	Jakarta	4/5/2006

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APPENDIX 2: GROUP DISCUSSION AND INTERVIEW

No	Location		Participants (individuals and organizations)	Date
1	Aliansi Jurnalis Independent (AJI) Office, Branch of East Java	Surabaya	Zed Abidien, Kukuh, Sunu	19/4/2006
2	Indonesian Legal Aid Society (MBH) Secretariat	Surabaya	Surabaya Labor Union (FBS), MBH activists, Andie Hermawan (lawyer)	5/4/2006
3	Demos Office	Jakarta	Asmara Nababan, Antonio Pradjasto, and Emanuel Lalang	4/5/2006
4	Jakarta Legal Aid Institute	Jakarta	Uli Parulian Sihombing and Erna Ratnaningsih	4/5/2006
5	ALNI Office	Jakarta	Launa, Timboel Siregar, Fadjar Dwi (ACILS) and other ALNI activists	9/5/2006
6	Surabaya Legal Aid Institute (LBH Surabaya) Office	Surabaya	Surabaya Labor Union (FBS), lawyer and LBH activists	21/6/2006

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