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On the Need to Study Weak State Institutions: A Rejoinder

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We were pleased to learn that Paul Gellert proposed to write a response to our article (Peterson, Bedner, and Berenschot 2025) on how Indonesia's court system deals with land-grabbing cases. Too often, academic articles are published without sparking meaningful engagement. Academics are often too busy or too conflict-averse to express their disagreements, which hampers academic debates and, consequently, progress. We were also happy that Gellert was the person engaging with our article. As an expert on Indonesia's political economy and author of important articles on the palm oil industry, he would surely see the importance of our topic and be able to advance the discussion by pointing to the limitations of our article.

We were, however, somewhat disappointed on these counts. The response article, we think, misrepresents our arguments. For instance, our article explicitly concludes that "our findings caution against optimistic assessments of the potential of legal mobilisation." Yet, Gellert (2025) characterises our article as advocating the opposite, suggesting that we argue that "legal remedies [can] act as a line of defence against dispossession." This mischaracterisation was not an isolated instance; rather, it was part of a consistent pattern, leading us to feel "strawpersoned." It seemed that Gellert was constructing positions that we did not hold in order to critique them. As such, we are compelled to clarify both what we were saying and what we were not saying – an effort we undertake in the first part of this rejoinder. We realised, however, that beneath this mischaracterisation, Gellert raises a debate that is worth engaging with. Gellert implicitly – and sometimes explicitly – argues that in the context of a nefarious political economy that undermines the functioning of state institutions such as the judiciary, studying these state institutions is superfluous; instead, research attention should be focused squarely on understanding (resistance against) this political economy. While we agree that understanding Indonesia's political economy is of critical importance, we take a different position. In the second part of this response, we argue for the importance of studying state institutions, even – or especially – when they are weak.

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"Strawperson" Arguments

We will start with the "strawperson" arguments. In his response, Gellert makes a range of different points but, roughly summarised, they amount to three main criticisms of our article: (i) our analysis reflects "wishful thinking" and unfounded "optimism" about the potential of Indonesia's legal system to address instances of land grabbing; (ii) our approach is "individualist" and "law-centric," as we unduly present an image of a legal system operating autonomously from societal forces; and (iii) given the impact of such societal forces, we should have focused our study more squarely on understanding Indonesia's political economy. We discuss each point in turn.

Despite a stated dislike for labels like "optimistic" and "pessimistic," the main theme here emphasises our "optimism," as Gellert takes us to task for arguing that "communities can effectively use the law to establish precedent and improve their rights," and for proposing "optimistic reformist efforts." We were puzzled by this. In fact, we concluded exactly the opposite, and our article does not contain proposals for reform. Our article is a study of 18 court cases involving rural Indonesians taking palm oil companies to court, mainly for dispossessing them of their land without their consent and without adequate compensation. We found that most of their claims were dismissed for procedural reasons. And when, in five cases, the plaintiffs received a favourable judgment, those judgments remained mostly unimplemented. Only in one case did the court case translate into actual results. We argued that the legal formalism of judges and incompetent lawyering led to these outcomes, and arrived at an explicitly pessimistic conclusion:

> The legal formalism identified in this article invariably worked to the benefit of companies and corporate elites. Due to a vicious combination of an ambiguous legal framework, weak lawyering, and formalist judges, the courts do not offer citizens effective protection against corporate land grabbing. Indonesians facing land conflicts cannot rely solely on the court system.

To make our point further, we followed up with: "These findings caution against optimistic assessments of the potential of legal mobilisation, while being supportive of approaches to legal development that emphasise the importance of a country's political economy and the associated entrenched economic inequalities." These conclusions cannot be labelled optimistic. How could they have convinced Gellert that we argue that "legal remedies can act as a line of defence against dispossession"? Puzzled, we searched our article for formulations that could have given rise to such an interpretation. While we use the labels "optimistic" and "pessimistic" in our literature review, it is clear that we use these labels to describe the views of others – and, in the conclusion, we side with the pessimists. Elsewhere, we could find no formulations that would support Gellert's interpretation, and it is telling that he provides no direct quotation from our text to this end; this is because we did not provide an optimistic appraisal.[1] Nor did we write several other things that Gellert attributes to us – nowhere did we write, for example, that "the systematic existence of conflicts in Indonesia [is] attributable to an 'ineffective' court system."

Ultimately, we conclude that Gellert's perception about our optimism stems not from what we write, but from what we write about. This becomes clear when he articulates what is actually so optimistic about our article: "their focus on judges and plaintiffs reads as optimistic." In other words, the topic itself is deemed optimistic. This might be because, in Gellert's view, the strength of oligarchic forces makes the outcome of court cases a foregone conclusion and unworthy of study. The court system is hopeless and hence aiming to understand "how a legal system can be made to work in the interest of economic elites" strikes Gellert as uninteresting. We should focus instead, he proposes, on the "why," that is, why oligarchic forces are so strong that they can undermine

Indonesia's legal system. This is a debate worth having. Is it actually worth the effort studying (legal) institutions when they are so weak? We engage in this discussion below. In any case, it bears noting that a dislike of, or a disinterest in, our research topic cannot be an excuse for misrepresenting our conclusions about this topic, which are not optimistic at all.

The second criticism concerns our alleged "individualist" and "law-centred" approach. Again, these claims seem mainly based on our choice of topic. A study of cases brought to the courts by individual plaintiffs is unavoidably individualist and involves a narrow focus on the legal system. Our analysis, however, is presented as, and motivated by, an explicit acknowledgement of the limited autonomy of Indonesia's legal system. As we quoted earlier, the aim of this article was to understand how the legal system is made to work in the interest of economic elites. Here again we feel that Gellert's objection is not to our approach or what we write – as the quotations above illustrate, our article echoes in various places his concern with the impact of these outside forces – but rather with the topic itself.

That brings us to the third criticism. This unease with the topic is articulated most explicitly in terms of the host of political economy topics that, according to Gellert, should have been the focus of this article as we, he says, "miss the bigger picture." In fact, Gellert proposes a range of topics that we should have addressed in our article. We should have explored "how society contains the possibility of mobilising groups to change law," revealed "how groups of individuals come to be part of individual cases," explained "why legal cases are important to community plaintiffs," pursued "the issue of unequal social relations," and explained "why communities have incompetent lawyers." By bringing in Gilbert's (2024) ethnographic study of a land conflict in West Sumatra, Gellert also seems to propose that we should have studied how a community "integrates social struggle and law."

These are certainly interesting topics worthy of study. In fact, we address several of these issues in other publications that derive from the project that resulted in our article. We have analysed elsewhere the sources of the unequal power balance between (palm oil) companies and communities, and the difficulties of changing law (Berenschot and Dhiaulhaq 2023), the ways in which communities mobilise to resist palm oil companies taking their land (Berenschot et al. 2022 and our forthcoming book on palm oil conflicts, Berenschot et al. n.d.), as well as the strategies that companies employ to supress community protests (Berenschot et al. 2024). Ironically, these publications all propose a political economy approach, and a recurring theme is the limited autonomy and captured nature of state institutions. In other words, in that body of work, we agree with Gellert about the importance of understanding how Indonesia's political economy shapes the outcomes of these conflicts between communities and companies.

But that does not mean that every article should focus on Indonesia's political economy. Sometimes it makes sense to incorporate a country's political economy merely "in a contextual way," in order to zoom in on one specific issue – in our case, the way in which Indonesia's court system deals with land grabbing cases. The list of topics that Gellert proposes is quite an agenda and it would be impossible to address all of them in one article. Writing about so many different topics would not make our article clearer, nor more convincing. We would not have been able to study this issue coherently had we addressed all the issues proposed by Gellert. Perhaps that is Gellert's point, namely that we should not have studied our court cases, but rather focused on his list of proposed topics. In this sense, his response suggests that he is criticising us for not focussing on topics he finds more interesting.

In short, the underlying theme of Gellert's response article is that in the context of a political economy that thoroughly undermines the autonomy of state institutions, it makes no sense to study the functioning of state institutions, as research attention should be focused on how this political economy weakens these institutions. We now address this argument.

Political Economy and the Study of Institutions

There are quite some arguments in favour of Gellert's view that the research agenda of Indonesianists should be narrowly focussed on understanding the country's political economy. Indeed, there is ample research showing that Indonesia's economic elites have preferential access to state officials, including judges. Wealthy oligarchs typically use their financial prowess, as well as their social capital, to develop political influence, which they can use not only to ensure the adoption of favourable legislation, but also to manipulate the implementation of these laws. There is considerable evidence provided, for example, by Butt (2023, Kouwagam and Bedner 2019) that judges receive bribes from wealthy litigants, which might explain why we find that Indonesia's court system is such an unreliable avenue for communities struggling against palm oil companies that have dispossessed them of their land. In other words, state institutions such as the judiciary are weak in the sense that powerful societal forces undermine their capacity to implement laws and regulations in a rule-bound, impersonal manner.

A point of debate might be the extent to which Indonesia's legal institutions are, in fact, autonomous.[2] In rare cases judges have decided disputes in favour of communities and such judgments have been implemented (see, for instance, Van der Muur 2019, 58–74). If, however, for the sake of argument, we follow Gellert's assessment, then the implication that Gellert draws from this limited autonomy is that it makes little sense, and might even be counter-productive, to study state institutions, for two reasons. First, as real power lies elsewhere, state institutions are irrelevant. As these rules and regulations, as well as the institutions implementing them, are having such little impact on actual outcomes – because these outcomes are determined by these oligarchic forces – these institutions are simply too irrelevant to be worthy of study.

A second objection we attribute to Gellert is that a study of state institutions might end up obfuscating the impact of this political economy, thereby legitimising these institutions to a degree. As Gellert points out, law is an "important factor in organising the consent of the dominated classes," as "[t]he legal system is the thin veneer of legitimacy over a state that serves the interests of these industries." The study of legal institutions – and particularly a study such as ours, which asks whether such institutions could serve the interests of these dominated classes – could end up obscuring this role of the legal system. We read plenty of studies that attribute social injustices to a few technical failures or inadequate laws without mentioning the social inequalities that led to these inadequacies.

These objections, however, are not applicable to every study of state institutions or, in this case, the court system. It matters what the conclusions of the study are, and how these conclusions are framed – hence our efforts in the previous section to set the record straight, as we feel these reservations do not apply to our study.

But more importantly, viewed from a different angle these two reservations actually point to the importance of studying state institutions when they are weak. These two impacts of Indonesia's political economy on state institutions – their limited autonomy and their partiality – cannot be substantiated convincingly without studying these state institutions. Perhaps a political economist may simply assume that state institutions have

such limitations, but for others these limitations need to be identified, analysed, and shown. The dissemination of such knowledge is necessary to motivate people and, consequently, to foster the "direct action movements" on which Gellert pins his hopes. Without widely shared knowledge of how state institutions really work, how could people be motivated to attempt to reform these institutions?

Second, these social movements need input on how these institutions are being undermined. It is important to generate and disseminate knowledge on *how* economic elites are curtailing the autonomy of these institutions. Are the problems in the cases we consider caused by legislation, by judicial interpretation, or by inadequate lawyering? It is important to go beyond the blanket statement that the law is a tool in the hands of the elite and, in fact, analyse *how* it is a tool in the hands of the elites. Any kind of effort – whether "optimist reformist" or "revolutionised" – to end such interference, needs to depart from knowledge about how this interference actually works. The assumption that we do not need such knowledge, that state institutions will suddenly magically work better once "society is revolutionised" really is wishful thinking.

In other words, it is an important research agenda to show how state institutions – and particularly the court system – do not live up to the standards that they set themselves, in order to help generate the kind of awareness and political will needed to engage in efforts to address the limitations of these institutions.

Notes

1. Gellert does mention one specific sentence where we write that a specific judge "could have" reached a different verdict as proof of our optimism. We think the context of that sentence makes it clear that we are referring to how applicable laws afforded a different verdict.
2. As an aside, law apparently does matter to Indonesia's elites to the extent that they enacted the controversial Law No. 11 of 2020 on Jobs Creation, to sweep aside all kinds of environmental and labour rules that were apparently a nuisance to them – no matter how problematic their enforcement. Furthermore, there have been successes in other fields, notably the Constitutional Court, but other cases, including the defamation case against academics Fatya Maulidianti and Haris Azhar, who would now be in jail if it were not for the constraints imposed by the use of law.

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