CIVIL COURTS AND THE DEVELOPMENT OF COMMERCIAL RELATIONS: THE CASE OF NORTH SUMATRA

J. JOSEPH BURNS

This study of the relationship between businessmen and the civil courts in the Indonesian province of North Sumatra finds that Sumatran businessmen seldom use the courts either to collect retail debts or to settle commercial disputes among themselves. In fact, they were found to litigate disputes only when they hoped to salvage something from a failing business relationship, or when simply opening litigation could by itself help discharge a bureaucratic responsibility, satisfy a personal grudge, or harass a defendant into making an out-of-court settlement. The unusual cost structure of the civil courts, relatively low formal costs and relatively high informal costs, contributed to an unfavorable image of the courts as expensive, arbitrary, and inefficient dispute settlement mechanisms in the eyes of one important group of businessmen, the rubber exporters. Other characteristics of the exporters, their trading partners, and the social and economic relationships among them were found, however, to present more basic obstacles to the use of the courts in settling commercial disputes. These results then suggest some general conditions under which the capacity of a legal system to influence the development of commercial relations is severely limited.

In the classical Weberian formulation, private civil law, particularly the law of contracts, supports the development of commercial relations in a market economy by providing a predictable, formally rational mechanism for guaranteeing the behavior of two parties to an exchange (Rheinstein, 1967: L-LII; Trubek, 1972: 25-28; Weber, 1967: 39-40, 100-102, 122-125, 303-307). Within this conceptualization, the threat of litigation helps deter contract violations while the courts serve to redress damages incurred by innocent parties when such violations do occur. This contract-guaranteeing service of the civil courts, theoretically at least, encourages market development by permitting businesses to plan future production activities with confidence that the necessary supplies and markets will, in fact, be available when required.

Empirical studies, however, generally find that, although businesses make frequent use of the courts to collect debts from retail customers (Blankenburg, 1975: 312-317; Friedman

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and Percival, 1976: 280-281; Lowy, 1978: 188; Todd, 1978: 113; Yngvesson and Hennessey, 1975: 235-243; Wanner 1974: 431-433), businessmen seldom litigate disputes among themselves even when contractual obligations have clearly been violated (Bonn, 1972; Kurczewski and Frieske, 1977: 495-498; Macaulay, 1963). By and large, businessmen sue each other only when the profit potential in a continuing relationship is perceived as low and they are seeking "loopholes, salvage operations, the bureaucratic process of debt collection, and evasions of responsibility" (Macaulay, 1977: 514). Thus, if we define commercial relations as the set of relationships across which businessmen exchange raw materials, manufacturing equipment, and other wholesale goods and services, and we assume that most such exchanges take place between parties in continuous, mutually profitable relationships, the role of the civil courts in ordering commercial relations is not as immediately apparent as is the courts' role in stabilizing retail markets.

On the other hand, the low frequency of commercial litigation does not necessarily mean that civil courts exert no influence over the development and ordering of commercial relations. There are at least two ways in which the courts may affect patterns of commercial exchanges without actually processing a high volume of disputes: 1) by providing clear, unambiguous standards of behavior, and 2) by providing a credible threat of punishment for contract violations.

To the degree that the courts can "educate" all the actors in a market as to the acceptable standards of commercial behavior, litigable disputes resulting from differences in expectations of the two parties to a contract will be reduced. This notion is at least implicit in Friedman's hypothesis (cited by Grossman and Sarat, 1975: 323-324) of a curvilinear relationship between the rates at which economic disputes are litigated and the rate of social and economic change: low litigation rates in settled traditional periods; higher rates as new kinds of relationships develop or the market expands to include new actors; and a return to lower rates when market change slows, courts have produced precedents, and specific commercial norms have been established. In this sense low litigation rates for commercial disputes may be seen as a direct result of the effectiveness with which the civil courts are ordering commercial relations by communicating a clear understanding of the legal rights and obligations of economic actors.

Civil courts can also influence patterns of commercial relations indirectly by providing "a vague sense of threat that keeps everyone reasonably reliable" (Macaulay, 1977: 519). A court system that is perceived as accessible and reliable can provide economic actors with a kind of background confidence that problems arising in a contractual relationship will be fairly settled and that simple debts will be collected. This confidence by itself may encourage the development and expansion of legally sanctioned trade relationships regardless of the probability of actually entering litigation when a problem occurs.

Similarly, when disputes do arise, the existence of the courts makes it possible to threaten litigation explicitly, thereby "legitimately escalat[ing] the costs of disputing" and "increasing the likelihood of private dispute settlement" (Lempert, 1978: 99; see also Kurczewski and Frieske, 1977: 496-497; Merry, 1979: 921). Conversely, a willingness to forego litigation in a specific dispute can help create a sense of mutual trust and obligation between parties in an ongoing relationship and may be reserved as a bargaining chip to be used in settling future disputes (Moore, 1973; Burns, 1978: 35-36). The threat of litigation, both general and specific, may thus help maintain commercial relations within certain legal limits even though clear standards of behavior are not frequently enforced through direct court action.

These indirect effects of the civil courts on commercial relations via education and threat, although independent of actual litigation rates, will depend directly on the degree to which the courts are perceived as usable institutions by the businessmen involved. Courts perceived by potential defendants as inaccessible or by potential plaintiffs as prohibitively expensive will provide neither important models for commercial behavior nor persuasive threats. The factors that affect this perception, as well as factors affecting actual litigation rates, constitute a major research area in the study of law and development.

This study then concentrates specifically on the relationship between businessmen and the civil courts in the Indonesian province of North Sumatra. It examines the conditions under which businessmen make use of the civil courts to help manage their exchange relations with suppliers/purchasers and the factors that affect their willingness to do so. It is part of a larger study of the development of trade relations and court use among rubber

traders in North Sumatra that was funded by the Social Science Research Council and the International Legal Center. The data are drawn from surveys of civil court records for the years 1971-1974 and interviews with businessmen, particularly rubber exporters and processors, in North Sumatra. The paper draws on these data to suggest some general hypotheses concerning the conditions under which contract law and civil courts can effectively contribute to market development.

I. CIVIL LITIGATION IN NORTH SUMATRA

The Indonesian Civil Court structure is largely derived from the colonial court system established by the Dutch. In each administrative district (*kabupaten*) there is one court of first instance (*pengadilan negeri*), and in each province, usually, an appellate court (*pengadilan tinggi*) with jurisdiction over the several *pengadilan negeri*. Decisions of the appellate courts may be further appealed to the Supreme Court (*Mahkamah Agung*) in the national capital, Jakarta.

All courts have general jurisdiction and employ the same judicial personnel in both civil and criminal actions. There are no specialized branches covering specific types of cases (e.g., small claims) or specific classes of defendants (e.g., juveniles), although Islamic (see Lev, 1972) and military courts, both external to the national court system, maintain practical jurisdiction over certain individuals and cases.

Overall litigation rates in the twelve courts of first instance in North Sumatra (Table 1) are quite low by modern standards.[1] This is particularly true in light of the fact that some of the courts include uncontested civil petitions (e.g.,

[1] By way of comparison, a general litigation rate of 44 per 10,000 population in Kenya (1969) is reported by Abel (1979: 184), and rates ranging from less than 100 to 400 per 10,000 population in West Germany (1971) are reported by Blankenburg (1975: 310).

True litigation rates in the United States are difficult to compute because of multiple (federal, state, county, municipality) court levels and overlapping jurisdictions. We can derive some general idea of the rate of litigation for the state of New Jersey however, by adding the national average rate of civil litigation entering the Federal District Courts in 1977 (6.0 per 10,000 population) to the rate of civil litigation entering the New Jersey Superior Court, Law Division and the County Courts for the court year 1976-77 (35.1 per 10,000 population.) The resulting figure of 41 suits per 10,000 population does not include data from the county district courts, municipal courts or tax court for which summary figures are not broken down into civil and criminal actions. The fact that the county district courts have jurisdiction over contract, tort, and debt actions up to $3000 and handled 303,057 new (civil and criminal combined) actions in 1976-77 (vs. only 39,143 civil cases in the Superior and County Courts) suggests, however, that the true rate of civil litigation in the state of New Jersey for 1976-77 was considerably higher than 41 per 10,000. (Sources: *Statistical Abstract of the United States, 1979; Annual Report of the Administrative Director of The Courts of New Jersey, 1980*).

change of name, guardianship, formalization of divorce, etc.) in their litigation figures.

Table 1. Number and Rate of Civil Complaints Entering the *Pengadilan Negeri* of North Sumatra

Civil Cases[4]

Pengadilan Negeri[1]	Population[3] (1000)	1970 Cases Entering *P.N.*	1970 Rate (per 10,000 Capita)	1971 Cases Entering *P.N.*	1971 Rate (per 10,000 Capita)	1972 Cases Entering *P.N.*	1972 Rate (per 10,000 Capita)
Medan	1,500[2]	883	5.9	810	5.4	679	4.5
Siantar	786	92	1.2	146	1.9	112	1.4
Tebing Tinggi	650[2]	47[2]	0.7	70[2]	1.1	42[2]	0.6
P. Sidempuan	624	124	2.0	134	2.1	98	1.6
Balige	618	52	0.8	81	1.3	83	1.3
Binjei	579	47	0.8	41	0.7	37	0.6
Tanjung Balai	555	41	0.7	26	0.5	24	0.4
Gunung Sitoli	364	60	1.6	84	2.3	81	2.2
Rantau Prapat	362	39	1.1	20	0.6	32	0.9
Sidikalang	185	35	1.9	41	2.2	60	3.2
Kabanjahe	182	152	8.4	152	8.4	197	10.8
Sibolga	134	72	5.4	50	3.7	61	4.6
Total	6,539	1,594	2.4	1,655	2.5	1,506	2.3

[1]*Pengadilan Negeri* are identified by the name of the *kabupaten* town which is also usually the seat of the most heavily used court branch. *Pengadilan Negeri* have as many as five branches in different towns throughout the *kabupaten*, and occasionally a branch court processes more complaints (e.g., Kisaran is more heavily used than Tanjung Balai).

[2]Estimate.

[3]Population figures are the 1971 estimates reported in the annual situation reports submitted to the *Pengadilan Tinggi* by the various *Pengadilan Negeri*. The same 1971 figure is used in deriving the rates for all three years.

[4]Case figures for most of the *Pengadilan Negeri* include both two-party suits (*perkara*) and one-party civil petitions (*permohonan*) requesting name changes, guardianship and heir declarations, citizenship, divorce, etc. Petitions are usually disposed of in one to three days, generally granted, and rarely appealed. Some courts report only the number of two-party cases they have registered, however.

Sources: *Laporan*[2] *Situasi* (Situation Reports) and *Buku Biaya* (Fee Register), *Pengadilan Tinggi* Medan.

If we therefore consider only two-party suits (*perkara*) and exclude one-party petitions (*permohonan*) from the calculations, the true rates of litigation in some of the court districts[2] will be even lower than reported in the table. For

[2] In spite of attempts by the appellate court in North Sumatra to standardize administrative and reporting procedures, many discrepancies among the various courts of first instance remain in practice. For the years surveyed, it is not clear in the annual situation reports submitted to the provincial administrative office which courts of first instance include petitions in their civil register and which do not.

instance, only 444 of the 810 entries in the Medan court register for 1971 were two-party suits where a plaintiff sued a defendant. The true rate of litigation in Medan in 1971 was thus only 3.0 per 10,000 rather than the 5.4 listed, and the equivalent rate for Medan in 1972 was only 2.4 per 10,000 rather than 4.5.

Moreover, the percentage of litigation involving businesses also seems to be relatively low. Even in Medan, the provincial capital and a large international trading center and port, businesses were cited as either plaintiff or defendant in only 30 percent (328) of the 1079 two-party civil cases entering the court from 1971 to 1973.[3] Although this is probably a conservative figure, since much business in North Sumatra is transacted between individuals and firms that are not formally licensed or incorporated, it still seems that businesses in North Sumatra account for a lower percentage of total civil litigation than do their counterparts in western countries.[4]

It appears then that the civil courts are not regularly used as debt collection mechanisms by North Sumatran businessmen. We must therefore ask whether the same factors that discourage this direct, routine use of the courts also interfere with the capacity of the courts to influence commercial relations indirectly by clarifying standards of commercial behavior and providing a credible threat of punishment to potential violators.

II. RUBBER EXPORTERS AND THE LEGAL SYSTEM

One major, relatively accessible group of businessmen in North Sumatra consists of the exporters of natural rubber. The processing and export of natural rubber has long been one of the most important economic activities in the province; it accounted for approximately 45 percent ($123 million) of the

[3] Data on business involvement in litigation were gathered for two other courts of first instance in North Sumatra, for the same years, 1971-1973. In a smaller trading city, Tanjung Balai, businesses were cited as either plaintiff or defendant in 20 percent (25) of the 122 cases over three years, and in Kabanjahe, the center of a rather rural, agricultural district, businesses were cited in only 3 percent (8) of the 298 civil cases entering the court during that period. Thus the 30 percent figure for the Medan court, though low by western standards, seems high relative to other courts of first instance in North Sumatra.

[4] By way of comparison, Blankenburg (1975: 317) reports that firms, agencies or businessmen were involved as either plaintiff or defendant in 87 percent of all litigation of economic matters and in 39 percent of matters "not directly economic" in West Germany in 1971. Likewise, Galanter (1975: 350-351) in a comprehensive summary of empirical studies of litigation reports that organizations were plaintiffs in 57-77 percent of cases (excluding marital break-up cases) entering American civil courts of general jurisdiction covered by two studies, in 43-89 percent of cases entering 11 American small claims courts, and in 75-91 percent of cases in two studies of English county courts.

total nonpetroleum exports of North Sumatra in 1973. This analysis, while drawing on information about a variety of businesses, will focus primarily on rubber exporters.

In that part of the rubber trade not controlled by large estate enterprises, individual exporters buy raw rubber from middlemen who collect it from small farmers. The exporters generally have large capital investments in processing plants which must be kept operating at or near capacity to produce a profit. The processed rubber is sold on future-delivery contracts to foreign buyers; cash is often advanced to the middlemen to assure adequate supplies of raw materials to meet these contracts. (For a more complete description of the North Sumatran rubber trade, see Burns, 1978: 76-93.) The exporters thus bear some risk that the middlemen will not act in good faith and supply the necessary quality and quantity of raw material on schedule.

We might expect therefore that the wealthier, more educated, more urban rubber exporters would be able to use the court system to control the behavior of the middlemen upon whom they depend. The exporters interviewed, however, viewed the courts as poor mechanisms for guaranteeing their relations with middlemen for three basic reasons: 1) the expense, 2) the unpredictability of the outcome, and 3) the potential damage to their business reputations.

Expense

The official costs of filing a civil suit in the Indonesian civil courts are quite low, often only a few dollars, and vary somewhat depending on the amount of investigatory work the court must do and the amount of travel involved in officially communicating with the litigants. Unofficial costs, on the other hand, can be quite high, and vary considerably with the litigants' ability and willingness to pay.

Unofficial payments to court personnel are a form of direct taxation; they are generally viewed as payment for services rather than corruption (Lev, 1965a: 304-305), and have become institutionalized. Such payments are justified in terms of the extremely low salaries of civil servants, even those at higher levels, and the legitimate need for such people to make a reasonable living. Thus the request for such payments is understood by and often gains the sympathy of those who are asked to make them. Typically, a Medan notary (*notaris*) suggested that the pattern would persist "until the system provides enough salary [officially] for them [civil servants] to

live well and put a little aside for the schooling of their children."[5]

The impact of these unofficial payments is exaggerated by the "loosely coupled" nature (see Hagan *et al.*, 1979: 508) of the Indonesian legal system. Each element in the system (prosecutors, clerks, investigators, judges) must be mobilized separately to achieve a desired outcome (see Lev, 1965b), and potential litigants thus receive an impression of constantly escalating costs. Furthermore, the notion that requests for unofficial payments are quite reasonable and legitimate hampers efforts to bring greater integration to the system, as noted by a rubber exporter in describing his attempt to deal with "harassment" by a local police official:

> I thought that I could go over his head because I was fairly close friends with an official in the provincial police office, but when I brought him the problem, he just said, "What can I do? He (local official) just doesn't make enough money."

Later in the same interview, however, the exporter indicated that perhaps even he did not find the problem to be as annoying in practice as he had originally made it sound:

> We had a national police chief who was well known for his strict honesty and was working hard to reform the system. When he retired, his pension was not even sufficient to maintain his house. What kind of lesson is that for his successors who might be tempted to be honest? Businessmen can just write off this kind of thing as business expenses, so a policeman who doesn't ask for something is just stupid.

The costs of effectively mobilizing the legal system as a whole can thus be quite high. They are also unpredictable in the sense that the total costs of mobilization depend upon the outcomes of a series of open-ended private price negotiations. Individuals seeking the contract-guaranteeing services of the court must bargain with legal personnel over the costs of these services. Hence the greater the value of the property under litigation, and the wealthier the litigants, the higher the expected payment.

This leads businessmen to consciously weigh the costs and benefits of litigation against those of other mechanisms for settling disputes. There was unanimous agreement among the rubber exporters of Medan that money invested in mobilizing the law to resolve disputes could be more profitably employed in arriving at an informal compromise. A typical attitude was expressed by one of the exporters:

> It is very seldom that we have problems with our suppliers or that one will run off with the money we advance him; but if it happens,

[5] Since 1974, when the fieldwork for this study was completed, a number of administrative reforms, including a major upgrading of civil servants' salaries, have been initiated to deal directly with this problem.

there is nothing we can do. If we have a friend in the police in the area in which the middleman works, we can ask his help, but otherwise, it is much too expensive to get the police or the courts to work.

Litigation costs however, since they are adjustable to the needs of litigants as well as the needs of court personnel, do not by themselves adequately explain the low rates of civil litigation. It is the difficulty in predicting the outcome of the litigation process, more than the costs, that keeps the exporters from using the courts on a regular basis.

Predictability

Rubber exporters generally express the opinion that the courts are too inconsistent and unpredictable to use in settling disputes. It is not entirely clear that this judgment is warranted, but a variety of factors perpetuate this impression in the minds of potential litigants.

As noted above, direct, informal payments to legal system personnel are generally regarded as payment for services, not bribes. They produce the service, but do not guarantee the results. In this sense, the integrity of judges in rendering fair and just decisions can often seem to be a source of unpredictability for litigants who feel that they have paid for a decision, and the payment system makes it possible to interpret an unfavorable result as an example of corruption. In fact, however, if the system were truly corrupt and results could be bought, one might expect the wealthy, urban, repeat-playing exporters to make much more frequent use of it in attempting to control the behavior of their middlemen suppliers.

This pattern of "direct taxation" also leads to a customer orientation on the part of legal personnel; they are particularly receptive to requests for additional services (appeals, counter suits, and other actions) whose strict legal merit is questionable. This results in a very high rate of appeals for all kinds of litigation, often up through the Supreme Court, which adds to the delay and expense of adjudicating a dispute and determining just when a judgment is final.

Court personnel also have a high level of formal discretion in processing complaints because of the confusing and often conflicting sets of legal principles which are the Indonesian legal system's historical legacy from the period of "legal pluralism" (Lev, 1962: 205-213; Gautama and Hornick, 1972: 1-23). This, combined with the bureaucratic and communication weaknesses typical of young nations, may give the unsuccessful litigant the impression of having been treated

unfairly and arbitrarily even when valid legal grounds for a decision exist.

Thus, predictability of legal outcomes is not perceived to be produced by payment, by the appeals process, or by a coherent, unified, clearly defined body of legal principles. The impression, therefore, that legal process is largely unreliable, although it may not be fully warranted, is certainly widespread.

Reputation

A third and final reason cited by exporters for their reluctance to litigate commercial disputes is their fear of developing a reputation for being "litigation minded" and thus undesirable trading partners. This feeling that it is unreasonable to drag a trading partner into court except as an absolute last resort, and that reasonable people can settle among themselves any contractual difficulty that arises, is certainly not unique to the North Sumatran setting (e.g., Macaulay, 1963). Among the rubber traders of North Sumatra, however, this attitude is perhaps exaggerated by their negative view of the legal system, by the extremely personal way in which most trading relations are viewed, and by the cultural aversion of ethnically Chinese traders[6] to submitting their private problems to a purely Indonesian legal system. The rubber exporters seemed particularly sensitive to any damage to their business reputations that might be associated with litigation of a commercial dispute, since they depended upon middlemen for the supply of raw materials for which there was intense local competition. The anticipated damage to their reputations was generally deemed sufficient reason to simply accept a financial loss rather than litigate a dispute.

These three factors then, (cost, lack of predictability, and damage to reputation) were the ones most often cited by rubber exporters as reasons for not having sued a middleman/supplier to settle a commercial dispute. Almost every one of them told of an unsuccessful personal experience with the system. It is difficult to determine whether these stories were based on actual experiences or were simply a kind of common knowledge of how things work. But the enthusiasm with which they were related to a foreigner in order to familiarize him with the "situation in Indonesia" makes one suspect that they have at least been embellished. Regardless

[6] In 1973 approximately 80 percent of the directors of rubber exporting firms in Medan were ethnically Chinese, although all were Indonesian citizens. Most of the larger middlemen with whom they traded were also Chinese.

of whether the system is quite as ineffective as it is portrayed, it is quite clear that the courts, police, and other bureaucracies suffer from a universally poor image among the rubber exporters.

Nevertheless, despite their expressed reservations about the courts and litigation, some businesses and businessmen, occasionally even those rubber exporters who had denied ever having been involved in litigation, were found in a survey of court records to have, in fact, been party to litigation between 1971 and 1973. The conditions under which they made use of the courts are described below.

III. COURT USE BY BUSINESSMEN

When confronted with the information, drawn from court records, that over 30 percent of civil cases entering the *Pengadilan Negeri* Medan involved businesses, those rubber exporters who had stated that businessmen never use the courts typically responded that the actual number of cases was still quite small. These cases probably represented either a last-resort attempt by a failing firm to survive by salvaging something from important business transactions, or a last-resort attempt of a firm to salvage something from a failing trading partner.

It is difficult to estimate the proportion of cases involving businesses in Medan which were initiated as economic "last resorts," since the economic health of the firm is generally not reviewed in the court records, and businesses in difficulty obviously do not wish to publicize their problems. In a very informal effort to assess the influence of economic marginality in prompting litigation, a sample of those cases in which one of the parties was identified as a business firm was drawn from the cases entering the Medan court in the preceeding six months (January 1 through July 1, 1974).

Of the 64 firms named in 62 cases, some information could be gathered on 30. Of the 30, 7 were found to have ceased operations or to be on the verge of doing so six months or less after the suit had been filed. Several others were rumored to be in financial difficulty; but, given the high volume of rumors in a business community with little hard information, it was impossible to determine which of these were accurate and which were not. In fact, to many of the traders interviewed, the fact that litigation had been initiated constituted evidence of business difficulties and contributed to the rumors. Such rumors could, of course, become self-fulfilling prophecies if

other traders shied away from dealings with the firms involved either because they appeared to be in difficulty or were "litigation minded." Thus even with complete information it might be difficult to determine whether financial difficulties caused litigation or vice versa.

Although the estimate of 7 (23 percent) firms in difficulty out of the 30 located seems high, the figures really do not answer our question. The estimate of 23 percent of firms in difficulty may simply reflect the percentage of firms in difficulty in the economy at large, suggesting no increased tendency for such firms to enter litigation. The data therefore offer no strict proof of the "last resort" hypothesis, although they do show that firms facing serious financial difficulties enter litigation with some frequency. Moreover, the estimate is almost certainly conservative since the sample, as collected, was necesssarily biased in favor of the larger, more easily located firms which would also probably be the most financially stable.

On the other hand, the decision to initiate litigation does not necessarily imply that a plaintiff is interested in achieving a final decision in a case. This distinction is particularly useful in analyzing litigation patterns in the North Sumatran courts, because the formal costs of simply filing a complaint are quite low while the bulk of the costs of litigation fall on the party who is most interested in pushing the case to a conclusion. There are at least three situations in which a businessman in North Sumatra might find it useful to file suit even if he is unwilling to bear the costs of producing a decision.

First, the fact of having filed suit can provide formal bureaucratic evidence that a dispute is in the process of being settled or a debt is in the process of being collected, thus relieving the official in charge of these functions of responsibility for these problems (Macaulay, 1977: 519). One Medan exporter suggested that this was a fairly common practice among officials of state-owned businesses or state-subsidized banks which were based in Jakarta but had branches in Medan. He claimed that such officials would begin formal legal action in order to discharge their bureaucratic responsibilities, but make little effort to pursue the case or reach a settlement. It is clear from the court records that such firms do enter litigation occasionally, but it is not apparent whether or not such an hypothesis explains their behavior.

Second, formal legal process can also be used to harass personal enemies. Lawyers and judges in Medan frequently commented that they felt personal factors such as emotional

pique or the desire for revenge and the general historical background of a dispute were the most important elements in determining whether a given dispute would be brought before the court for formal adjudication. In fact, much of the litigation in the North Sumatran courts is brought by relatively poor people in disputes over relatively small amounts of property (virtually always land) where the costs of legal representation and court process far outweigh the economic value of the property in question. We assume therefore that such symbolic litigation represents simply one aspect of a much broader and more personal kind of dispute, as it does in village courts in North India (Cohn, 1967: 156-157) and in some small claims litigation in the United States (Sarat, 1976: 345-349). Undoubtedly some of the cases in which businesses are involved in the North Sumatran courts likewise disguise broader-based, more personal kinds of disputes.

Finally, the low costs of formally initiating litigation, combined with the slow processing of cases when the various elements of the system are not continuously mobilized, make it possible for a plaintiff to tie up a defendant's property almost indefinitely at very low cost to himself. The plaintiff only needs to request that a lien (*sita*) be placed against the disputed property, the collateral on a loan, or a sufficient portion of the defendant's property to cover a damage claim. This is regularly granted by the court for the period that the claim is under consideration and may prove sufficiently annoying or costly to encourage a recalcitrant defendant to reach a "reasonable" settlement out of court in much the same way that the litigation process in the United States (Burns, 1979; Sarat, 1976: 352) and India (Kidder, 1973) is used to promote informal settlements.

As of January, 1974, the average completed case which had entered the Medan court in 1971 took 222 days from filing to decision, and the average for such cases entering in 1972 was 208 days. Both of these figures are quite conservative, since approximately half of the civil cases entering the court during those years had not been decided by the beginning of 1974. Furthermore, they represent only a small part of the delay that a defendant might anticipate, because—as noted earlier—appeals are easy, cheap, and readily accepted by the appellate courts.

Legal personnel were generally agreed that a very great majority of all civil cases decided are appealed. By 1974, 49.5 percent (105) of all the 1971 civil cases in the Medan court

which had been decided and 51.7 percent (92) of the 1972 cases had been appealed to the *Pengadilan Tinggi Sumatera* Utara. These rates are likewise conservative since they include only cases that had (by 1974) already been filed with the appellate court and do not include as appealed those decisions that had been made, but not officially conveyed to the litigants, or those that were still being processed by the lower court clerks (*panitera*) responsible for gathering and transmitting case materials to the appellate court. Thus appeals of lower court decisions are very common in all types of civil litigation, and at least one member of the appellate court felt that the only reason for variations in the rate of appeals from the different lower courts was variation in administrative efficiency among the courts.

A prominent Medan lawyer summed it up rather emphatically:

> All of the civil and criminal cases that I handle are appealed. The only reasons that decisions are not appealed are that the disputants do not know that they have the right to appeal or that for one reason or another, they miss the deadline for filing appeals (two weeks from the day of official notification of the decision).

Thus the length of the complete litigation process from filing to final appeal represents considerable incentive for the parties to settle out of court, especially when the property attached is cash or some other liquid asset (since it is the sale or transfer of property, not its use, that is impeded by the lien). For businessmen and traders in particular, then, such a lien would seem to represent an important threat.[7] The lawyer quoted above further indicates:

> Of course, traders would always rather make an out-of-court settlement. Their cases call for quick action. A slow decision might cost them as much as they could expect to gain, and then the decision will be appealed by the loser.

Another lawyer, after discussing the difficulties for businessmen presented by informal procedural arrangements and inconsistent legal codes seemed to arrive at the same conclusion:

> Anyway, traders can usually arrange some kind of fair settlement out of court, particularly when they realize that their assets will be tied up for a year or more before the thing ever gets settled. Inflation has always been high here, and the higher it gets, the more important it is for them to make sure that their investments are productive. Even if litigation didn't cost them anything, and the outcome were certain, an

[7] In fact, Daniel Lev, in a personal communication to the author, suggested that this was only one of several strategic or pathological ways in which Indonesian businessmen use the litigation process to gain or maintain control over valuable assets in an economy which has traditionally had an extremely high rate of inflation.

immediate 50-50 compromise would be more attractive than a full settlement years later.

In sum, then, it is likely that the few civil cases involving businesses that do enter the North Sumatran civil courts arise out of last-resort attempts to salvage something from a failing commercial relationship or are initiated for bureaucratic, personal, or strategic reasons with no intention of achieving full adjudication of the complaint.

In light of these conditions under which commercial relations give rise to litigation, especially the final ploy of using the litigation process to encourage informal settlement, it seems somewhat surprising that rubber exporters virtually never sued their middlemen/suppliers in the Medan court in the years surveyed, even though the trade in rubber accounted for a large percentage of the cash economy of the province. This suggests that there may be further characteristics of the relationship between rubber exporters and middlemen that render litigation especially unnecessary or inappropriate in settling problems that arise from the relationship.

IV. LEGAL PROCESS AND MIDDLEMEN

The first possibility is that trading relations between middlemen and exporters are so smooth that disputes are rare and there is little need for litigation. This explanation is not intuitively persuasive; in fact, exporters themselves report that relations with suppliers are far from universally satisfactory. They cite the late delivery of raw material and changes in the price demanded after fluctuations in the world market price as major and continuing problems (see Burns, 1978: 163-165).

On the other hand, the character of the exchange which takes place between middlemen and exporters does have a built-in mechanism for resolving disputes, a final adjustment of the price. The quality, quantity, place, time, and price of an exchange may be more or less specifically agreed upon in advance, but the final exchange always takes place in a face-to-face meeting between the supplier and the exporter/processor. This permits them to iron out any difficulties that have arisen with a final adjustment of the price. This built-in bargainability reduces the need for appeal to a formal post hoc settlement procedure to regulate exchanges, although obviously there will always be some problems that cannot be settled in such a manner.

Some kinds of disputes, of course, are more readily bargainable than are others. For instance, disputes over late

delivery of raw rubber are more likely to result in an amicable informal settlement than are disputes over low quality of delivered rubber, because late delivery is more likely to have a "reasonable" explanation. It is more easily accommodated "downstream," the transaction has not been completed at the time of the dispute, and the potential for both parties to make a profit remains (Burns, 1978: 247). Nevertheless, exporters generally felt that any kind of problem that might arise in their relationships with middlemen could be settled by adjusting the price and that if a specific middleman proved particularly troublesome, they would simply take this into account in their future dealings with him.

This post hoc adjustment of prices as a means of settling disputes with suppliers may well be very efficient at eliminating the feeling that one or the other side has been cheated in a transaction, but it also disrupts manufacturing or trading plans that had assumed the availability of a given quantity and quality of rubber at a given time. One might expect therefore that exporters would, at least occasionally, find it in their economic interest to attempt to reduce some of this uncertainty or at least strengthen their bargaining position by resort to litigation.

There are other reasons, however, that formal legal process is not used by exporters to guarantee their commercial relations with suppliers even though they do sometimes litigate other kinds of problems. The relationship that exists between the two parties and the specific characteristics of middlemen as potential defendants seriously limit the usefulness of the legal system in settling commercial disputes.

In theory at least, formal legal process will be frequently used in settling disputes when the parties involved are unrelated and have no expectation of a continuing relationship after the dispute is settled (Black, 1973: 134). In the North Sumatran rubber market, however, the exporters are well acquainted with most of the larger middlemen and have often developed personal relations with them. Both parties generally see long-term, continuous, smooth relations to be in their mutual economic interest. In this sense, relations between exporters and middlemen are precisely the kind of relations that are best suited to informal dispute-settlement mechanisms.

Moreover, exporters are well aware of the keen competition for the limited supply of smallholder rubber caused by the over-licensing of processing plants in North Sumatra. They

must also keep their plants continuously in production in order to be profitable and must meet their commitments to foreign buyers who have bought their production in advance. The rubber market is therefore usually a sellers' market even when prices are low, and the exporters are especially sensitive to the need to maintain good relations with the middlemen and the sources of raw materials they represent. They are thus very hesitant to risk breaking any single relationship or damaging their reputations among suppliers generally by initiating litigation.

Similarly, the formal structure of the relationship between exporters and middlemen is usually not the kind most easily dealt with by the courts. Exchange agreements between them seldom take the form of a formal written contract even when rather substantial amounts of rubber or credit are concerned. A notary in Medan explained this avoidance of contract in domestic business relations in terms of the personal trust that usually exists between the two parties:

> I might notarize an occasional agreement between a Chinese and an Indonesian or between two Chinese from different provinces, but, by and large, business contracts are not notarized because they are made between friends or people who trust each other.

Another, perhaps more compelling reason is offered by one of the exporters:

> We never make contracts with middlemen because there is a steep government tax on all sales that can be avoided by a direct transaction. Of course, then we have to have a second set of books to cover the profits for which there is an even higher tax. It's a lot of trouble, but what can we do? It is the only way to make money.

Thus, contracts are seldom formally signed between domestic rubber traders, which makes the court's task in evaluating an agreement all the more difficult.[8] Verbal agreements can be enforced in court, but their terms are much more difficult to determine. Exporters are also understandably reluctant to admit in open court that they have structured their commercial relations in such a way as to avoid paying taxes. In this way, the public and formal nature of the legal system further limits the ability of the exporters to litigate disputes with middlemen effectively.

Finally, rubber middlemen are the types of individuals who are difficult for the courts to deal with effectively because 1) they are often very difficult to find, and 2) they are difficult to

[8] Of course, this is only one example of the kinds of problems that a legal system with formal rules for dealing with evidence meets in trying to deal with an environment where social and property relations are not formally documented—i.e., where there are few contracts, bills of sale, deeds, incorporated businesses, or written guarantees.

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sanction effectively if located. An exporter identifies both of these kinds of problems in discussing the high level of risk involved in advancing credit to suppliers of other exportable commodities:

> We have to advance credit to logging middlemen so that they can go into the local markets and buy logs. But, I would say the chances of losing that money are quite high, probably around 40 percent, because they just take the cash and disappear into the remote areas (*hutan*) where logging operations take place, and we have no control over them nor any way to track them down.
>
> In the case of tobacco, I would say we lose about 5-10 percent of the credit we advance, but that is because we have to give it directly to the farmer; and if the crop fails for some reason, what can you do? A farmer has no property. We just have to write off such losses as business expenses.

Rubber middlemen, like the logging middlemen, are highly mobile individuals operating in a variety of widely dispersed, small, rural markets. They often have little or no investment in permanent standing property, are not formally organized or licensed, and are very difficult to gain access to, even for research purposes. Moreover, since many of them are ethnically Chinese, they often intentionally maintain a very low profile to avoid the risk of political or economic harassment. They are, in short, the most difficult kind of people for the courts to trace.

Moreover, as described above, the usefulness of legal process to the exporters is largely dependent upon the ability of the courts to place a lien on the important economic assets of the defendant. Tobacco farmers, as suggested by the quote, though they obviously own some land, do not have the kind of property the buyer would find useful to seize or attach. Similarly, rubber middlemen, though they may have considerable property, generally own highly liquid assets, mostly cash, and seldom use bank accounts. They do not have the kind of property against which a lien would be effective and thus remain relatively immune from any added pressure to settle a dispute that might result from the threat of litigation. They are also difficult people from whom to collect damages should the court award them. To Gautama (1979: 163) this inability of the courts to deal with propertyless defendants and the unavailability of the option to incarcerate a defendant for a civil offense represents one of the major weaknesses in the development of Indonesian civil law.

No suits by exporters against middlemen concerning disputes over the delivery of rubber were found in a survey of over 3000 registered civil complaints in three courts of first instance (Medan, Tanjung Balai, Kabanjahe) in North Sumatra

for the years 1971-1973. This does not, however, exclude the possibility that some such disputes were disguised as disputes between individuals over other kinds of property.

In the first six months of 1974, on the other hand, three suits against large rubber middlemen were filed by a single exporting firm in the Medan court. Immediately preceding these suits, the exporter had been sued in the same court for failure to deliver processed rubber to two separate buyers. Although the exporter refused to discuss the suits, it is probably safe to assume that they were all part of one major transaction, and the fact that the suits against the middlemen followed the two complaints against the exporter suggests that they were probably initiated in reaction to those complaints.

Only four other cases, besides the five just mentioned, involved Medan rubber exporters in the first half of 1974. One North Sumatran and one Jakarta-based firm were suing a Medan exporter/processor for delivery of processed rubber; a Jakarta firm was suing a Medan-based shipping company for damage to rubber during shipment; and a rubber exporter was suing over the rental of a building. In each of these cases, the defendant was an incorporated and licensed firm holding real property in the firm's name. Exporting firms therefore do, on rare occasions, get involved in commercial litigation, but they seem to do so, as plaintiffs at least, only when the defendant holds some real property which the court can attach.

V. CONCLUSIONS

The civil courts of North Sumatra do not play a direct role in ordering economic relations; they are not ordinarily used by Sumatran businessmen to collect debts or to develop and reinforce acceptable business standards. The frequency of court use by rubber exporters and other economic actors is so low that it seems doubtful the civil courts influence economic behavior even indirectly by threatening to sanction unacceptable behavior. On the rare occasions when businessmen do litigate disputes, however, their aims are much the same as their counterparts in more developed economies: to harass a defendant into compromising out of court, to assuage a feeling of personal affront, to make a last-resort attempt to salvage something from a failing business relationship, or to discharge a bureaucratic responsibility (Macaulay, 1977: 514).

The explanations that businessmen give for their low rate of litigation (high unofficial costs, low predictability of results,

and damage to business reputations) do not by themselves account for the lack of such litigation, since one might expect the wealthier, more powerful, repeat-playing rubber exporters to be in a good position to develop strong working relationships with court personnel and hence use the formal legal process to their own advantage.

Rather, the explanation for the low rates of court use by businessmen in North Sumatra and the resulting weak influence of the courts on the development of commercial relations seems to lie in the more basic difficulties that any legal system has in dealing with a small group of individuals continuously involved in relationships of economic interdependence and often personal friendship; an environment where important social and economic relationships are not formally documented with deeds, contracts, licenses, etc.; a group of potential plaintiffs whose regular business activities may be designed specifically to avoid some of the (tax) laws; a set of defendants who are physically difficult to locate and may not have much real property that the court can attach; or a cohesive (occupational or ethnic) subculture alien to and contemptuous of the existing legal bureaucracy. In any society or specific subsystem within a society (e.g., businessmen) with such characteristics, the capacity of a reactive system of civil law to influence the development of economic and social relations is severely limited.

Finally, it is clear from this study that North Sumatran businessmen settle the disputes that arise in their commercial relations through other means. There is some evidence that the inefficiency of the civil process has led businessmen to attempt to disguise civil problems as criminal complaints in order to settle commercial disputes (Gautama, 1979: 163 n.9), but certainly it is clear that informal, nonlegal mechanisms of negotiation, compromise, and mediation are by far the most frequently used means of settling commercial disputes (see Burns, 1978: 197-216). Whether the long-term personal relations among actors which support such informal settlement procedures are the cause of low litigation rates, or whether the ineffectiveness of the civil law has created the need for businessmen to cultivate close personal relations with other businessmen upon whom they depend, however, remains a question for further research.

REFERENCES

ABEL, Richard L. (1979) "Western Courts in Non-Western Settings: Patterns of Court Use in Colonial and Neo-Colonial Africa," in Sandra B. Burman and Barbara E. Harrell-Bond (eds.), *The Imposition of Law*. New York: Academic Press.

BLANKENBURG, Erhard (1975) "Studying the Frequency of Civil Litigation in Germany," 9 *Law & Society Review* 307.

BONN, Robert L. (1972) "The Predictability of Nonlegalistic Adjudication," 6 *Law & Society Review* 563.

BLACK, Donald J. (1973) "Mobilization of Law," 2 *Journal of Legal Studies* 125.

BURNS, J. Joseph (1978) "The Management of Risk: Social Factors in the Development of Exchange Relations Among the Rubber Traders of North Sumatra," Ph.D. Dissertation, Department of Sociology, Yale University.

——— (1979) "Litigation and Compromise: A Comparison of Litigation Patterns in the United States and Indonesia," Paper presented at the 1979 Annual Meeting of the Law and Society Association.

COHN, Bernard S. (1967) "Some Notes on Law and Change in North India," in Paul Bohannan (ed.), *Law and Warfare: Studies in the Anthropology of Conflict*. New York: Natural History Press.

FRIEDMAN, Lawrence and Robert V. PERCIVAL (1976) "A Tale of Two Courts: Litigation in Alameda and San Benito Counties," 10 *Law & Society Review* 267.

GALANTER, Marc (1975) "Afterword: Explaining Litigation," 9 *Law & Society Review* 347.

GAUTAMA, Sudargo (1979) *Arbitrase Dagang Internasional*. Bandung, Indonesia: Penerbit Alumni.

——— and Robert N. HORNICK (1972) *An Introduction to Indonesian Law: Unity in Diversity*. Bandung, Indonesia: Alumni Print.

GROSSMAN, Joel B. and Austin SARAT (1975) "Litigation in the Federal Courts: A Comparative Perspective," 9 *Law & Society Review* 321.

HAGAN, John, John D. HEWITT, and Duane F. ALWIN (1979) "Ceremonial Justice: Crime and Punishment in a Loosely Coupled System," 58 *Social Forces* 506.

KIDDER, Robert (1973) "Courts and Conflict in an Indian City: A Study in Legal Impact," 11 *Journal of Commonwealth Political Studies* 121.

KURCZEWSKI, Jacek and Kazimierz FRIESKE (1977) "Some Problems in the Legal Regulation of the Activities of Economic Institutions," 11 *Law & Society Review* 489.

LEMPERT, Richard (1978) "More Tales of Two Courts: Exploring Changes in the 'Dispute Settlement Function' of Trial Courts," 13 *Law & Society Review* 91.

LEV, Daniel S. (1962) "The Supreme Court and Adat Inheritance Law in Indonesia," 11 *American Journal of Comparative Law* 205.

——— (1965a) "The Lady and the Banyon Tree: Civil-Law Change in Indonesia," 14 *American Journal of Comparative Law* 282.

——— (1965b) "The Politics of Judicial Development in Indonesia," 7 *Comparative Studies in Society and History* 173.

——— (1972) *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*. Berkeley: University of California Press.

LOWY, Michael J. (1978) "A Good Name is Worth More Than Money: Strategies of Court Use in Urban Ghana," in Laura Nader and Harry F. Todd, Jr. (eds.), *The Disputing Process—Law in Ten Societies*. New York: Columbia University Press.

MACAULAY, Stewart (1963) "Non-Contractual Relations in Business: A Preliminary Study," 28 *American Sociological Review* 55.

——— (1977) "Elegant Models, Empirical Pictures, and the Complexities of Contract," 11 *Law & Society Review* 507.

MERRY, Sally Engle (1979) "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," 13 *Law & Society Review* 891.

MOORE, Sally Falk (1973) "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," 7 *Law & Society Review* 719.

New Jersey Administrative Office of the Courts (1980) *Annual Report of the Administrative Director of the Courts of New Jersey*. Trenton.

RHEINSTEIN, Max (1967) *Max Weber on Law in Economy and Society*. New York: Simon and Schuster.

SARAT, Austin (1976) "Alternatives in Dispute Processing: Litigation in a Small Claims Court," 10 *Law & Society Review* 339.

TODD, Harry F., Jr. (1978) "Litigious Marginals: Character and Disputing in a Bavarian Village," in Laura Nader and Harry F. Todd, Jr. (eds.), *The Disputing Process—Law in Ten Societies*. New York: Columbia University Press.

TRUBEK, David M. (1972) "Max Weber on Law and the Rise of Capitalism," 1972 *Wisconsin Law Review* 720.

United States Bureau of the Census (1979) *Statistical Abstract of the United States: 1979*. Washington, D.C.

WANNER, Craig (1974) "The Public Ordering of Private Relations: Part I: Initiating Civil Cases in Urban Trial Courts," 8 *Law & Society Review* 421.

WEBER, Max (1967) *Max Weber on Law in Economy and Society*. New York: Simon and Schuster.

YNGVESSON, Barbara and Patricia HENNESSEY (1975) "Small Claims, Complex Disputes: A Review of the Small Claims Literature," 9 *Law & Society Review* 219.