South Carolina Journal of International Law and Business

Volume 1 | Issue 1 Article 3

2003

Manulife Indonesia: A Meditation on Three Mythologies

David K. Linnan
University of South Carolina School of Law

MANULIFE INDONESIA: A MEDITATION ON THREE MYTHOLOGIES

David K. Linnan[*]

The travails of PT Asuransi Jiwa Manulife (Manulife Indonesia), the Indonesian life insurance subsidiary of Manulife Financial Corporation (Manulife), are well known to Canadians. Manulife's problems over the past two years within the Indonesian legal system most recently drew active protests from the Canadian government after a solvent Manulife Indonesia was (temporarily) placed in bankruptcy. Less well recognized is the fact that the Manulife Indonesia case looks distinctly different to three different groups: Canadian and other foreign investors generally versus the governments involved versus the major Indonesian business community (which is largely ethnic Chinese). We term the competing views mythologies because they vary greatly (so how can they all be true?), while each contains an element of truth but also hidden issues.

Like the proverbial three blind men describing an elephant, each group seems in good faith to believe a mythology dictated by the group's perspective. Foreign investors see in the Manulife Indonesia case a story about judicial corruption and the generally weak status of the rule of law in Indonesia. On the government side, even reform-minded elements in Indonesia admit problems but perceived recent Canadian demands to intervene directly in the judicial process as impinging on due process concerns and Indonesian efforts to strengthen the rule of law. The major Indonesian (Chinese) business community is unhappy with the current situation, but is largely unsympathetic to Manulife because of perceived carelessness in its business.

We shall try to unpack the Manulife Indonesia controversy in looking (1) at a two year history of events as seen through foreign investor

[*] Associate Professor of Law, University of South Carolina and Program Director, Law & Finance Institutional Partnership, Jakarta, Indonesia. The views are expressed solely as the author's in an academic capacity. This paper was originally published in the conference volume Helen Lansdowne, Philip Dearden & William Neilson, eds., Communities in Southeast Asia: Challenges and Responses. Victoria, B.C.: Centre for Asia-Pacific Initiatives, University of Victoria, 2002.

eyes, (2) then all the way back to Manulife Indonesia's 1985 founding to uncover Indonesian private sector perspectives on the background of Manulife's problematic former Indonesian partner and current antagonist, the Dharmala group of companies controlled by the Gondokusumo family (Dharmala), and (3) finally, at the government level, a four-year story focused since the 1998 fall of the authoritarian New Order government on alleged corruption in the Indonesian judiciary, and whether foreign government intervention as practiced in the Manulife Indonesia case may be tempting but can be counterproductive. In parallel, one should recognize an untold story concerning the apparent failure of international financial institution involvement (here the International Finance Corporation or IFC, a World Bank affiliate owning a 9% equity interest in Manulife Indonesia alongside Manulife's original 51% and Dharmala's original 40% equity interests), to protect foreign private sector investment.

I. MANULIFE INDONESIA: THE FOREIGN INVESTOR PERSPECTIVE

The foreign investor version of the Manulife Indonesia saga follows. Manulife Indonesia was the outgrowth of Manulife's business plan to expand and redirect its international business to Asia for longer term growth reasons, partnering Manulife's established insurance expertise with Dharmala as a leading local business group. Manulife Indonesia quickly became one of the dominant players in its relatively small national market, enjoying modest immediate profits but substantial longer term prospects due to Indonesia's then rapid growth and burgeoning population (now over 200,000,000 inhabitants). The aim was to grow the business organically within the Indonesian economy, not to run a relatively short term project-based export business (unlike many natural resource-based extractive businesses, since Canadian mining companies have also been active investors in Indonesia).

At this point the story fast forwards to the 1999 aftermath of the Asian Financial Crisis. Like many Indonesian business groups, Dharmala was essentially insolvent while foreigners were looking for attractive investments to participate in the anticipated revival of the Indonesian economy. Unlike most other Indonesian debtors, its bank PT Dharmala Bank was seized and effectively liquidated by banking authorities while its chief non-bank finance affiliate Dharmala Sakti Sejahtera (DSS) was forced into bankruptcy proceedings in 1999 (and delisted from the Jakarta Stock Exchange on October 9, 2000). The value of DSS assets was the subject of dispute as the bankruptcy receiver sought to maximize creditor recovery, even while Dharmala sought to stave off liquidation in favor of a voluntary debt composition promising pennies on the dollar in which it would presumably retain control (because Indonesian bankruptcy law recognizes only liquidation or a relatively weak voluntary debt composition approach, Linnan 1999b). Manulife then made a business decision to buy DSS's 40%

stake in Manulife Indonesia, whereupon the Manulife Indonesia saga really begins in foreign investor eyes.

Manulife thought to purchase the 40% Dharmala stake in an auction organized by DSS's curator or receiver in bankruptcy. The flavor of foreign investor views is best conveyed in a 2001 analysis of Indonesian bankruptcy law enforcement prepared by PricewaterhouseCoopers, advisor to many foreign investors at the time:

> "Those debtors with knowledge of the law and the system of law enforcement [in Indonesia] have an advantage in manipulating outcomes to their advantage. Creditors' claims of fraud and embezzlement are being overlooked by authorities and the court. An interesting example is of the Canadian life insurer, Manulife Financial Corporation, who attempted to buy out the share of its Indonesian business owned by its bankrupt local partner through an open auction run by the court-appointed curator. Near the end of the proceedings a lawyer claiming to represent the true owner of the shares, a British Virgin Islands company called Roman Gold, stepped forward. Since then the sale has been in limbo, with the proceeds unusually being awarded to the custody of the police. Manulife claims its partner had illegally sold its 40 percent stake in the venture, whereas the partner claims to have sold its stake to a company called Harvest Hero International Ltd in 1996. Roman Gold claims to have purchased its stake from a Western Samoan registered company called Highmead Ltd days before Manulife made its own purchase from the curator. In an unusual twist, Manulife's vice-president in Indonesia spent some time in jail for his troubles, only being released supposedly on the intervention by the Indonesian president acting on a plea from the Canadian president (*sic*).
>
> Co-incidentally, Highmead Ltd was a member of a loan syndicate arranged by Harvest Hero, a Hong Kong, China registered company that is meant to have lent US$160m to PT Panca Overseas Finance in the second half of 2000. [*ed.-- Looking forward, Panca is an affiliate of the Panin group, which itself allegedly comes from the same Chinese ethno-linguistic group as Dharmala.*] This unsecured loan came in the midst of protracted negotiations between Panca and its creditors, including several foreign banks and the International Finance Corporation ("IFC") (a member of the World Bank Group) who are owed around

> US$68m. The IFC claims in its petition to the court that Panca created these fictitious creditors in order to block their petition to bankrupt the company and accept Panca's restructuring proposal that offered all creditors, including the recent ones, a payment of 17 cents in the dollar on their debts. [*ed.-- This approach would have negated the parallel outcome in the DSS proceedings, where under Indonesian bankruptcy law the creditors declined the debtor's restructuring proposal and so forced the liquidation in which DSS's interest in Manulife was sold.*] The other members of the syndicate are all registered in either Western Samoa or the Bahamas. Harvest Hero, according to the IFC submission, has paid up capital of HK$2, no telephone listing in Hong Kong, China, nor any permit to lend money there. Harvest Hero's registration papers lists the address of one of its directors, the one who signed the loan agreement with Panca, as a restaurant selling chicken and noodles in North Jakarta. The restaurant's proprietor has never heard of the director or Harvest Hero." (Pricewaterhouse 2001).

The combination of deadpan comedy and libel lawyer's advice is palpable.

The subsequent history of the Manulife Indonesia controversy shifts to a three-cornered litigation circus in Indonesia, Singapore and Hong Kong. The details are less important than the apparent strategies in which Manulife Indonesia was repeatedly attacked in Indonesian bankruptcy proceedings (initially seeking to place the company in receivership based upon alleged unpaid debts arising out of contested denials of death benefits under policies, culminating most recently in the fictive dividend claim as an alleged unpaid debt still owed to DSS). In turn, Manulife went on the offensive in Hong Kong and Singapore courts in an attempt to disprove the claimed Roman Gold-Harvest Hero transaction by demonstrating that they were controlled by the Godokusumo family and represented an attempt to defraud creditors. The litigation has been ugly by businessmen's standards, with Manulife seeking to have its perceived tormentors jailed for fraud or their assets seized while in an apparent scorched earth tactic Dharmala allegedly decided to destroy Manulife Indonesia if its demands were not met. Its denouement has come in two stages, first in a 2001 "settlement offer" in Singapore in which an Indonesian allegedly with ties to the Godokusumo family offered that legal harassment of Manulife Indonesia would cease upon payment of US$40 million (the existence of which offer was subsequently denied, but Manulife had videotaped the proceedings)(AFP 3/8/01). Then, Manulife Indonesia was (temporarily) placed in bankruptcy, leading to it publicly accusing the Indonesian bankruptcy court judges of taking bribes

(Bloomberg 6/14/02). Then, the Canadian government made strong representations to the Indonesian government concerning Manulife's treatment, at which point the Indonesian Supreme Court in an accelerated proceeding overturned the bankruptcy court ruling. It may be premature to pronounce the Manulife Indonesia controversy to be finally resolved, however, because the grounds on which the lower court decision was overturned were procedural rather than substantive.

Looking forward, Manulife Indonesia's treatment is widely cited in the international media as the leading example of how problems with the Indonesian legal system impede much needed foreign investment. This sentiment is paralleled widely within the Indonesian media in stories anecdotally linking the Manulife Indonesia fiasco with recent period-to-period comparisons of foreign direct investment into Indonesia showing a reduction of up to 60%, while the Indonesian Ministry of Justice has taken the unusual step of opening a corruption investigation against the judges involved in the recent bankruptcy proceedings.

II. MANULIFE INDONESIA: THE INDONESIAN PRIVATE SECTOR PERSPECTIVE

Under local private sector views the real roots of Manulife Indonesia problems reach back to the opening and deregulation of the Indonesian financial sector in the early 1980s. At the time, Dharmala was reckoned as the tenth largest Indonesian business group. Local financial sector expertise was largely limited to a few banks at the time, and Dharmala was something of a financial sector parvenue.[1] Dharmala's business had been founded in 1954 as an agricultural commodities trading operation in Surabaya dealing in coffee, pepper, cassava, copra and corn first under the name NV Mansur, then as PT Dharmala Inti Utama under the leadership of Soehargo Gondokusumo (alias Go Ka Him), the Godokusumo family patriarch. The patriarch's son Suyanto Gondokusumo studied in Singapore and the United States, joining the family business in 1979 and soon rose to managing director in charge of finance and international affairs.[2] In 1980, Dharmala established DMT International as a holding company based in Hong Kong and Singapore to manage Dharmala businesses in diversifying outside Indonesia, now a common practice for ethnic Chinese business empires (e.g.,

[1] The Indonesian insurance industry has a history reaching back into Dutch colonial times (*see* Hoflich 1961, 1-12), and Dharmala's relative lack of experience is striking compared to indigenous senior management at its competitors drawing from established industry companies (*see* Silaban 1994, 21, 41, 66, 113, 156, 177, 232-33, 257, 282). The Indonesian life insurance industry is commonly considered to have really taken off only following a 1992 revision of laws governing the industry, but the industry was already expanding rapidly in the late 1980s (*see* Wijaya 1991, 170). *See also* Binhadi 1995.

[2] Portions of the material in this section are drawn from Putranto 2002 and portions from the author's discussions in Jakarta of matters covered with persons associated with the Indonesian Chinese business community.

the Salim group's First Pacific empire based in Hong Kong) but at the time a bold and controversial step because ethnic Chinese businessmen investing outside Indonesia have always faced criticism locally for being "unpatriotic" in sending capital abroad.

Thus, the Dharmala business was founded as a traditional trading house by a local ethnic Chinese businessman, then the second generation was groomed for business leadership in studying modern management abroad. As Dharmala's crown prince Suyanto concentrated on financial services, founding DSS, while Soehargo continued to manage Dharmala's agribusiness. Thus, in 1985 Manulife Indonesia was born under the name PT Dharmala Manulife Indonesia as a new insurance joint venture with ownership split among Manulife (51 %), the IFC (9%) and Dharmala finance affiliate DSS (40%). In 1991, Suyanto succeeded Soehargo as Dharmala's chief executive officer, in no small measure because of the meteoric rise of Dharmala's financial sector businesses, including both Manulife Indonesia and Dharmala Bank.

In Dharmala's 1996 heyday the group had more than 100 companies including as business sectors real property, agribusiness, trading, construction, industry and financial services, and holding approximately 6 trillion IDR in assets (almost US $2 billion at then current exchange rates) with 20,000 employees. Dharmala was, however, among the more highly leveraged Indonesian conglomerate families with both domestic rupiah borrowings (often from the affiliated banks of other ethnic Chinese conglomerates in Jakarta, with that unpaid debt remaining a sore subject in the Chinese business community) and foreign currency borrowings abroad. Dharmala immediately was counted as being in one of the weakest financial positions when the 1997 Asian Financial Crisis struck, an unusual distinction in a country plunged into a de facto depression in which practically all businesses quickly stopped paying their debts. However, unlike most Indonesian debtors who just stopped dealing with creditors by early 1998 without significant formal consequences (Linnan 1999b), many of Dharmala's businesses within Indonesia have been the subject of formal enforcement actions in varying fora such as delisting from the Jakarta Stock Exchange (including DSS delisted 10/9/00, PT Dharmala Agrifood delisted 3/12/99, PT Aster Dharma Industri delisted 12/2/99 and PT Dharmindo Adhiduta delisted 3/12/99), liquidation of an insolvent Dharmala Bank by central banking authorities, and bankruptcy receivership such as the case of DSS.

The natural question is why Dharmala has suffered such formal enforcement setbacks even while other Chinese Indonesian and Pribumi (Malay Indonesian) business conglomerates largely have not? The answer offered privately within the Jakarta-based Chinese Indonesian business community is that, contrary to outside perceptions, there is more than one "community" involved. The predominant Chinese Indonesian business community in Indonesia is the Hokkien group from Fujian province speaking various Min dialects.[3] However, the Hokkien community itself breaks down further into distinctive ethno-linguistic groups, with the Gondokusumo family from Nanan in Quanzhou presumably speaking the Quanzhou variety of Hokkien. Meanwhile, Quanzhou Hokkiens appear to have trouble getting along with other Hokkien ethno-linguistic groups like Zhangzhou Hokkien speakers, while some of the most successful Indonesian Chinese businessmen are from yet another distinct Fujian ethno-linguistic group (e.g., Sudono Salim alias Liem Sioe Liong, a Hockchia from Fuqing). Dharmala is criticized privately within the Chinese business community as being from a "less moral" ethno-linguistic community which is claimed to be greedy in not sharing the same reciprocal "business generosity" expected within the majority Hokkien community (Dharmala being criticized for traditionally keeping too much profit for itself as opposed to generous provision for other - Chinese - business partners' reciprocal profits). In a chicken-and-egg fashion, it is difficult to say whether Dharmala is considered an only marginally acceptable business partner because it exists outside the majority Hokkien informal enforcement community, or suffers from a labeling effect because that same community automatically imputes poor business ethics to non-members of the community.

Also difficult is the objective documentation of claims concerning low business morality, with the majority Hokkien business community referring rather to Dharmala's failure to balance Pribumi and Chinese personnel in their operating businesses (keeping too tight family control with deleterious effects on community reputation), the very fact that Dharmala businesses have failed because Dharmala is not a full-fledged member of the core Hokkien Indonesian Chinese business community, public relations problems with Dharmala's early movement of capital offshore and perceived closeness to the Hong Kong Chinese business community, "excessive" affiliate transactions and inter-corporate guarantees, and the idea that even in its heyday Dharmala business deals such as public offerings of partial interests in its operating companies were not well received with the result that Dharmala often (re)purchased parts of such offerings to hide poor

[3] Compare Chinese dialect and Gondokusomo versus Salim family origin information at http://zz-www.sd.cninfo.net/song/lawfaq/rich/yinnifei/c909036.htm, http://www.post1.com/home/zhuangfu/dialects.htm and http://weber.ucsd.edu/~dkjordan/chin/hbchilang-u.html. The details of ethno-linguistic dialect subgroups and their character in pigeon-holing individuals is an anthropological exercise beyond the scope of this essay, except to note that the Indonesian Chinese business community think that they matter and that the dealings of the Gondokusomo family are apparently as a result affected within that business community. The Western reader may find ethno-linguistic typecasting an odd exercise, but within the Overseas Chinese world dialects are a subject of great interest and attributing social characteristics to their speakers is no odder than, for example, ethnic jokes in the West, or individuals affecting regional or standard accents in English-speaking countries in the alternative to play the fool or sound posh following British usage.

performance. This raises the broader question of how one documents non-performance in an informal versus formal enforcement system, viewed as reputational interests within a closed ethnic business community versus public proceedings in the formal legal system such as in the Manulife-Dharmala fight.

The above are all non-public aspects outside the law's formal enforcement system, with the sole exception of one incident related to problems with a marginal public offering. Within the financial community, the example is cited that Dharmala once entered into a contract with underwriters of an affiliate's public offering promising to repurchase any shares not taken up in the offering. Such contracts were not uncommon at the time, albeit impermissible under Indonesian capital market regulations to the extent regulatory authorities insisted on firm underwritings. The offering was not entirely successful and so the underwriters proceeded to repurchase shares as part of offering stabilization activities. However, Dharmala refused to honor its agreement to repurchase the shares, and the underwriters brought suit to enforce the contract. This attempt at formal enforcement failed, however, because the contract was adjudged void for public policy reasons since it violated Indonesian capital markets regulations. The businessmen's criticism inferring poor business ethics is not that Dharmala manipulated the lawsuit (which it was probably entitled to as a purely doctrinal matter), but that it did not keep its underlying promise. Thus, Manulife is not the first Dharmala business partner to be disappointed in the formal enforcement system.

Following Dharmala's financial setbacks, the Godokusumo family moved to Singapore as have many Chinese Indonesian businessmen post-Asian Financial Crisis. One reason was presumably to escape the reach of Indonesian law.[4] This reflects delicate Indonesian racial politics not clear to most Canadians, that foreigners like Manulife may regard Singapore positively as a jurisdiction with a functioning legal system, but in (Pribumi) Indonesian eyes Singapore is a suspect haven for flight capital and corrupt businessmen who triggered the nation's on-going crisis then fled the reach of Indonesian law (so Manulife working through Hong Kong and Singapore courts raises Indonesian hackles). The other reason was to access Dharmala's overseas assets and business ventures. Unlike more affluent Chinese Indonesian business families (e.g., the Salim family's First Pacific investments via Hong Kong or even Eka Wijaya with the Sinar Mas group's Chinese investments now bedeviling Asia Pulp & Paper creditors), however,

[4] *See* Bloomberg 4/25/01, because political pressure has grown for punitive actions, including potential arrest and prison terms, as ordinary Indonesians have felt increasingly impoverished since 1997 as a result of the misbehavior of major business groups. The parallel is clear to the public outcry in the US following recently revealed accounting malfeasance and a plunging stock market, with the US Congress responding to constituent pressure in passing sweeping legislation.

Dharmala's equity overseas is privately estimated to be in the range of only US $35-$50 million. The story in the Jakarta Chinese business community is that Dharmala is effectively finished in Indonesia, and is trying to extract funds from Manulife in reality only to use outside Indonesia because current Dharmala resources are otherwise insufficient to rebuild its businesses outside Indonesia. Looking to Indonesia's major Chinese business community, in private they criticize the Dharmala's recent actions against Manulife Indonesia as drawing unwanted attention and hardly worth the grief for the amounts involved. However, they find them unsurprising because Dharmala has enjoyed a mixed reputation for business ethics within its own community long predating current Manulife Indonesia problems.

The above is a more nuanced businessmen's version of how and why Dharmala was viewed locally in Jakarta as a difficult partner long before the current Manulife Indonesia controversy. The implicit question then is why Manulife did not know, or in the alternative disregarded, all the warning signs in a 15+ year business relationship? There are at least three possibilities. The first is a failure of due diligence on the business level, or more charitably that the issues did not present themselves squarely in 1985 when the original Manulife Indonesia partnership was created (and later the die was already cast). The second is that Manulife knowingly incurred the business risk in 1985 of a difficult business partner, perhaps believing in formal enforcement system terms that management control via its 51% ownership interest in Manulife Indonesia was comfort enough (since it is striking in a business sense that Manulife in 1985 did not seek out a local partner with greater financial sector expertise, presumably because such a partner would have demanded control or at least a larger share in business benefits). The third is that Manulife itself relied on the foreign investor version of an informal enforcement system for developing country investments, namely retorsion at the government to government level. Structurally, this was potentially possible either via the direct involvement of international financial institutions in the form of the IFC's 9% interest (a kind of moral guarantee given that problems caused by Dharmala would automatically affect both Manulife and the IFC, which has recourse through the World Bank directly to the Indonesian government), or bilaterally in pushing the Canadian officials to pursue its complaints with their Indonesian counterparts.

The first and second possibilities would be Manulife's risk in a business sense, to which the proper response at a government policy level is presumably to offer Manulife reasonable support in its current predicament but ultimately leaving it to its own devices assuming it accepted the risk. Thus, the Indonesian private sector is largely unsympathetic to Manulife Indonesia's plight, not because of any closeness to Dharmala but rather because they criticize Manulife's business judgment (visible only beyond the two year time horizon in terms of which foreign investors see the on-going controversy). The third possibility raises the broader institutional question whether the international community realistically can push simultaneously for development of formal enforcement systems via the rule of law and retention of its own informal enforcement system (retorsion) if and when the formal enforcement system fails. This third possibility is more a judgment issue for governments than the private sector, to which issue we now turn.

III. MANULIFE INDONESIA: THE GOVERNMENT PERSPECTIVE

Enforceable contracts are the lifeblood of modern business activity; meanwhile, charges of judicial corruption in Indonesian bankruptcy proceedings are nothing new (Linnan 1999b, 121-22). At a certain level the Manulife Indonesia story is about development of formal versus informal enforcement systems for economic activity in developing countries. For these purposes the legal system and its courts are the formal enforcement system, while an informal enforcement system should be understood as any system in which the parties, in reliance upon reputational interests or the non-obligatory grant/withholding of a benefit or infliction of a detriment, directly or indirectly attempt to force a private party to respect its contractual obligations. The traditional example of an informal enforcement system is a community of merchants who may deal, or refuse to deal, with each other or third parties based on reputation (*compare* North 1990). Such communities, typically linked by distinct ethnic or geographic ties, include the Jakarta-based ethnic Chinese business community consisting of the major conglomerates/corporate groups under family control.

In developing country eyes, however, the concept of an informal enforcement system for private relations also extends to economic coercion organized against a country's government whether via intensive government-to-government lobbying by the investor's home government as the modern form of diplomatic protection, or through international financial institutions. This is retorsion in public international law terms, when the capital importing country's government faces the implicit or explicit threat by the capital exporting country's government that, failing satisfactory resolution of the foreign investor's "private" difficulties, voluntarily made bilateral foreign aid/multilateral program loans will be withheld.

It seems unlikely that in 1985 Manulife entertained any illusions about the status of the rule of law in Indonesia when it originally entered upon the Manulife Indonesia partnership with Dharmala. Presumably, Manulife chose its local partner with a view to its ability to navigate a society in which the rule of law was weak. In this light Manulife still deserves support with its current problems, but the situation is less clear than it appears even while Manulife seems genuinely surprised at its former partner's current behavior. It raises questions about the broader problem for long-standing foreign investors, who now seek protection in formal enforcement through embracing the rule of law. However, they often entered Indonesia through joint ventures like Manulife's at a time when they were relying more likely on the informal hierarchy of an authoritarian government for protection (so ultimate recourse when problems occurred was to complain to the responsible Indonesian minister and ultimately the president, possibly via their home governments as in the Manulife Indonesia case). The difference from current practice is that, at the time, the international community had not yet begun its latest heavy push to improve governance in Indonesia, including the rule of law, and so this "informal enforcement" approach seemed unremarkable in local eyes.[5]

To that extent, the Manulife Indonesia problem is about transitions and how to navigate a change from an informal enforcement system to a formal one. Reaching back to the informal system's heyday, one of the oddest aspects of foreign investor behavior in Indonesia always has been its inconsistency in foreign investors' embrace of well-connected partners under the New Order government. Such partners were largely chosen for their ability to game the system in maneuvering through the local business and government communities, but then the same foreign investors evinced surprise that said local partners might also game their foreign partners too when it suited them. No reasonable business person, even in a country enjoying the full benefits of the rule of law, chooses their partners without close attention to their business ethics (e.g., is their word their bond in traditional terms, or giving close attention to reputational interests within the business community in economic parlance). Only lawyers like litigation, while business people regard recourse even to a functioning formal enforcement system as a painful exercise in damage control. Thus the Manulife Indonesia controversy may be negative for foreign investment sentiment, but at the same time implicit claims are overstated that foreign investors rely primarily on the local legal system for protection.

At the policy level of government, the problem is twofold concerning what to do when faced with issues like Manulife Indonesia. Simple references to Indonesian problems such as judicial corruption generally do not resolve the issues, nor do private sector claims that if specified things do not take place, foreign investment will dry up. Private sector investment will continue as long as there are profits to be made, with the caveat that greater risks must be offset by greater rewards (i.e., they require higher potential

[5] In fact, depending upon one reckons organized legal reform efforts in terms of generations, the developing world is probably in its fourth or fifth generation while Indonesia is at least in its third. *See* Linnan 1999. While some foreign investors might have entered Indonesia long enough ago in the late 1960s-early 1970s to claim reliance on past institutional reform efforts, they would be a very small minority.

profits thus reducing the number of economically feasible investment projects and ultimately lower local economic performance). Thus, a developing country like Indonesia should perceive it as in its own interests to embrace improved governance and the rule of law. The broader problem is what to do about a situation like the Manulife Indonesia problem during what all parties hope is a longer term transition in Indonesia to an effective legal system.

On the one hand, formal enforcement systems and the rule of law do not spring into being full-grown, and so the question presents itself whether and when old-fashioned diplomatic protection or generically retorsion is permissible to exercise influence at a government level to settle a dispute at the private party level. This is not an abstract possibility, since it arguably already presents itself in the Manulife Indonesia if one assumes that Indonesian government and society are making a bona fide effort to make the transition longer term to a law and market-based system (for the benefit of Indonesians primarily, although foreign investors would benefit coincidentally).

On the other hand, from an Indonesian point of view, asking its executive branch to intervene in an individual judicial branch proceeding is at least superficially inconsistent with the resounding parallel message from the international community asking Indonesia to improve governance including judicial independence (including dealing with corruption, including judicial corruption, via general civil service reform and approaches such as an anti-corruption commission). The political risk is that, given Indonesians' nationalistic predisposition to be suspicious of foreign motives, implicitly or explicitly threatening retorsion plays into the hands of those who argue within Indonesia in the alternative that the international financial institutions themselves are just tools of developed countries (a charge made more often against American than Canadian government policy), or that foreigners basically just want their investors to win and so the international community's insistence on reforming governance is not sincere (Indonesian politics' version of a foreign conspiracy theory).

The risk is that, in pushing for direct government intervention into the operations of the (still weak) Indonesian legal system, the harder you push on intervention the higher the risk of undercutting development of the legal system itself. The counterargument is that the foreign push for intervention results from judicial corruption issues. However, judging by senior Indonesian political figures' public statements (Mahendra 2002, Tempo Interaktif 2002), that presents a problem in both prejudging the judiciary before investigation and undercutting due process concerns.

Adding to the problem at the economic level of foreign policy is now an additional tension related to general "war on terrorism" concerns. Foreign investor problems appear to foreigners to have only commercial consequences. However, particularly within Indonesia as a majority Moslem country and battleground in a broader fight for public opinion (e.g., is the West now waging a war on terrorism or a war on Islam?), claims of foreign conspiracies or insincerity may fall on fertile ground among segments of the Indonesian population. At the (Canadian) government policy level, the Manulife Indonesia controversy presumably requires a balancing of economic and non-economic foreign policy concerns.

IV. CONCLUSION

While the Jakarta-based foreign business community is lined up solidly behind Manulife, the local Chinese business community is largely unsympathetic to its plight. In a nutshell, they believe that if they, the Chinese business community, largely treat Dharmala as an outsider and are reluctant to deal with it, the foreigners deserve what they get when they do. However, major players in that selfsame Chinese business community have themselves largely stalled any formal enforcement attempts at involuntary reorganization of their corporate groups through the Indonesian bankruptcy courts post-Asian financial crisis (Linnan 1999b). To that extent, the chief difference between Dharmala and the balance of the local business community at the level of formal enforcement is Dharmala's attempted use of bankruptcy law as a sword while the others have employed it more as a shield.

What goes often unrecognized in the Manulife Indonesia controversy is that the Dharmala Group is unusual by Indonesian standards chiefly in having lost several member companies to legal proceedings, including the bankruptcy proceeding in which Manulife purchased DSS's interest in Manulife Indonesia. The formal enforcement system seems to have worked more often than not with Dharmala, but the reason given privately in Jakarta is precisely because Dharmala is only a limited member of the major Chinese business community and so has been excluded from its mutual support networks. On the other hand, from an Indonesian perspective, Manulife's apparent recourse to diplomatic protection via the Canadian government and parallel pressure on the Indonesian government via international financial institutions (IFC/World Bank) is itself viewed as an election for a competing informal enforcement system basically inconsistent with those same institutions' advocacy of improving the formal enforcement system (i.e., pushing development of the rule of law).

Hence competing mythologies, that foreign investors view the Manulife Indonesia controversy as an indictment of the Indonesian legal system, while Indonesian government reformers admit problems but see Canadian insistence on intervention in the legal proceedings as undercutting a "bright light" in the form of the perceived relatively successful performance of the formal enforcement system in dealing with Dharmala. Meanwhile, the Indonesian Chinese business community's mythology is not ultimately aligned with Dharmala's interests but maintains that Manulife is just whining about problems inflicted by its own misguided business decisions. At the same time, one of the hidden questions in the Manulife Indonesia controversy is whether Manulife mistakenly relied on the "moral" guarantee implicit in investing together with the IFC. To a certain extent, Manulife's longer term behavior makes sense only if it embraced the idea that the Indonesian government ultimately would control Dharmala as Manulife Indonesia's Indonesian partner (to avoid problems for the Indonesia government in its broader relationship with the World Bank).

Whose version of the truth is most compelling?

REFERENCES

Agence France Press (3/8/02) 'Manulife Indonesia allegedly told to pay 40 mln dlrs to end dispute.'

Binhadi (1995) Financial Sector Deregulation: Banking Development and Monetary Policy: The Indonesian Experience 1983-1993. Jakarta: Institut Bankir Indonesia.

Bloomberg (6/14/02) 'Manulife Acccuses Indonesian Judge of Taking Bribes.'

Bloomberg (4/25/01) 'Manulife Case Suspect Won't Cooperate with Summons, Lawyer Says."

Hoflich, Harold J. (1961) Indonesian Insurance Monographs 22A. Jakarta: Lembaga Penjelidikan Ekonomi dan Masjakat FEUI.

Linnan, David (1999a) 'Indonesian Law Reform, Or *Once More unto the Breach*: A Brief Institutional History,' 1 Australian Journal of Asian Law 1 (July 1999).

Linnan, David (1999b) 'Insolvency Reform and the Indonesian Financial Crisis', 35 *Bulletin of Indonesian Economic Studies*, 107 (August 1999).

Mahendra, Yusril Ihza (2002) 'Orang Harus Tahu, Asas *Trias Politica* Itu Tetap Diterapkan' Forum Keadilan (July 14, 2002) (interview with Indonesian Minister of Justice).

North, Douglas C. (1990) Institutions, Institutional Change and Economic Performance. Cambridge: Cambridge University.

PricewaterhouseCoopers (2001) Guide to Restructuring in Asia 2001.

Putranto, Budi (2002) 'Dharmala Blows in from Nowhere', *Indonesian Business*, 16 (July 2002).

Silaban, Sintong ed. (1994) Asuransi di Indonesia: Prospek, Harapan dan Tantangan: Pandangan Tokoh-tokoh Asuransi Jilid I. Jakarta: Dasamedia Utama.

Taufik, Ahmad et al (2002) 'Court Disorder' *Tempo*, 52 (July 16-22, 2002).

Tempo Interaktif (2002) Wapres Minta Kanada Taati Mekanisme Hukum

Indonesia 21- 6-2002/16:02 WIB. http://www.tempo.co.id/harian/focus/107/2,1,4,id.html (internet portal of national news magazine).

Wijaya, Faried (1991) Perkreditan & Bank dan Lembaga-Lembaga Keuangan Kita Edisi I. Yogyakarta: BPFE.