

# Judicial Oversight in Indonesia & Constraints Hampering Its Implementation

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**Abstract:** This paper analyses constraints hampering judicial oversight implementation in Indonesian courts. The author highlights some major problems faced by the Indonesian judiciary to implement supervision towards judges and court personnel when conducting their duties. The author examines external and internal mechanisms toward the Indonesian judicial system, including some recommendation to improve the implementation.

**Keywords:** Constraints, Judicial oversight, integrity, Indonesia.

## I. INTRODUCTION

The struggle faced by the Indonesian judicial system in overcoming its notorious reputation can be traced back since the country's independence in 1945. There have been three major constraints that smear courts' name, which include corruption, complex proceedings and courts' personnel low quality.

Corruption, collusion and nepotism have been the main problems that impede the judiciary to provide fair access to justice to the Indonesian people [1]. Dean contends [2]:

The court system in Jakarta is particularly rotten, to the extent that the government plans to relocate more than 70 per cent of Jakarta's judges to the rural areas, replacing them with judges from areas outside the capital claimed not to be as corrupt (p. 8).

It has been suggested that the main cause of corruption in courts is the low income paid to judges. Some are forced to take bribes as additional earnings to cover their living costs [3]. Rais argues that there is more corruption based on the need to survive in Indonesian courts than corruption driven by greed [4]. The low income of judges occurred because 'judges were seen simply as implementers and facilitators at the end of the "food chain", unlike the government executives' [5, p. 288]. Parties who had brought their cases to court also blamed on low income of judges for the corruption [6].

Collusion and nepotism also prevent the courts from implementing legal certainty. The Ministry of Justice organizes, administers and financially controls judges which makes them dependent on the government for work, income and promotion [7]. 'The major role of this ministry enables an unhealthy restraining influence over the judiciary, particularly in controversial cases (both civil and criminal cases)' [8, p. 7]. This condition makes judges hesitant to go against the executives who provide for them [9]. One

example which illustrated this problem was when a Supreme Court judge intended to disclose collusive practices and the other judges asked President Soeharto to discharge this judge [10].

To overcome this problem, the courts were separated from the Ministry of Justice to free judicial authority from executive's influence. Juwana (p. 37) contended that with the issuance of this law 'it is expected that the judiciary will be able to enforce the rule of law, free from interference' [11]. Katjasungkana further argued that there should be 'a strict distinction between the civil, political and public domains' to overcome corruption, collusion and nepotism [12, p. 262].

Notwithstanding these efforts, the courts have yet to perform their duty to enforce justice and legal certainty in Indonesia. 'The Indonesian court system has stubbornly resisted reform, and for the most part, it has been "business as usual" [2, p.8]. People in Indonesia and foreigners are not convinced the courts can deliver prompt, fair and transparent verdicts and, because of the legal uncertainty, investors are reluctant to invest their money in Indonesia [11]. Barnes and Abdul Syukur argued that this negative condition in Indonesia makes people reluctant to use courts to resolve disputes and they therefore aim for out-of-court settlements [6].

The Indonesian judicial system also suffers from long, expensive and complex court proceedings. Juwana further describes other reasons for the delays including tactics used by lawyers [11]:

...The long process is usually due to postponement in each of the court hearing for various reasons, such as the judge is taken ill, the defendant or plaintiff asks more time to prepare the written pleadings. However, the delay has in many occasions been used as outright strategy from lawyers in an attempt to slowdown the proceedings (pp. 18-19).

Many disputants have complained about the lack of transparency in court proceedings [7]. It is very difficult to get a judge's verdict and comprehensive law reports to examine that verdict. They often have to pay an illegal fee to get the verdict [11]. This unofficial payment adds to the expensive legal fees that disputants have to pay in extended litigation processes to get an enforceable verdict. The court proceedings paralyse people because they have to spend money, time, energy and other resources [13]. This condition contradicts the mandate from Law No. 4 Year 2004

concerning Judicial Power which instructs the Indonesian courts to deliver simple, fast and inexpensive proceedings.

The last problem that the Indonesian judiciary has been facing is lack of human resource competence. The Supreme Court of Indonesia has been having difficulty to prioritize its limited budget to provide sufficient and continuing legal trainings for judges and court personnel. Not to mention, the vast geographical area of the country that the judiciary has to cover. Budiardjo, Nugroho & Reksodiputro commented [8]:

The quality of the judges has also come under attack. Most of the individual judges, particularly of the lower courts (Pengadilan Negeri), are considered as inadequate in their knowledge of substantive law (especially civil and commercial law) and the rules of procedural law. They are also accused of being 'legally unstudied' (and indifferent to legal accuracy) when making their decisions on the cases, leaving the unsatisfied litigants to appeal the decision to higher courts (Pengadilan Tinggi) (p. 8).

## II. IMPLEMENTING JUDICIAL OVERSIGHT SYSTEM AND ITS CONSTRAINTS

The Supreme Court of Indonesia has been trying to solve the abovementioned problems by improving the oversight mechanism toward the conducts of judges and court personnel. The Indonesian judiciary had been influenced by the executive power under Ministry of Law and Justice since the country's independence in 1945, in terms of financial, personnel and supervision. The amendment of Indonesian Constitution in 2000 in article 24 emphasizes the Indonesian judicial system independence and its authority to manage the organization to enforce law and justice. The unification into one-roof system in 2004 has further supported the Supreme Court to develop reforms on its business processes [14]. Additionally, the issuance of Law No. 4 Year 2004 has given Judicial Power under the Supreme Court as part of reform for judicial independence [15].

In order to prevent abuse of power from judicial system, the next Constitution amendment in 2001 also established Judicial Commission to monitor the courts externally. The Commission assures external accountability towards the courts. The dual mechanism is crucial component for good governance of the Judicial branch. It is an independent institution which has been given the power to recommend the appointment of Justices of Supreme Court and the authority to enforce judges' code of conduct.

In 2009, the Supreme Court and the Judicial Commission came to an agreement to enforce one Code of Conduct. This agreement is reflected in the Joint Decision Letters of Chief Justice of the Supreme Court and the Head of Judicial Commission

However, the relationship between the two institutions has not been decent. Tensions often resurface due to disagreement on certain issues. The role of each institution in enforcing the Code of Conduct is not clear. The joint decision letters

stipulate that both institutions can conduct investigation of misconduct and both can give recommendation to the Chief Justice without further regulating detailed procedures. This unclear guidance in conducting supervision roles is potentially conflicting.

Another major problem is their respective perceptions on what constitutes judges' professional conduct and judicial technical matters [16]. Some miscommunications between the two institutions have been arising because the Supreme Court perceives that the Judicial Commission only has authority on supervising judges' code of conduct, not on judicial technical matters. Due to this problem, the Supreme Court has rejected many recommendations from the Judicial Commission.

The 2004 Judicial Power Law also arranges internal supervision by stipulating that the Supreme Court has the highest supervision authority towards courts under its jurisdiction. The Supreme Court further established an Oversight Body (*Badan Pengawasan*) to implement the function of internal supervision.

As a guidance to conduct internal oversight, the Supreme Court developed a Handbook called Book IV on standard operating procedure compilation for Internal Supervision based on the Chief Justice Decree in 2006 which was amended in 2007. The Handbook compiles some issues, which comprise court budget, judges and court personnel's conduct, court management and administration, case management, and public service quality.

The Supreme Court further has delegated some of its oversight authority to High Courts which are in the capital cities of 34 provinces in Indonesia due to immense geographical area and vast number of courts. This oversight function delegation consists of enforcement of judges' code of conduct and court administration.

Under the Supreme Court's jurisdiction there are four court divisions which comprise General/District Courts, Religious Courts, Administrative Courts, and Military Courts. The four jurisdictions manually implement their standard operating procedure of internal oversight comprising three hierarchy levels, namely first instance courts, High Courts, and the Supreme Court.

The High Court faces many difficulties in implementing its delegated supervision control over numerous courts under their jurisdictions, including their location in scattered and remote area. There are some other constraints which have exacerbated the High Courts' ability to do their monitoring tasks, such as lack of budget and limited number of High Court judges to conduct supervision [17]. Not to mention these judges must also perform their main duty to handle cases every day.

To overcome the three major problems mentioned at the beginning of this paper and to provide faster, cheaper and simpler court proceedings for justice seekers, the Supreme Court has developed some mechanisms on judicial amicable

settlement, depending on the types of cases [18]. When parties have private cases, they will have judges who are obligated to mediate under court-annexed mediation procedures. This settlement process takes place prior and during litigation proceedings, before presiding judge gives their final decision on the case [19, 20]. This amicable process was initially established in 2003 and is implemented in the district courts to mediate private cases among non-Muslims and in Religious Courts to settle cases among Muslims [21]. The court-annexed mediation mechanism also provides opportunity for the community mediation to take part in the Indonesian judicial amicable processes where its out-of-court settlements are recognized [19, 22]. Religious and community leaders who resolve conflicts in their society can register their settlements to get equal final and binding enforcement as court decision or settlement into court-annexed mediation [23, 24].

As mandated by the 2012 Indonesian Juvenile Justice Law, the Supreme Court also provides another form of judicial amicable processes in the form of diversion process. This victim-offender mediation process handles juvenile cases involving youth offenders under 18 years old [25]. This restorative justice approach offers a comprehensive and effective solution to dealing with youth offenders [26]. This effort aims to save the future of young generation by prioritizing amicable settlement and putting imprisonment as the last resort. Restorative justice 'aims to empower victims, communities, offenders and families to repair the effects of a harmful event, using effective 'repentance rituals' Pavlich [27, p. 1]

Another method of judicial amicable processes involves settling disputes of domestic and family violence which has been increasingly popular among judges [28]. Based on restorative justice, this mechanism has no legal basis yet in the judicial system although mandated by the Alleviation of Domestic Violence Law issued in 2014 [29, 30]. This kind of penal mediation processes have been carried out mostly by judges who possess restorative justice mindset [31].

### III. CONCLUSION

The Supreme Court has been trying to adapt with recent and continues changes that affect the judicial conduct by conducting close supervision. It developed an interesting internal oversight reform program by conducting mystery shoppers. The leaderships of Supreme Court disguised themselves and visited selected courts, particularly the ones which have been reported to have violated code of conduct, to check in person. At present, in collaboration with the Ministry of State Apparatus & Bureaucratic Reform, the Supreme Court has also tried to improve and maximize the bureaucratic reform program to not only monitor courts under its jurisdiction but also to give reward and punishment

The Supreme Court recently also uses the fast and sophisticated development of information and technology to advance its oversight system. It is hoped that the use of

modern technology can improve transparency and integrity in the judicial system.

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