Chapter II

JUDICIAL REFORM IN INDONESIA, 1998-2006

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I. INTRODUCTION

During an interview with the press after his appointment as Chief Justice in 1996, Sarwata stated that the first thing he intended to do was to conduct internal (institutional) consolidation. When a journalist asked if he had any special message from President Soeharto, he replied, "*in this regard, I just want to seek his permission to embark on a consolidation process*".[1] He kept his promise. Up until the end of his leadership in 2000, the Supreme Court – and the Indonesian courts in general – were never more solid in maintaining the status quo. The appointment of Ketut Suraputra as acting Chief Justice in 2000, and who was followed by Taufik, brought about almost no discernible changes.

Internal reform in the judicial system only really commenced in 2001 with the appointment of Bagir Manan as Chief Justice. With wide-ranging support, particularly from newly appointed non-career justices[2] (selected from among the ranks of lawyers and academics), reformist Supreme Court justices and officials, civil society groups and donor agencies, slowly but surely the process of reforming the Supreme Court and the judicial system in general was set in motion.

External to the courts, many changes took place in Indonesia between 1998 and 2006. Among these were raft of constitutional amendments and changes to the legislation in the judicial sphere, and the handing over of responsibility for court administration from the executive to the judiciary. A lack of trust in the existing judicial bodies led to the establishment of a number of new institutions in the judicial field, including the Judicial Commission, the Anticorruption Court, the Commercial Court, the Human Rights Court, the Fisheries Court, to name but a few. All of these special bodies are characterized by the appointment of ad hoc judges selected from outside the judiciary to sit side by side with career judges. The era of reform was also marked by a

strengthening of the roles of civil society, the media and support institutions – all of which has produced its own dynamics with respect to judicial reform.

This paper will discuss the process of court reform to date in Indonesia. The purpose of the paper is to describe the general changes that took place in the court system between 1998 and 2006, and to analyze the extent to which the reform efforts have been successful, particularly in the Supreme Court (and, in some respects, the subordinate courts), in supporting democratization in Indonesia. In other words, it will try to assess the extent to which an independent, impartial, competent, predictable, accessible, accountable, efficient and effective court system has been established in Indonesia.

Among the issues that will be discussed in this paper are the following: the changes that have taken place at the constitutional level and in the legislation governing the judicial sphere; changes at the institutional level, including organizational culture, the efforts made to strengthen the independence of the courts and reduce corruption, collusion and nepotism; changes in the relationship between the courts and other state institutions (including the Judicial Commission), as well as the media, civil society, and donor agencies.

II. CONSTITUTIONAL CHANGES AND THE ONE-ROOF SYSTEM

One of the most fundamental demands of the Indonesian reform movement in 1998 was the wholesale amendment of the 1945 Constitution due to the fact that the country's basic law established a system of division of powers that was executive-heavy, thus facilitating the emergence of authoritarianism. The desired changes were clear: there had to be a stricter separation of powers and the adoption of a system of checks and balances. In the judicial sphere, the political elite sitting in the People's Consultative Assembly – who in reality were precisely the same politicians who had so loyally served the New Order – sought to accommodate the reform demands by issuing RI People's Consultative Assembly Decree Number X/MPR/1998, which stressed the need for the immediate separation of the legislative, judicial, and executive functions.[3]

The Supreme Court then issued a formal declaration on the importance of this People's Consultative Assembly Decree being put into effect. However,

the declaration focused solely on a number of issues that had long been bones of contention for the judiciary, namely: the need for the expeditious transfer of responsibility for organizational, administrative, personnel and financial management of the courts from the executive to the Supreme Court, or what has become known as the establishment of a one-roof system; the granting of the power of Constitutional Review to the Supreme Court; the need to restrict the types of cases that could be appealed to the Supreme Court, and the need for enactment of legislation on contempt of court.[4] The declaration in no way addressed the question of how the Supreme Court would respond to the various major challenges undermining the prestige and standing of the courts, such as corruption, collusion, and nepotism involving both judges and court officials, the poor quality and lack of consistency that characterized judicial decisions, the difficulty in enforcing the judgment, limited public access to the courts, and so forth.

In 1999, the administration of President Habibie established a working committee[5] to study and formulate strategies for the effecting of such separation (the genesis of the one roof system). Some time before the committee was established, members of the judiciary were threatening to go on strike to push for the implementation of the People's Consultative Assembly Decree noted above.[6] In the end, the working committee recommended that responsibility for court management be transferred from the executive to the Supreme Court, thus establishing the one-roof system.[7] As a consequence of this, the status of first-instance and appellate judges needed to be changed from that of civil servants to state officeholders.[8]

The Working Committee was fully aware that the establishment of a one-roof system had the potential to give rise to a situation characterized by "the tyranny of the judiciary", especially given the fact that the courts were riddled with corruption, collusion, and nepotism. Accordingly, the Committee also recommended the establishment of a Judicial Disciplinary Committee to oversee the conduct of members of the judiciary, to make recommendations on the appointment, promotion and transfer of judges, and to draft a code of conduct for the judiciary.[9] This proposal eventually formed the basis for the subsequent establishment of the Judicial Commission.

Almost all of the recommendations of the Working Committee were followed up on through the enactment of Law Number 35 of 1999[10] and Law

Number 43 of 1999, which in essence established the one-roof system and changed the status of subordinate court judges from that of civil servants to state officeholders.[11] This was a historic move, and represented a major victory for the judiciary, which had been campaigning for a one-roof system for many years previously.[12] It had long been believed -– including by practicing and academic lawyers – that the establishment of the one-roof system (and a change in the status of the judges) was an essential precondition for the creation of an independent judiciary as mandated under the 1945 Constitution.[13]

After the enactment of Laws Number 35 of 1999 and Number 43 of 1999, little further effort was made to bring about meaningful legislation reform until 2003-2005 when a raft of amendments to the Constitution and the legislation governing the judicial system were put on the statute books. However, the changes lacked creativity and appeared specifically designed so as to avoid addressing the fundamental issues undermining the dignity and standing of Indonesia's judicial bodies. Almost no discussion took place on what sort of courts Indonesians really wanted – for example, as regards to the status of the military courts or traditional/customary law courts in the Indonesian judicial system; the mechanisms for ensuring quality and consistency in judicial decisions; the need to create an accessible and efficient judiciary; the need for adequate support systems so as to ensure speedy justice; judicial and court accountability mechanisms; and so forth. There were insufficient safeguards instituted -– save for the stipulation in the legislation that a Judicial Disciplinary Committee needed to be established – to ensure that financial, organizational, administrative, and personnel management under the one-roof system would be capable of helping overcome the complex problems faced by the courts. Rather, the entire focus of the new legislation was simply the setting up of the one-roof system.

A. Amendment of the Constitution

The gradual process of amending the 1945 Constitution finally began to affect the judicial sphere in 2001. Three important changes were brought about by the amendments: *First,* the Chief Justice and Deputy Chief Justices of the Supreme Court would in future be chosen by, and from among, the justices of the Supreme Court themselves. *Second,* the establishment of a Judicial

Commission that would have the power to nominate appointees to the Supreme Court and other powers to protect and uphold the honor and conduct of the judges.[14] *Third,* the setting up of a Constitutional Court with the power to conduct Constitutional Review (that is, to strike down statutes that are repugnant to the Constitution), to decide on disputes between certain state institutions, and to hand down decisions in impeachment proceedings brought against the President and/or Vice President.[15]

Besides the positive changes brought about by the amendment of the 1945 Constitution, a number of problems also emerged due to the lack of an overall concept for the updating of the country's Basic Law. Instead, the approach that was adopted was one that responded to short-term problems and pure political lobbying, without being based on solid argumentation. It was not clear, for example, as to why the Judicial Commission was to be given the powers to nominate Supreme Court justices and other powers (that are primarily connected with oversight of judges), but not also other powers recommended by the Working Group on People's Consultative Assembly Decree Number X/MPR/1998[16] or based upon the other concepts discussed during meetings of the Ad Hoc Committee I of the People's Consultative Assembly Working Group, for example, the power to recruit all judges and to manage judicial transfers and promotions.[17] Why also was the Judicial Commission not charged with managing court finances and administration, as in the case of a number of other countries?[18] Nor is it clear why the Supreme Court Chief Justice and Deputy Chief Justices have to be selected by and from among the justices of the Supreme Court. If the objective here was to guarantee judicial independence, had the possible consequences of such an arrangement been fully thought out, for example, the loss of the checks and balances functions exercised by other state organs in respect of the Supreme Court,[19] or the possible emergence of splits in the judiciary over the election of the Chief Justice and Deputy Chief Justices?[20]

B. Amendment of the Legislation governing the Judicial System and Establishment of the Judicial Commission

As has already been touched upon, the main focus of the amendment of the Judicial Powers Law in 1999 was to support the establishment of the one-

roof system. However, this did not mean that there was a strong commitment, particularly on the part of the executive, to the speedy implementation of Law Number 35 of 1999. Although the legislation said that the process of establishing the one-roof system had to be completed within a period not to exceed five years from the date of enactment of the Law (article 1 (2)), up to 2002 there were no signs that such a transfer of powers was going to take place any time soon. The government argued that the process of setting up the one-roof system could only begin after the other statutes governing the judicial sphere, for example, the Supreme Court Law, the Public Courts Law and the Administrative Courts Law, had been amended so as to bring them into line with Law Number 35 of 1999. However, many observers were of the opinion that the real reason for the delay in establishing the one-roof system was the government's unwillingness to give up control over the courts and to eliminate a source of departmental funding.[21]

It was only at the end of 2003 that the House of Representatives and the government started to discuss the amendment of the legislation governing the judicial system. This was closely connected with intensive lobbying of the House of Representatives by the judiciary, including the holding of a meeting in a hotel that was attended by members of the House of Representatives, which ended with the legislators being presented with "attendance money".[22] Eventually, 2004 saw the enactment of a number of laws amending the legislation governing the judicial system. These amending laws were as follows: Law Number 5 of 2004 (which amended a number of articles of Law Number 14 of 1985 on the Supreme Court), and Law Number 8 of 2004 and Law Number 9 of 2004 (which amended Law Number 2 of 1986 and Law Number 5 of 1986. Law Number 35 of 1999 (and Law Number 14 of 1970) was replaced in its entirety by Law Number 4 of 2004 on Judicial Power. Then in 2006 Law Number 3 of 2006 on the Religious Courts was amended. As a result, responsibility for the management of all of the judicial bodies has now been handed over to the Supreme Court, with the sole exception of the Military Courts.[23] However, as explained above, the changes that were brought about by the amendments to the legislation failed to touch on the fundamental challenges facing the courts, but rather focused solely on the transfer of administrative powers to the Supreme Court.

It should also be noted that the amending legislation also contained a number of new departures, including the following:[24] *First*, the obligation to

incorporate any dissenting opinions in court judgments (article 19 (5) of Law Number 4 of 2004). This was a major step forward as regards to encouraging accountability on the part of judges as individuals; *Second*, the imposition of an obligation on each judge to prepare a written opinion on the case prior to the holding of deliberations with the other members of the judicial panel -- these opinions must also appear in the final decision (article 19 (4) of Law Number 4 of 2004). This requirement was deemed necessary by the House of Representatives as a way of ensuring accountability, even though the requirement has the potential to harm the judge's independence in deciding cases and to reduce the level of acceptance of judicial decisions by the litigants, which could in turn reduce public confidence in the courts. *Third,* an expansion of the Supreme Court's organizational structure (articles 4, 5, and 25 of Law Number 5 of 2004). Furthermore, there was an increase in the number of posts in career court registries (article 20). This was the result of lobbying by judges and non-judicial court officials.[25] *Fourth,* a tightening of the requirements for appointment of non-career Supreme Court justices (article 7(2)). This was the outcome of persistent conflicts between career and non-career justices.[26] *Fifth*, restoring the status of judges as civil servants rather than state officeholders (article 14(2) of Law Number 8 of 2004 and Law Number 9 of 2004). This showed a lack of consistency on the part of the framers of the legislation, and an unwillingness to relinquish control over the judiciary.

In 2004, the Judicial Commission Law was passed. Elaborating the provisions in the Constitution, this legislation provides that the Judicial Commission shall have the power to: *First,* nominate candidate Supreme Court justices to the House of Representatives; *Second*, supervise the conduct of members of the judiciary and to recommend sanctions against errant judges; and *Third,* propose the presentation of awards or other tokens of appreciation to high-performing members of the judiciary.[27] In many respects, the Judicial Commission Law deserves praise, and it clearly incorporated many of the ideas and concepts contained in the Judicial Commission Bill drafted by the Supreme Court in collaboration with civil society groups. It sets out the detailed mechanisms by which the Judicial Commission is to recruit Supreme Court justices and to oversight of judges and justices in a transparent, accountable, objective, and participatory manner.

III. INSTITUTIONAL CHANGE

Immediately after the fall of the New Order regime, various state institutions attempted to institute internal reform in order to, if nothing else, improve their public images. However, the Courts appeared to be unaffected by this trend. A Supreme Court insider recalls of that critical period, 1998-2000, that "nothing happened, nothing at all".[28] It is not surprising since Sarwata, Chief Justice during that period, was a New Order loyalist who also happened to be corrupt.[29] The appointment of Ketut Suraputra as acting Chief Justice in 2000, to be followed by Taufik, brought about almost no changes.

However, signs of a move in the direction of reform became apparent after the appointment of Prof. Bagir Manan – an academic and former bureaucrat and politician – as Chief Justice in 2001. With wide support, particularly from the newly appointed non-career judges (selected from among the ranks of lawyers and academics), reformist Supreme Court justices and officials, civil society groups, and donor agencies, slowly but surely the process of reforming the Supreme Court and the judicial system in general was set in motion. However, despite the fact that many reforms have been instituted to date, their worth and significance have been questioned by many observers.

A. Preparing Blueprints for Judicial Reform

One of the first major moves in the direction of change was the preparing of Blueprints for the reform of the Supreme Court and subordinate courts. This process lasted from late 2001 to 2003. The Blueprints set out short, mid, and long-term strategies for court reform (together with timetables and performance indicators), based on the results of assessments of the main challenges facing the courts. Four main Blueprints were prepared in a collaborative venture involving civil society groups led by the Lembaga Kajian dan Advokasi untuk Indepensi Peradilan (LeIP). The four Blueprints were as follows:

First, Blueprint for Supreme Court Reform, which included strategies for the reform of the Supreme Court's organizational structure, human resources management, case management, and financial management, as well as

strategies for the promotion of transparency, accountability, and independence in the Supreme Court.

Second, Blueprint for Reform of the Human Resources System in the Subordinate Courts, including the overhaul of the recruitment, transfer and promotions systems (including the assigning of judges), the remuneration system and the judicial evaluation system.

Third, Blueprint for Reform of Judicial Education and Training; and

Fourth, Blueprint for the Reform of the Case Management System, including the planning, management, and recording systems, as well as the budget control and accountability system.

Besides the four key Blueprints, a number of other Blueprints were also prepared by the Supreme Court in collaboration with civil society, and professional groups, including Blueprints for the Commercial Court, Anti-Corruption Court, and the Human Rights Court.

Although somewhat delayed, the Supreme Court established a Judicial Reform Committee in 2004. This committee was charged with implementing the Blueprints, including managing the process of change, coordinating with donor agencies, and so forth. Almost the entire leadership of the Supreme Court sat on the team, as well as civil society representatives.

However, the drawing up of the Blueprints and their implementation turned out to be two different things. Many constraints were encountered, including minimal support from some members of the judiciary and court officials. This lack of support was due to a number of factors, including outright resistance, the poor quality and performance of members of the judiciary and court officials, and the inability of the courts to properly manage change (as regards to leadership and determining priorities, among other matters).

B. Implementing the one-roof system

As stated earlier, the reform process produced a major victory for the judiciary in that power over the financial, personnel, and organizational administration of the courts was transferred from the executive to the Supreme Court through the establishment of the one-roof system. The objective was clear: such a change would strengthen the independence of the judiciary. In broader

terms, it would also help to improve the state of the judicial system so that it would be able to fulfill its role as an essential pillar of a democratic, law-based state.

However, it may be generally said that the courts lacked a clear concept about how the one-roof system would serve to bring about such an improvement. It turned out that Indonesia's courts were unprepared (and unwilling?) to respond to the many weaknesses and abuses afflicting them, as identified and described in the Blueprints and the recommendations for the bringing about of change.

In the end, we may conclude that the establishment of the one-roof system accounted for little more than a transfer of powers from the executive to the judiciary, and failed to do anything to address the real problems affecting the court system.

Organizational Structure and Staffing. A logical consequence of the transfer of additional powers to the Supreme Court following the introduction of the one-roof system was the need to expand the organizational structure of the Supreme Court. This opportunity was availed of by a number of Supreme Court officials to create a plethora of new posts in the Supreme Court, often without strong grounds or reasons for doing so. As a result, the Supreme Court organization has become bloated, with the Court currently employing more than 1,200 staff.[30] While the Chief Justice has stressed that the number of Court personnel must be reduced if efficiency is to be improved, nothing concrete has been done to bring about such a reduction to date.

Overstaffing in the Supreme Court is a reflection of one of the perennial problems affecting the government bureaucracy in Indonesia, including the courts. In the Working Paper on Judicial Personnel Management Reform and Needs Assessment of Jakarta Commercial Court, it was concluded that Indonesia has too many judges.[31] This gives rise to the following consequences: it will be difficult to achieve any significant salary increases, to increase the funding for the procurement of office facilities and training, and to exercise control over the performance and integrity of judges, and the consistency of their decisions. However, to date no efforts whatsoever have been made to respond to these problems. In fact, what has happened has been precisely the opposite,

with the Court is continuing to recruit significant numbers of new judges based on their delusion that the courts still need another 2335 judges.[32]

The increasing tendency to carve out new local government jurisdictions since the rolling out of regional autonomy has also produced adverse consequences as regards to the court system. Each new region demands that it be given its own court facilities. Due to a lack of strategic thinking, the Supreme Court regularly succumbs to these demands and appoints judges to the new courts, even though their caseloads are likely to be minimal.[33]

Recruitment, Transfer, and Promotion. It has long been common knowledge that one of the causes of low integrity and quality among Indonesia's judges is the weak career development system. To date, no significant changes have been made to the judicial recruitment, transfer and promotion system, although some ad hoc improvements have been made, such as the new policy that transfer and promotion decisions are to be made on a more collective basis by a committee made up of the Supreme Court leadership and officials (rather than by one or two people as was the case in the past under a system that was wide open to abuse). In addition, career track records are now starting to be used as the basis for making decisions on an ad hoc basis. However, it is still frequently the case that judges with low integrity and performance levels are promoted, and vice versa.[34] The most glaring recent example in this regard was the promoting of the former president of the West Java High Court, Nana Juwana, to the presidency of the Central Java High Court. Nana had only a few months before been sanctioned for improper conduct in the handling of a highly controversial case.[35] Another problem that makes it difficult to realize an objective and accountable judicial promotion and transfer system is the lack of adequate instruments for assessing judicial performance and quality. In many respects, the Supreme Court leadership in making promotions and transfers is highly dependent upon the recommendations of their staff.

Financial Management. To date, no significant changes have been made to the financial management of Indonesia's courts, particularly as regards to monies received by the courts from sources other than the state – for example, remaining funds left over after a case, among others. The State Audit Board (BPK) – the body responsible for auditing the use of state funds – has accused the Supreme Court of charging illegal/unofficial fees as it levies court costs

without any legal basis and lacks the necessary accountability mechanisms (as the Supreme Court cannot be audited by the BPK).[36]

C. Culture Issues: Openness and Non-Career Justices

One of the negative aspects of the Supreme Court, as well as Indonesia's other judicial bodies, is the all-pervasive culture of secrecy. Its also suffers from misconceived peer loyalty and abject deference to more senior colleagues. It is almost as if every snippet of information that comes the way of the court is "secret", or may only be made available to the members of a privileged circle.[37] Indonesia's courts are also loath to admit their weaknesses, and access to the media is very limited. In addition, there exists an almost patrimonial relationship between senior judges or members of the court leadership, and their junior colleagues.

However, these characteristics are slowly beginning to change with the entry of non-career justices and the appointment of Bagir Manan as Chief Justice. Among the steps taken by the Chief Justice to prove his openness and transparency was his decision to provide information to the media,[38] and to openly acknowledge the serious problems affecting the Courts – including corruption, collusion, and nepotism – a level of frankness that would have been unthinkable in the past.[39] In addition, the Chief Justice has frequently invited civil society and lawyers to participate in the efforts to reform the judicial institutions. This all tends to allow for healthier and more open exchange of ideas and views as between the judiciary and the public, and is very different from the situation that prevailed in the past.

In order to increase public access, the Court has been working for the last three years on improving its case information system (known as the Supreme Court Information System, or SIMARI) and publication of Court decisions on the Internet.[40] However, as with many of the Supreme Court's other reform programs, implementation has been slow. To date, little progress has been made on the SIMARI project. This is due both to weak project management and resistance to greater transparency. As a result, members of the public still have difficulty in accessing courts decisions, even through the Chief Justice has repeatedly stressed the importance of transparency in this regard.[41] On a positive note, however, one aspect that should be mentioned here is the

improvement that has taken place in the accountability of the courts, with the Supreme Court now publishing an accountability report every year. While initially this was the result of the obligation imposed by the People's Consultative Assembly on every state institution, the Supreme Court continued to produce its annual report even after this obligation was abolished.

The ad hoc judges and non-career justices elevated to the Special Court and Supreme Court bench tend to be more courageous in voicing their opinions than the career judges, provided, of course, that the ad hoc judges and non-career justices have not be co-opted. This greater willingness to go against the flow is apparent during both discussion forums and in their decisions, as reflected by the number of dissenting opinions handed down by these judges/justices.

As expected, the appointment of ad hoc judges to Special Courts and especially non-career justices to the Supreme Court met with significant resistance from career judges, who were willing to criticize their ad hoc and non-career colleagues both publicly and in private.[42] Some of the criticisms emanating from the career judges were well grounded, including charges that some of the ad hoc and non-career judges were unable to perform their judicial duties as expected due to both capacity and performance constraints. In addition, it can be argued that there is no guarantee that the non-career justices (as well as ad hoc judges) will be any more honest than their career-judge colleagues.[43] However, some of the criticism that has emerged is clearly due to unwillingness on the part of the career judges to accept the non-career "interlopers". This unwillingness is obviously based upon antipathy to the reform efforts being encouraged by the non-career justices, and the fact that the appointment of non-career judges limits the opportunities for the career judges to occupy key positions in the Supreme Court.

D. Corruption and Public Image

Corruption is one of the most intractable problems currently facing the Indonesian judicial system, including the Supreme Court. Although many judges and Supreme Court justices are honest and are characterized by the highest levels of integrity, the probity of many other judges and justices is open to question. In the past, it was almost unheard of for the conduct of a judge to be

impugned or for sanctions to be imposed for conduct unbecoming, despite the fact that it was an open secret that the courts were riddled with corruption. Even if a judge were to be punished for conduct unbecoming, the sanctions imposed would be very light. This situation was principally due to a lack of integrity on the part of court leadership (who have the authority to conduct oversight), and a misplaced sense of peer loyalty, or esprit de corps. In 1999, for example, a former Chief Justice and two ordinary justices of the Supreme Court were questioned by the Joint Anticorruption Task Force (TGPTPK) due to suspicions of their involvement in corruption. During questioning, they were accompanied by a Supreme Court Deputy Chief Justice and senior members of the Indonesian Judges Association (IKAHI) in the way that lesser mortals might be accompanied by their lawyers. Then, in an almost surreal development, the TGPTPK was declared illegal by the Supreme Court. One of the justices on the judicial panel deciding the case had been one of the same justices who had accompanied the judges who were earlier questioned by the TGPTPK.

In the period between 1998 and 2006, a great deal of public disquiet was recorded over judicial decisions in major corruption cases. Many defendants found guilty of involvement in such cases were only given derisory sentences. Strangely, however, if defendants were tried in absentia, the courts tended to impose extremely heavy sentences.

Table 1 Court Decision in Corruption Cases[44]

Defendant	Cases	State Lost (Prediction)	Sentence
David Nusa Widjaja	BLBL-Sertivia Bank	Rp. 1.29 trillion	1 year
Hendrawan Haryanto	BLBI-Aspac Bank	Rp. 583.4 billion	4 years
Beddu Amang	Goro	Rp. 20.2 billion	4 years
Handy Sunardjo	BLBI- SEAB Bank	Rp. 39.9 billion	10 months
Jemy Sudjiawan	BLBI- SEAB Bank	Rp. 39.9 billion	8 months
Hendra Rahardja	BLBI –BHS	Rp. 2.6 trillion	Life *
Bambang Sutrisno	BLBI-Surya Bank	Rp. 1.5 trillion	Life *
Adrian K. Ariawan	BLBI-Surya Bank	Rp. 1.5 trillion	Life *

Sources: Pusat Data Hukumonline, 2002

(Notes)*In absentia trial, defendants were outside the country.

However, it should be pointed out that many of these controversial decisions were handed down at the first instance, and were subsequently overturned by the Supreme Court. In the David Nusa Widjaja case, for example, even though the defendant was sentenced to only one year's imprisonment for embezzling 1.29 trillion Rupiah in the District Court, this was increased on appeal to eight years by the Supreme Court. In addition, the defendant was ordered to repay all the money he had stolen.

The lower courts have also frequently acquitted defendants in major corruption cases. However, it is difficult to prove whether this was the result of weaknesses in the case itself or corrupt judicial maneuvers. This is due to the fact that prosecution cases frequently suffer from fatal deficiencies,[45] as was evident particularly in some high-profile human rights trials.[46] Beside that, many decisions in the lower court which release the corruption defendant were overturned by the Supreme Court. In 2005, the Supreme Court sentenced 146 corruptors out of 162 cases that they heard.

It should be noted also that the tough sentences handed down by the courts in terrorism and drugs cases have been applauded by the public (many of the sentences were 20 years or more in prison).[47]

Since the onset of reform, a number of cases of suspected corruption involving members of the judiciary have emerged. One of the most controversial cases was that involving Manulife in the Commercial Court, with all of the judges hearing the case, particularly Hasan Basri and Kristi, being accused of accepting bribes. They were questioned and hauled before the Judicial Disciplinary Committee, where errant judges are given an opportunity to defend themselves before being removed from office. However, the Committee decided that the charges remained unproved, despite the fact that the evidence was overwhelming.[48] Another recent corruption case that caused quite a considerable degree of public disquiet was the one in which Herman Allositandi sat on the bench and Andry Djemi Lumanauw served as the court registrar. Both were found to have been involved in extorting money from the defendant in JAMSOSTEK (an Indonesian social security provider) case. Upon conviction each was sentenced to 4 and 4.5 years imprisonment, respectively, and fined Rp.

200 million.[49] Upset by his sentence, Lumanauw decided he was going to spill the beans to the press, saying that the crime he had been convicted of was nothing new in the South Jakarta District Court. "*It happens every single day here and normally involves a lot more money, but nobody is ever apprehended*," Lumanauw complained bitterly.[50]

Actually changes have slowly started to become apparent since 2002. The Supreme Court has instituted a series of measures to improve oversight of judicial conduct,[51] including the establishment of a special oversight organ, the adoption of a new oversight system, and the appointment of upstanding subordinate court judges and Supreme Court justices to the oversight committee. From the perspective of judicial discipline and the imposition of sanctions, improvements have also been made. In 2003, the Secretary-General of the Supreme Court replaced 64 echelon II and IV officials in the Supreme Court, and relieved 9 officials of their duties due to strong indications of unbecoming conduct.[52] The overall number of judges and court officials on whom sanctions have been imposed has risen sharply. Between 1990 and 1997, only 2 judges and 9 registrars were removed from the office. However, from in 2005-2006, the Supreme Court removed 6 judges from office and dismissed more that 10 court officials.[53] The total number of judges and court officials receiving sanctions in 2005 alone is 43.[54] In addition, in order to minimize the number of controversial decisions handed down by the courts in cases of particular public importance, the Supreme Court has also sat as a 5-judge panel on a number of occasions.

However, despite the improvements that have been made to date, the weaknesses afflicting the Indonesian judicial system are still pronounced. At a time when the public wants to see oversight of judicial conduct being prioritized by the Supreme Court and appropriate and uncompromising sanctions imposed on errant judges, the reality is that not enough is being done. The number of judges on whom sanctions are imposed is still insignificant compared to the perceived extent of corruption in our judicial system. The Supreme Court frequently appears to lack resolve in punishing errant judges found guilty of abuse of power (including involvement in corruption), with many of them only receiving slaps on the wrist in the form of transfers. In fact, some judges strongly suspected of being involved in corruption have received promotions.[55] The Supreme Court has also proposed a number of judges with poor track

records to the House of Representatives for elevation to the Supreme Court bench.[56]

IV. DYNAMIC CHANGES IN POLITICAL AND SOCIAL RELATIONSHIPS: THE COURTS AND OTHER ORGANS OF STATE

A. Relationships between the Executive, Parliament, and the Court

In line with the changes that have taken place in the state power structure, changes have also taken place in the relationship between the executive and the other organs of state, including the judiciary (Supreme Court and subordinate courts). The 1945 Constitution, as amended, now envisages a greater balance of powers between the different organs of state, particularly as between the executive and legislature. As a result of these changes too, the executive no longer dominates the Supreme Court and subordinate courts. In line with this new power constellation, charges of intervention by the executive (at the center) in judicial affairs are becoming increasingly less common.

During the administration of President Abdurrahman Wahid (or Gus Dur, as he is better known), the executive keenly supported the efforts to reform the judicial system. For example, in a move that was long overdue, Gus Dur's government significantly increased the salaries and allowances paid to members of the judiciary.[57] Gus Dur's government also proposed the names of many honest non-career judges to the House of Representatives for elevation to the Supreme Court bench. Furthermore, the Gus Dur administration did its best to have Benyamin Mangkoedilaga –[58] a judge widely admired for his courage– appointed Chief Justice, although this attempt was eventually shot down by the House of Representatives. There were no major conflicts between the executive and the judiciary during the Gus Dur administration, except for when the Supreme Court overturned Gus Dur's "decree" purporting to dissolve the House of Representatives.[59]

However, the relationship between the executive and the judiciary changed under the administration of Megawati Soekarnoputri, which openly criticized the judiciary on a number of occasions for attempting to thwart the government's law reform efforts (including the eradication of corruption, collusion, and nepotism). Megawati was of the opinion that the courts had too

much independence and lacked oversight, despite the fact that at that time responsibility for court personnel, including oversight was still vested in the executive.[60] Megawati's approach was mimicked by her subordinates in the Attorney General's Office, which became involved in trench warfare with the Supreme Court over which institution was primarily responsible for the fact that corruptors were getting off the hook so easily.[61] In addition, the government, through then Minister of Justice, Yusril Mahendra, appeared to drag its heels on transferring authority over court administration to the Supreme Court. This gave rise to charges that the executive was intent on strengthening its control over the courts, and maintaining the tradition of intervention in judicial affairs.[62]

On the other hand, Megawati's Minister of Justice also made a surprising move that drew praise from many sides by transferring 70 percent of the judges in Jakarta and replacing them with younger judges from the regions.[63] It was hoped that these judges from outside Jakarta would be relatively cleaner than the long-serving Jakarta judges. However, time eventually showed this hope to be misplaced. The Minister of Justice also took the initiative of engaging in collaboration with prominent law schools so as to encourage their students to apply for careers in the judiciary.[64]

Between 1998 and 2006, the relationship between the judiciary and the legislature has been generally positive. Subject to certain caveats, the active role played by the House of Representatives in improving the recruitment process for Supreme Court justices by having a "fit and proper test" has resulted in a more objective and transparent recruitment system.[65] In addition, the House of Representatives has been supportive over the last few years of the efforts to increase the funding provided to the Supreme Court. A number of Supreme Court funding proposals that were rejected by the government were subsequently resurrected by the House of Representatives and incorporated into the state budget. However, this may also be due to the fact that some House of Representatives members have interests (both political and professional) in ensuring a better relationship with the Supreme Court.[66]

While accusations of intervention by the executive in judicial affairs are becoming increasingly rare at the central level, the situation is very different in the provinces. In a 2002 survey of members of the judiciary, it was found that

the vast majority of attempts to interfere in judicial affairs were made by local governments or local legislative councils (Table2).

Table 2 Parties Threatening Judicial Independence[67]

The Parties	Percentage (%)
a. local governments	19.8
b. local legislative councils	12.8
c. president of the relevant court	9.9
d. military officers	9.5
e. political parties	9.1
f. officials of a higher court	7.4
g. central government	4.9

Source: Mahkamah Agung, Kertas Kerja Pembaruan Sistem Pembinaan Sumber daya Manusia Hakim (Jakarta: MARI, 2003).

There are a number of possible reasons for this somewhat surprising finding. *First,* there has long been a close relationship between local government (now including local legislatures) and the leaderships of local courts as both sides sit on MUSPIDA (official forums where important local issues are discussed, including legal affairs). In addition, local governments also provide the courts within their regions with funding and other facilities as a result of the lack of funding provided by the state and the poor conditions (including pay) under which members of the judiciary are forced to work. This situation often leads to a patron-client relationship between members of the judiciary and local officials. *Second,* the survey was conducted in 2002 during the rollout of decentralization/local autonomy, as a result of which the position and role of local government (including local legislatures) was significantly strengthened compared to the situation that prevailed previously (Table 1).

B. The Courts vs. the Judicial Commission and the Anti-Corruption Commission

Approximately one year after the enactment of the Judicial Commission Law (Number 22 of 2004), the President – acting on nominations forwarded to him by the House of Representatives – appointed seven members to the Judicial

Commission. These consisted of a former High Court judge, a former prosecutor, a former bureaucrat, a former House of Representatives member, and three academics. Not long after their appointment, the West Java High Court handed down its decision in the highly controversial Depok elections case. This decision clearly violated a number of both procedural and substantive norms, and was undoubtedly based upon assumptions rather than the facts.[68] A storm of controversy ensued. The Judicial Commission then stepped in to review the decision, and summoned the judges involved in the case to hear their side of the story. Shortly afterwards, the Judicial Commission announced that the West Java High Court's decision was misconceived and in flagrant violation of the law. As a consequence, it recommended that the Supreme Court suspend one of the judges involved. It also issued formal reprimands to the other four judges that heard the case.

The Supreme Court, however, did not agree with the Commission, of the fact that they could recommend sanctions based solely on a judicial decision. The country's highest court took the view that this exceeded the powers of the Judicial Commission and violated the principle of judicial independence as guaranteed by the Constitution and the relevant legislation. Accordingly, the Judicial Commission's recommendation was rejected by the Supreme Court.[69] According to the Chief Justice, the Judicial Commission was free to submit recommendations to the Supreme Court, but the Supreme Court was also free to reject these.[70] Similar conflicts between the Supreme Court and Judicial Commission have repeatedly occurred since then.[71]

The ill-feeling between the two institutions came to a head when the Judicial Commission recommended that the President issue an emergency law to reselect the entire Supreme Court bench. Following this, the Indonesian media for some time carried bellicose statements from the Supreme Court, Judicial Commission, and observers on an almost daily basis. The situation was further exacerbated by the leaking of the names of 13 Supreme Court justices who had been reported to the Commission by members of the public to the media – a number of these justices then threatened to report the Judicial Commission to the police.

The situation reached a climax when 31 Supreme Court justices challenged the constitutionality of the Judicial Commission Law in the Constitutional Court, which recently handed down its decision, finding that a number of the provisions

of the Judicial Commission Law were open to differing interpretations. As a result of this, the Constitutional Court held that Judicial Commission had engaged in courses of action that had violated the principle of judicial independence, and were therefore in violation of the Constitution. Accordingly, the Court struck down the offending provisions of the Judicial Commission Law allowing for oversight of the judiciary by the Commission, and recommended that the House of Representatives and government take immediate steps to amend the legislation. It does not mean that the Commission cannot conduct oversight, but rather that the jurisdictions and procedures for the conducting of this oversight need to be expressly spelled out in the amended Law.[72] Even though it has a strong legal and empirical ground, this decision was roundly condemned by many, including the media, some legal observers, and those NGOs that were firmly on the side of the Judicial Commission.

In the opinion of the writer, the one year in which the Judicial Commission has been in existence has not resulted in Indonesia's judicial system setting out on a better path. In fact, the exact opposite has been the case. Besides the obvious misconduct and misconceived decisions handed down by the courts and judges from time to time, the image of the courts has been severely dented by the unacceptable actions and statements of the Judicial Commission, which frequently went far beyond what was permissible under the law. As a result of the Judicial Commission's actions, judicial independence in Indonesia has come under renewed threat. Even more serious, the confidence of clean judges in the Judicial Commission – judges who should be the partners of the Commission in the effort to clean up the courts – has been eroded. The problem has been further compounded by the fact that some judges - including the leadership of the Supreme Court - who were initially supportive of the Commission, now vehemently opposed the Commission.

Conflicts have also arisen between the Supreme Court and the Anti-Corruption Commission. In 2005, the Anti-Corruption Commission attempted to get to the bottom of allegations of bribery involving three Supreme Court justices, including the Chief Justice. The allegations had been made by a defendant in a corruption case. Following an investigation that involved bugging and "entrapment", a Supreme Court official was arrested while soliciting a bribe from the defendant. The official said that the bribe money was to be paid over to the justices hearing the case, with part of it also to be paid to the Chief Justice.

The Anti-Corruption Commission then raided the offices of the Supreme Court justices involved, as well as the Chief Justice's office. As a result, the media was full of stories of bribery involving Supreme Court justices and the Chief Justice. However, the Anti-Corruption Commission was unable to come up with evidence implicating the Supreme Court justices, let alone the Chief Justice. However, the damage had already been done as a result of the inappropriate way in which the Anti-Corruption Commission handled the case.

V. CONCLUSIONS: EVALUATION OF THE REFROM AND ITS CHALLENGE

If I was to be asked to sum up the progress of judicial reform between 1998 and 2006 in one sentence, then that sentence would be as follows: "There have been a number of interesting changes, but these have been slow in coming, have lacked focus and have fallen short of addressing the key issues affecting the judicial system." There is still a long way to go before we arrive at a situation where the judiciary is capable of serving as an unshakeable pillar of a law-based, democratic Indonesian state.

Of course, it must be admitted that the process of reform is never easy or straightforward, especially when we are talking about institutions that have long been afflicted with fundamental weaknesses. The challenges faced not only encompass a weak statutory framework, poor working procedures, a lack of funding, and low salaries, but also extend to the poor quality and performance of human resources, unacceptable views/values of its judges and a negative organizational culture. In addition, the reform movement faces opposition from the pro-status quo group, who have long benefited from the abject state of our judicial system. Consequently, it would be clearly wrong for us to expect root-and-branch reform overnight.

In addition, the support that has been forthcoming for judicial reform from the state, professional associations, academia, the private sector, the media, and civil society has been inadequate. It is frequently the case that pressure for reform is misdirected or lacks proportionality so that the desired objectives are not achieved, or the image of the courts is further damaged, with the result that even those people working in the court system who are pro-reform end up feeling frustrated.

However, this is not to say that the bringing about of change in our judicial system is an impossibility. But it must always be remembered that there will be no quick fixes or dramatic overnight changes.

There are a number of key factors that are essential to ensuring the future success of judicial reform, which may be enumerated as follows:

A. Political Will and the Ability to Manage Change

The Supreme Court already has a number of Blueprints at its disposal to serve as guidelines for the bringing about of change. There is also political will on the part of a section of the Supreme Court leadership for further reform, although in some regards this political will appears inadequate. One major deficiency that has become apparent is a lack of change-management capabilities. This failure to set priorities, lack of support from capable and diligent working groups; weak project planning and monitoring, including in managing the donors; insufficient capabilities as regards to eliciting human resources support and funding; inadequate public relations capabilities (both internal and external), and so forth.

Up until a few months ago, it was frequently the case that proposals for urgent improvements to the system would be quietly shelved. Strategic plans that had already been approved and adopted would often not be acted upon or would be acted upon only after excessive delay, while less important plans would be given priority. Many reform programs are also overlapping, thus giving rise to inefficiency. In addition, the reform team established by the Supreme Court has not functioned as it should have, despite the fact that this team is supposed to act as the prime mover of reform.

Given the human resources limitations facing the courts in bringing about change, the involvement of civil society in the process – which has been encouraged by the Supreme Court – has played an essential role. This involvement now needs to be expanded to include professional associations. Their participation needs to be hands on, rather than being restricted to planning, so that court officials receive the support they need to effect reform in key areas, such as, for example, reform of financial and human resources management.

All of this must be accompanied by efforts to bring the judiciary and court officials onboard. Without wide-ranging support from the judiciary and court officials, then it will be difficult for the reform process to succeed in the long term. While these efforts are already being made, the Supreme Court sometimes appears less than determined, the result of which is that its reform targets often remain nothing more than targets.

B. External Support and Pressure

Given the limitations affecting our judicial system, it will be impossible for the judiciary to achieve all of the desired reforms alone. Accordingly, strong external support and pressure will be required, including from the state, professional associations, donors, the media, and civil society. As has been pointed out earlier in this paper, support and pressure from these sources to date has been inadequate. In addition, it is frequently the case that pressure for reform is misdirected or lacks proportionality so that the desired objectives are not achieved, or the image of the courts is further damaged, with the result that even those people working in the court system who are pro-reform end up feeling frustrated.

The government and the House of Representatives are in a position to put further pressure on the judiciary to bring about reform as a result of the fact that these institutions provide the money that keeps the courts open. Every process of change requires adequate funding, especially in the case of the Indonesian court system, where budgetary allocations for the operation of the courts have traditionally been abysmally low. However, increased funding and higher salaries for the judges and court officials without being accompanied by improved performance will only lead to the loss of the ability to exercise some form of control over the courts performance on the part of government and House of Representatives.

The House of Representatives and government also have the power to enact legislation and regulations. This power has an important role to play in judicial reform at the statutory level, including, for example, the enactment of legislation establishing more appropriate human resources management arrangements at the judicial level;[73] the adoption of rules guaranteeing public access to information held by the courts, regulations ensuring the speedy

dispensing of justice, including restrictions on the types of cases that may be appealed; regulations expanding the hearing of cases by a single judge so as to improve efficiency and judicial accountability; the amendment of the Judicial Commission Law, and so forth.

The role of the media and civil society is also of the utmost importance. Civil society, and in particular the media, has the power to elicit public support and pressure for court reform. In many cases, the pressure exerted by the media and civil society has encouraged judges to exercise more prudence in the performance of their duties. However, greater understanding of legal issues is also required on the part of the media and civil society so as to avoid the application of pressure in a disproportionate and misconceived manner.

Without the above mentioned improvements, it will be impossible for the judiciary to achieve all of the desired reforms. As Thomas Carlyle said "reform is not pleasant, but grievous; no person can reform themselves without suffering and hard work, how much less a nation".

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[1] "Interview with Sarwata: Saya Ingin Konsolidasi"'. *D&R magazine*: http://www.hamline.edu/apakabar/basisdata/1996/11/16/0030.html.22 October 2006.

[2] There were 9 non career justices appointed in 2000, which constitutes almost 20 % of the total justices in the Supreme Court.

[3] Chapter IV, Part C, People's Consultative Assembly Decree Number X/MPR/1998.

[4] Declaration of the RI Supreme Court regarding the Application of People's Consultative Assembly Decree Number X/MPR/1998 to the Supreme Court, Memorandum of Handover of Office of the RI Chief Justice (Jakarta, Supreme Court, 2000), p. 20-27

[5] This Committee was established by Presidential Decree Number 21 of 1999, and had a multi-stakeholder membership composition.

[6] "Hakim Mogok, Tak Etis dan Hancurkan Reputasi", *Kompas* (15 March 1999).
[7] Report of the Working Committee to Review the Application of People's Consultative Assembly Decree Number X/MPR/1998.
[8] Ibid
[9] Ibid, p. 54.
[10] See Article 11 of Law Number 35 of 1999 on the Amendment of Law Number 14 of 1970 on Fundamental Provisions concerning Judicial Power.
[11] Article 11 of Law Number 43 of 1999 on the Amendment of Law Number 8 of 1974 on Fundamental Provisions concerning the Civil Service.
[12] Between the mid-1950s and the start of the 1970s, the principal focus of judicial concern was the wresting of control over the organization, administration, personnel, and financial management of the courts, from the executive. In the 1970s, however, the judiciary had to accept defeat with the enactment of Law Number 14 of 1970 on fundamental provisions concerning judicial power, and Law Number 8 of 1974 on the civil service. These two Laws provided a fresh basis for the executive to retain control over court administration, and confirmed the status of subordinate court judges as civil servants. A full description of this process may be found in, inter alia, Sebastiaan Pompe, *The Indonesian Supreme Court, A Study of Institutional Collapse* (New York: Cornell Southeast Asia Program, 2005), Chapter 2-3 and Daniel S. Lev, *Hukum dan Politik di Indonesia, Kesinambungan dan Perubahan* (Jakarta, LP3ES, 1990).
[13] *Ibid.*
[14] The name "Judicial Commission" is used in the Constitution as a replacement for the "Judicial Disciplinary Committee" proposed by the Working Group and adopted by Law Number 35 of 1999.
[15] See article 24A (4), article 24 B (11), article 24 C (1) and (2) of the 1945 Constitution
[16] See Footnote No. 7
[17] Majelis Permusyawaratan Rakyat, "Buku Kedua (Jilid 3 A), Risalah Rapat Panitia Ad Hoc (PAH) I BP-MPR RI Ke-11 s/d 15, Masa Sidang Tahunan MPR RI Tahun 2001" (Jakarta, MPR, 2001).
[18] Wim Voermans, "Councils for the Judiciary in EU Countries" (Brussels: TAIEX, 1999).
[19] It would be interesting to conduct a thorough study to inquire into why the People's Consultative Assembly decided to abolish the powers of the President and House of Representatives as regards to the selection of the Chief Justice and Deputy Chief Justices without a proper discussion of the consequences. The situation was very different when they discussed the election of the President, the powers to be given to the House of Representatives, and so forth. One possible reason is that, in the opinion of the People's Consultative Assembly, the judicial power is unimportant and lacks strength, so that it can always be "fixed" should it begin to pose a threat.
[20] This problem arose during the election of Deputy Chief Justices in 2004.
[21] There were a number of reasons that are believed to have led to the delay. *First*, the possibility of gaining benefit from wielding administrative power over the courts, particularly if the Minister happened to own a law firm. In one example of this, the Minister rejected an agreement with the Supreme Court on

the transfer of Lalu Mariyun, the president of the Jakarta district court, who was believed to be corrupt, to a posting outside Java, apparently on account of the Minister's close relationship with the judge. Yusril later admitted that he once intervened in a judicial transfer decision for legitimate reasons. *Second,* the Department of Justice could use funding allocated to the courts to make up for funding deficiencies in other sections of the Department. *Third*, the Minister did not believe that the Supreme Court would be able to better administer its affairs than the Department.

[22] "Isu Suap Guncang DPR". Sriwijaya Post On line: http://www.indomedia.com/sripo/2002/07/11/1107aktual1.htm. 18 October 2006 and "Hakim dan Jaksa Lobi Uang Gotong Royong". Gatra On line: http://www.gatra.com/2004-0304/artikel.php?id=34699. 18 October 2006.

[23] The principal problem holding up the amendment of the legislation on the military courts is the unwillingness of the military to submit to civil jurisdiction in cases where soldiers commit civil crimes.

[24] Rifqi Assegaf, Mahkamah Agung dalam Gerak Perubahan (Jakarta: ILUNI FHUI, 2004), p. 250.

[25] According to information from court officers and officials, the court registrars and other officers engaged in intensive lobbying of the House of Representatives to ensure the enactment of this provision. The lobbying efforts included the payment of financial "incentives" to legislators.

[26] See Chapter III for more information on changes in organizational culture.

[27] Articles 13, 20, 21, and 24 of Law Number 22 of 2004.

[28] Pompe, loc.cit, p. 473.

[29] Pompe, loc.cit, p. 167

[30] Mahkamah Agung, Laporan Kegiatan Mahkamah Agung RI, 2002-2003 (Jakarta: MA, 2003), p.41

[31] Supreme Court, Working Paper on Judicial Personnel Management Reform (Jakarta, Supreme Court, 2002), p. 79-81 and Tim Pengarah Pengadilan Niaga dan Persiapan Pembentukan Pengadilan Korupsi, Penilaian Kebutuhan Pengadilan Niaga Jakarta (Jakarta: PT Nagadi Ekasakti, 2005), p.viii.

[32] Fakultas Hukum Universitas Gajah Mada, "Laporan Akhir Rekrutmen dan Karir di Bidang Peradilan. Komisi Hukum Nasional On line: http://www.komisihukum.go.id/files/hasil/a.2.pdf?PHPSESSID=aead76da78296361659200361196c9d9. 11 September 2006.

[33] Between 2002-2004, there are 30 new courts were propose to be established. Mahkamah Agung, Laporan Kegiatan Mahkamah Agung RI, 2003-2004 (Jakarta: MA, 2004), p.34.

[34] "Ada KKN dalam Mutasi Hakim Made Karna Dipindah ke PN Jakarta Pusat", *Sinar Harapan*, (25 July 2003).

[35] "Utak Atik Nama di Balik Mutasi Hakim". *Hukumonline:* http://www.hukumonline.com/detail.asp?id=8398&cl=Fokus. 18 October 2006,

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[36] "Biaya Perkara: Anwar Nasution dan Bagir Manan Berbeda Pendapat". *Kompas* (23 Agustus 2006).

[37] Rifqi S Assegaf dan Josi Khatarina, Membuka Ketertutupan Pengadilan (Jakarta: LeIP, 2005), Chapter III.

[38] This, however, can have adverse consequences as well, as sometimes the Chief Justice makes public things that should not be made public, for example, his views on a legal issue that may be currently before the court.

[39] In his speeches at formal events, the Chief Justice almost always refers to the need to eradicate corruption, collusion, and nepotism from the court system. See: Mahkamah Agung, Kumpulan Naskah Pidato Ketua Mahkamah Agung RI 2001-2004 (Jakarta: MA RI, 2004).

[40] This is a computerized system that is intended to allow members of the public to ascertain what stage a particular case has reached in the Supreme Court. At the present time, anyone wishing to access this information must visit the Supreme Court in person. Even then, the information available will rarely be up to date. The new computerized system is intended to allow members of the public to access case information by telephone or via the Internet.

[41] Mahkamah Agung, Kumpulan Naskah Pidato Ketua Mahkamah Agung RI 2001-2004 (Jakarta: MA RI, 2004), p. 36-37 dan 49-50 and Bagir Manan, *Sistem Peradilan Berwibawa: Suatu Pencarian* (Jakarta: MA RI, 2004), p.32.

[42] "Ketua Ikahi Harapkan Hakim Karier Dominasi MA". Hukumonline: http://www.hukumonline.com/detail.asp?id=7382&cl=Berita. 10 September 2006.

[43] There have been rumors that some non-career justices are also willing to accept bribes.

[44] Inayah Assegaf "Perbaikan Pengadilan Masih Butuh Setumpuk Kesabaran" Dalam Agus Priyanto (eds), Analisis Hukum 2002: Jangan Tunggu Langit Runtuh (Jakarta: Hukumonline, 2003), p.38.

[45] See also Mahkamah Agung, Sambutan Pembukaan Ketua Mahkamah Agung RI Pada Rapat Kerja Nasional Tahun 2005 (Jakarta: MA RI, 2005), p. 16-17.

[46] Lembaga Studi dan Advokasi Masyarakat, "Kegagalan Leipzig Terulang di Jakarta, Catatan Akhir Pengadilan HAM ad hoc Timor-Timur (Jakarta: ELSAM, 2003).

[47] Asep Rahmat Fadjar, "Dunia Peradilan Indonesia: Refleksi dan Koreksi" Dalam Agus Priyanto (eds), Analisis Hukum 2002: Jangan Tunggu Langit Runtuh (Jakarta: Hukumonline, 2003), p.74-73.

[48] Both of the judges accused of corruption had long had close relations with the lawyer for one of the parties. In fact, a child of one of the judges worked for the lawyer. In addition, during the investigation various other pieces of information emerged that cast doubt on the integrity of the two judges. One of them, for example, owned a house worth Rp 1.4 billion that had not been reported in his official assets declaration. Meanwhile, the other judges admitted accepting gratuities from litigants after their cases had been decided.

[49] "Herman Allositandi Divonis 4,5 Tahun Penjara". Hukumonline: http://www.hukumonline.com/detail.asp?id=15066&cl=Berita. 27 September 2006.

[50] "Divonis Bersalah, Djemi Lumanauw Menyusul Allositandi". Hukumonline: http://www.hukumonline.com/detail.asp?id=15067&cl=Berita. 27 September 2006.

[51] See for instance Chief Justice's Directive No. KMA/039/SK/III/2002 on rules for the receipt of guests and the Judicial Code of Conduct, 2006.

[52] "Terapi Kejut Mahkamah Agung", *Koran Tempo* (30 April 2003)

[53] "MA Berhentikan Enam Hakim". Koran Tempo Online: http://korantempo.com/korantempo/2006/09/06/Nasional/krn,20060906,10.id.html. 2 August 2006. Majalah Forum Keadilan (20 April 1998) in KRHN and LeIP, *Menuju Independensi Kekuasaan Kehakiman* (Jakarta: ICEL, 1999), p.124 and Mahkamah Agung, Laporan Tahunan Mahkamah Agung RI, 2005 (Jakarta: MA RI, 2006), p.33.

[54] Mahkamah Agung, Laporan Tahunan Mahkamah Agung RI, 2005 (Jakarta: MA RI, 2006), p.33.

[55] Information from a number of judges and Supreme Court justices. See also footnote No. 35

[56] See Koalisi Pemantau Peradilan, Catatan Seputar Calon Wakil Ketua MA (Jakarta: KPP, 2004).

[57] See Government Regulation Number 8 of 2000, Government Regulation Number 27 of 2001 and Presidential Decree Number 65 of 2001. Prior to the salary increases introduced by Gus Dur, the take-home salaries of the most junior and most senior judges were Rp. 510,300 (consisting of basic salary of Rp. 300,400 and allowances amounting to Rp. 210,000), and Rp. 1,405,000 ((consisting of basic salary of Rp. 1,075,200 and allowances amounting to Rp. 360,000), respectively. After judicial salaries and allowances were increased, the most junior judge received Rp. 2,000,000 ((consisting of basic salary of Rp. 1,350,000 and allowances amounting to Rp. 650,000), while the most senior judge received Rp. 6,000,000 ((consisting of basic salary of Rp. 3,400,000 and allowances amounting to Rp. 2,600,000).

[58] Despite of his track record, Benyamin Mangkoedilaga gained fame for finding on behalf of TEMPO news magazine in an action brought by it against the New Order regime in 1995.

[59] "Ketua MA: Gus Dur Keliru Soal *Judicial Review* Dekrit 2001". Sriwijaya Post Online: http://www.indomedia.com/sripo/2002/03/20/2003utama2.htm?prd=iis&sbp=&pver=5.0&pid=&ID=404&cat=web&os=&over=&hrd=&Opt1=&Opt2=&Opt3=. 13 September 2006.

[60] "Megawati Bantah Reformasi Tidak Berjalan". *Tempointeraktif Online.*: http://www.tempointeraktif.com/hg/nusa/jawamadura/2004/06/16/brk,20040616-08,id.html. 10 October 2006.

[61] "Koruptor Lolos MA dan Kejagung Saling Tuding". *Suara Karya* Online: http://www.suarakarya-online.com/news.html?id=133234. 10 August 2006.

[62] See footnote No. 21. See also the charges of intervention laid against the Minister of Justice in the Lawas case. "Kasus Lawas Sentil Yusril". Gatra Online: http://www.gatra.com/2001-10-15/majalah/artikel.php?pil=14&id=48442&crc=1672778905. 10 September 2006.

[63] "70% Hakim Jakarta Dimutasi". Media Indonesia Online: http://www.indonesiamedia.com/rubrik/berta/berta00may-70persen.htm. 22 October 2006.

[64] This new approach succeeded in encouraging more than 100 law students to apply for careers in the judiciary – something that had never happened in the past.

[65] Rifqi S. Assegaf "Refleksi *Fit and Proper Test* Calon Hakim Agung, Ketua dan wakil Ketua MA: Sebuah Pengantar" dalam Lembaga Kajian dan Advokasi untuk Independensi Peradilan, *Janji-janji Calon Ketua dan Wakil Ketua MA* (Jakarta: LeIP, 2000), p.v-viii.

[66] For example, many observers say that the GOLKAR party has a strong interest in maintaining good relations with the Supreme Court due to the fact that many of its members are involved in court proceedings. In addition, the fact that many legislators are also lawyers has given rise to charges that they are doing their best to "keep in" with the Supreme Court so as to help ensure successes in court.

[67] Mahkamah Agung, *Kertas Kerja Pembaruan Sistem Pembinaan Sumber daya Manusia Hakim* (Jakarta: MARI, 2003), p. 42.

[68] "Komisi Yudisial Rekomendasikan Pemberhentian Ketua PT Jabar. Kompas Online: http://www.kompas.com/utama/news/ 0509/15/132236.htm. 17 September 2006.

[69] However, the Supreme Court also conducted a closed-door review of the decision, and imposed sanctions on the judges involved. These sanctions took the form of transfers to desk jobs in the Supreme Court without the right to hear cases.

[70] "Pemberhentian Hakim Wewenang MA". Pikiran Rakyat Online: http://www.pikiran-rakyat.com/cetak/2005/0905/17/0107.htm. 22 October 2006.

[71] See, for example, the review of the Pontianak illegal logging case, and the recommendations for sanctions submitted by the Judicial Commission in the Depok, Raju, and Neloe cases. In the aforesaid illegal logging case, Judicial Commission member Irawadi Joenoes stated "We will immediately summon the judges and I have asked for the case file. We are extremely upset that this case ended in an acquittal. In the Neloe case, the Judicial Commission took the view that the court had misapplied the law by employed the State Treasury Law instead of the Anti-Corruption Law.

[72] Decision of the Constitutional Court, Number 005/PUU-IV/2006.

[73] Currently, the regulations applicable to human resources management in the courts are the same as those applicable to civil servants in general, even though those working in the court system have very different duties.