

## **Indonesian *judicial reform agenda***

**CONCERNS** over the performance of the Indonesian judiciary have grown recently. The latest example was the World Bank's inquiry into the ruling of the South Jakarta District Court to drop all charges against Djoko S. Tjandra, a main suspect in the high-profile Bank Bali scandal.

The judge's decision, saying the allegations related to a cessie transaction, should have been filed in a civil court rather than a criminal court, shows that the judiciary has indeed become the stumbling block in efforts to uphold the law and to recover the economy, particularly in the past two years.

The judiciary certainly needs to be reformed. Indonesia, a constitutional state based on the rule of law, has several conducive factors to develop an independent and accountable judiciary.

What is certain is that an independent judiciary is needed. The 1945 Constitution provides that judicial powers are vested in the Supreme Court and subordinate courts as regulated by laws (Article 24).

The Constitution emphasizes two important aspects of the judiciary. First, the judiciary is independent and thus free from government authority. Second, legislative laws prescribe the structure, jurisdiction, appointment and dismissal of judges.

However, the judiciary stands and operates within the political, social, economic conditions of its society. The post-New Order Indonesia has inherited a judiciary prone to external influences, mainly from political and business interests.

Former president Soeharto's regime used the judiciary to maintain his rule, which led to the judiciary avoiding cases which were controversial to the government. Consequently, sitting judges generally leaned toward "conservation" instead of changes -- the above mentioned ruling is an example.

With the formation of a new government resulting from a democratic presidential election last year, new expectations arose. The judiciary is now expected to play a significant role in keeping with the pace of political and economic reform. Ironically, the judiciary has not been reformed.

There are two urgent agendas on judicial reform that deserve further discussion, namely the "one roof" policy of courts administration, and judicial independence and accountability.

The transfer of court administration from the executive to the Supreme Court is obviously an urgent reform agenda. According to Law No. 35 of 1999, this has to be done in five years in 2004.

The executive's involvement in judicial governance became the channel of the government's intervention in the judiciary under the New Order.

Placing the courts' administration under a one-roof system, i.e. it is undertaken by the judiciary itself, is considered to be one of the suitable strategies to enhance judicial independence.

The administration of the courts would be under a single management with the Supreme Court at the apex.

But it is imperative that the transfer of courts' administration is conducted gradually and cautiously to avoid disrupting the existing process of implementing justice.

On the other hand, the new management of the Supreme Court should be able to carry out its regular tasks and be prepared to take on additional burdens.

Administration of courts includes supervision and control over administrative personnel, preparation of the court budget, maintenance of court buildings, recruitment of judges and the posting, promotion and transfer of judges.

There are two levels of administration, i.e. the central level and the court level. For the central level, it is obvious that Law No. 14/1985 on judiciary places the responsibility of the central judicial administration of the Supreme Court.

It follows the collective model with the responsibility in the hands of the judiciary as an institution -- or modeling the United States, Italy

and Portugal vis-a-vis Norway and Austria, which puts it in the hands of the executive.

At the court level, Law No. 35/1999 regulates the implementation of exclusive judicial administration. It gives the judiciary full responsibility for courts administration.

There are several ensuing problems to such a regulation. First, there are problems related to existing courts' administration and second, problems of administrative transfer.

Third, there are problems of adapting courts' administration to the existing Supreme Court administration and fourth, implementing new courts' administration with anticorruption measures.

Some steps should also be taken. First, the assessment of existing courts' administration and its problems, as well as the review of whether the Supreme Court is prepared to fully manage the courts' administration.

Second, the conducting of pilot projects on courts administration based on such an assessment and review. Third, the implementation of transitional measures prior to the full responsibility of court's administration when the Supreme Court is considered ready.

Fifth, the evaluation of early problems of the new administration and the formulation of proposals for action.

Enhancing greater judicial independence would be achieved through, among other things, independent court administration, the right to exercise a judicial review, adoption of a universal code of conduct, freedom from financial or business entanglement and sufficient salaries.

Judicial independence includes individual independence of a judge, in a substantive and personal nature, and collective independence of the judiciary. However, independence requires accountability.

Judicial accountability prevents the judiciary from exercising haphazard, repressive and even dictatorial roles under the guise of professionalism and independence. Judicial accountability for a new Indonesia requires a combination of a reasonable degree of political and societal responsibility, with a reasonable degree of legal responsibility. This method of accountability should improve the responsiveness of the judiciary to societal changes.

Issues related to judicial responsibility include political accountability of individual judges, or the judiciary as an institution. Here, judges and the judiciary can be held responsible, or be impeached, by the House of Representatives.

Second, societal or public accountability on individual and institutional basis. Judges and the judiciary are exposed to public criticism; they have to observe the open policy of judicial proceedings and exercise publicity of court decisions and dissenting opinions.

Third, legal accountability, whether exclusive or concurrent with the personal accountability of the judge. Exclusive responsibility lies with the institution where the judiciary is liable for damage caused by a judge's wrongdoing in exercising his public function.

Legal accountability of the individual judge means a judge can also be held responsible either on criminal, including anticorruption measures, civil or disciplinary grounds.

Judicial reform certainly requires supporting efforts to help the judiciary in administering its own affairs and in providing services to the public. An important element of this is legal information on the judiciary, such as through reports on the law and media coverage.

Further discussions on immediate judicial reform programs would have to include a timeframe; two other factors are political devolution, or decentralization, and anticorruption measures.

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