

Notes on Judicial Reforms in Indonesia
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Washington, DC, February 20, 2007

Professor Sirait, Professor of Law at the University of North Sumatra, presented Indonesian judicial reform as very much a work in progress. While there are many improvements on paper, she said that improvements in practice are harder to find.

Prof. Sirait began with noting the dramatically increased powers of the Supreme Court. New decrees and laws consolidate the court's authority over lesser courts. With these new powers, the court is working to maintain its independence and impartiality, guarantee access to justice, improve efficiency, and increase transparency.

In 2003, the Court created a plan for reform, and the next year international donors funded the creation of a reform team consisting of lecturers and leaders from non-governmental organizations. The team monitors implementation of the reform program and coordinates donor efforts and Government of Indonesia funding.

Sirait noted that numerous new laws had been passed, but that these laws were frequently vague or confused. Thus, new laws lead only to paper improvements, leaving police, prosecutors, and judges without clear guidance. This lack of clarity in the law then leads to ambiguous decisions and appeals to the Supreme Court.

So, she asked, are things improving? Some special courts have been established: the Juvenile Court in 1997, the Commercial Court in 1998, the Human Rights Court in 2000, the Corruption Court in 2001, and the Industrial Relations Court in 2006. There are also 13 independent commissions and 30 commissions at the executive level designed to improve legal and governmental processes.

However, she said, Indonesians are exhausted by these attempts at reform. Indonesians have become more critical of the judicial system at all levels, believing that is both too costly and difficult for average people and that it too often delivers quixotic decisions. People do not trust the system because these controversial decisions often occur in cases involving narcotics, corruption, and illegal logging. Ordinary citizens, therefore, try to resolve their legal problems at the police level—before their cases enter the court system.

Sirait then turned to a series of challenges facing the judicial system.

- Enacted reforms do not always contain adequate penalties for non-compliance. For example, judges are required to disclose their assets. If this disclosure is not complete or falsified, there are penalties; however, there are no penalties for not filing disclosures.
- The legal documentation system has yet to be put on line.
- The Supreme Court has 18,000 cases pending.
- There are serious challenges to the Corruption Court.

In closing, Sirait made a number of proposals to improve the system.

- Expand specialized court jurisdiction to ensure that cases are heard by competent judges.
- Clarify the role of the Judicial Commission to improve judicial oversight.
- Limit the number of cases eligible for Supreme Court review.

- Integrate the criminal justice system to foster cooperation among police, investigators, prosecutors, and judges. The current system, she argued, leads to duplication and secrecy.

All these proposals, she said, could be encouraged by pressure from outside the Indonesian system.

Discussion:

Q: Are all these commissions permanent?

A: Some are required by law. For example, the Competition Commission is required because business competition cases are complicated. The commissions tracking corruption are necessary to ensure that corruption cases are heard quickly. Some of the other commissions are unnecessary and it is very expensive to maintain them all.

Q: Have foreign assistance projects been important in helping the justice system and the Supreme Court?

A: Yes, they have been very active. On the third floor of the Supreme Court building, major donors (USAID, the Asia Foundation, the European Union, and others) have offices. They are right there. What have the donors accomplished? What are the most pressing needs remaining? There should be a needs assessment to find out exactly what is required to go forward. We welcome donors, but we all have to work together to identify the needs. Donors also need an “exit strategy” – when and how to complete their work.

In 2008, major players in the Supreme Court will retire. Donors should be considering projects that will assist the new people. Too often, projects create beautiful books, “but what really happened?”

Q: How effective has the Yudohyono administration been in fighting judicial corruption?

A: We need to focus on what happens when a corruption case gets to court. People look at what actually happens. Sometimes “there are unbelievable decisions ...it can be very political.”

Q: Is there systemic reform of the judiciary (helped by the executive branch)?

A: No, they are acting independently and results so far are “not convincing.”

Q: Can the law on disclosure of judges’ assets be corrected?

A: Political will from the Supreme Court could do it. If the Supreme Court members complied, lower judges would follow their example. There is a strong *esprit de corps* and the judges want to police themselves. There have been some good signs. For example, Pertamina, the state oil company, was fined and the Supreme Court upheld the fine.

Q: Have law faculties changed curricula in the past five years?

A: Yes, there have been many changes. We present students with the new laws, even at the undergraduate level. At the graduate level, we have courses for judges. After these programs, the judges feel quite confident. But it is difficult to see how to train all 6000 judges.

Q: Are there short courses for judges?

A: No, but some training goes on. Some judges take longer courses and then return to the bench, but the system does not encourage that.

Q: What about the role of *sharia* law?

A: I am not sure about the role of new *sharia* courts.

Q: In Indonesia, courts must deliver a verdict—they can not dismiss a case. Is there any other option?

A: I do know of a case in which a prosecutor refused to prosecute. The court needs to follow the evidence: if there is not strong evidence, how can you convict?