

Judicial Corruption: Where Are We Going?

Written by Todung Mulya Lubis



Frans Winarta's article on judicial corruption (*The Jakarta Post*, Oct. 31, 2005) lays much of the blame for the tragic state of the Indonesian judiciary precisely where it belongs - with those in the legal profession who work to undermine the judicial system. It is indeed a tragic state of affairs where lawyers can openly boast that they can guarantee a judicial outcome, and taunt their opponents with the inevitability that those opponents will lose, not because of the legal arguments, but because of the inadequacy of judicial salaries. It is a tragic state of affairs when two courts at first instance in two different parts of the country reach virtually word-for-word identical judgments, each totally absurd as a matter of jurisprudence, and where the only link between the two courts is the plaintiffs' lawyer. The odds of those identical judgments being genuinely arrived at are similar to the odds of a room full of young children accidentally typing the works of Shakespeare.

Yet all these things have happened in a group of cases in which I am involved.

We, like many other defendants in cases brought by businesses seeking to avoid their obligations, have taken comfort that, whilst the lower courts are riddled with corruption and we would inevitably lose at that level, at least with an appeal to the Supreme Court was a good chance that our cases would be heard on their merits.

Now that too seems doubtful. Allegations of corruption involving a number of senior justices at the Supreme Court caused a lot of anxiety among all justice seekers.

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The cost of corruption to the Indonesian economy is enormous. One of the elements that is invariably considered by foreign creditors in calculating their interest rates for lending into Indonesia is the reliability and transparency of Indonesia's judicial system.

Indonesia's current external debt is US\$136 billion. If, as a result of these problems in the courts, foreign creditors were to factor in an additional 1 percent into the cost of lending into Indonesia, the annual cost to Indonesia - based on its current debt - would be \$1.360.000.000. That is over \$3.5 million a day.

There have now been a number of instances where defaulting debtors have made use of the Indonesian court system simply to avoid meeting their obligations to international investors. This practice is attracting attention among the international investor community, and is particularly worrying since incidents like these can only serve to deter international investors, on whose investment Indonesia's continuing economic recovery relies.

A fair and independent judicial system is a cornerstone for a modernizing economy. An honest and trustworthy legal profession is a necessary prerequisite to an effective judicial system. Although the news that the Corruption Eradication Commission is now looking into the practices of the judiciary is welcome, without the support of a corruption-free legal profession, its work will be seriously undermined.

Indonesia is blessed with many highly intelligent, capable, expert and honest lawyers, some of whom I am honored to call my friends. If the rest of the legal profession could follow their example it would be an important step towards achieving the President's objective of an honest legal system where obligations are fairly enforced by an effective judiciary.