



General Assembly

Distr.: General
26 May 2010

English only

Human Rights Council

Fourteenth session

Agenda item 3

**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International NGO Forum on Indonesia Development (INFID), a non- governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Progress of independence judiciary in Indonesia*

Preface

Strengthening the Independence of the judiciary in Indonesia carried out since the amendment to the Constitution, the year 2002. There are three important things stipulated in the Constitution relating to the judicial authorities. First, the article states that judicial power is the power to conduct an independent judiciary to uphold the law and the judiciary. Second, judicial power is not only done by the Supreme Court, but also by the Constitutional Court, which is authorized to decide on the level of the first and last and final decision to review the Act against the Constitution, disputes the authority of state institutions whose authorities are granted by the Constitution, the dissolution of political parties and disputes election results. In addition, the Constitutional Court also decided opinions Parliament on alleged violations of the Constitution made by the president / vice president. Third, the Judicial Commission was formed, namely an independent agency authorized to propose the appointment of judges and other authorities in maintaining and enforcing honor, nobleness dignity, as well as the behavior of judges.

Since the amendment of the constitution, also formed several special courts under the Supreme Court, such as Human Rights Court, Industrial Relations Court, Commercial Court, anti Corruption Court and Court of Children. Even in 2009 the government enacts the Special Act concerning the anti Corruption Court through the Law Number 46 Year 2009. Typical for these special courts is the existence of ad hoc judges are judges who were recruited specifically because they have special expertise and high integrity. One factor that makes the performance anti corruption court is better than the district court in examining the cases of corruption, is due to factor the existence of ad hoc judges¹. However, there are still some obstacles in maintaining the judiciary independence in Indonesia.

Recruitment of judges in the hands of the House of Representatives through the political process in Indonesia

There are some different models of recruitment judges. Judges of Constitutional Court that consists of nine people each filed three people by the Supreme Court, the President and Parliament. Meanwhile Supreme Court Judges are elected by the Parliament of the names proposed by the Judicial Commission. While the ad hoc judges elected by the Supreme Court. Technically, the judge selection mechanism is also different. The filing of Constitutional Court Judges by the Parliament and the Supreme Court does not begin with a transparent recruitment process. These are different things with the submission by the president that begins with an open recruitment led by the Presidential Advisory Council. Meanwhile the selection of Supreme Court Judges candidate by the Judicial Commission conducted with the involvement of independent agencies and the nomination of ad hoc judges by the Supreme Court conducted by forming a selection committee that involves a group of law professionals and academics.

Justices recruitment process involving political institutions (Parliament) and President of the intervention is potentially occurred. The chosen Constitutional Court Judges must not only meet the existing criteria in the Act, but also must have the same views with the Parliament and the President, while one of the authorities is dissolved political parties.

* The Institute Ecosoc Rights and the Human Rights Working Group (HRWG), NGOs without consultative status also share the views expressed in this statement.

¹ Partnership for Governance Reform; Research on Anti Corruption Court, 2009

Similarly, Supreme Court Judges, in addition to escape from selection by the Judicial Commission must also be able to reach a majority parliament vote.

Judges verdict: the potential of abuse of independence principle

There are two different characters between the verdict of the Constitutional Court and Supreme Court. Constitutional Court ruling is final and binding, meaning there is no legal action again if the applicant does not accept the ruling. This character has advantages in terms of execution has speed but his weakness is that if the verdict is not neutral because the majority of constitutional justices from political institutions (the president and the parliament). While the verdict of Court below the Supreme Court is not final. There are stages of legal action began to appeal, cassation, judicial review.

Judiciary mafia and power of influence has hindered the independence of the judiciary.

One of the challenges in improving the independence of the judiciary is the high level of judicial mafia. To respond to the level of judicial mafia excelsior, has established the Independence Institution authorized to exercise such external oversight of the Judicial Commission, Commission Attorney, Police Commission and the Ombudsmen RI. Even in January 2010, President Susilo Bambang Yudhoyono forms Taskforce on anti Law Mafia. Since its establishment, the institution under this President has received 381 complaints. Of this amount, which is following up by sending points to the relevant agency for clarification are 35 letters. From the aspect of the mafia sector, three of the biggest complaints that most 106 cases of land disputes, 67 cases of corruption, and fraud and embezzlement as many as 42 cases. While the institutional aspects of the judiciary, as many as 150 complaints related to Supreme Court, High Court, and District Court, 127 complaints related to the Police, the Attorney General and the remaining 74 related to the others².

Law Mafia can be done both transactional and look like providing bribes to law enforcement officers and non-transactional, such as a power of influence. One example of judicial mafia transactional is Anggodo case which is performed by the recording conversations with several state officials have been heard in the Constitutional Court on 3 November 2009. In a taped conversation, It appears that Anggodo communicate with investigators in the police, the commissioner of Victim and Witness Protection Agency to arrange the legal process so that two leaders of Anti Corruption Commission (Bibit Samat Riyanto and Chandra M Hamzah) could be arrested by the police. Alleged mafia height is reinforced by the findings of the "Tim 8" that have a strong suspicion there has been a phenomenon that occurred in a case a mafia in policeman, prosecutors, lawyers, the anti corruption commission and Victim and Witness Protection Agency. Even in other cases, the mafias also overwrite the profession of notary law and the courts³.

Meanwhile, one example of judicial mafia influence in the form of power is the mafia in the trial Muchdi Pr (former Deputy V of Indonesia Intelligent Agency) in the case of Munir's murder, which took the form of intimidating the witnesses so that witnesses who incidentally are the staff of Muchdi Pr revoke his statement at trial. In addition, his staff assigned Indonesia Intelligent Agency (Budi Santoso) is also a witness, to overseas and when called upon in the trial there was no effort of Indonesia Intelligent Agency to help bring the witness. As a result, the judges have freed Muchdi Pr on December 31, 2008⁴.

² <http://news.okezone.com>, 14 of May 2010

³ Report and recommendations of Team 8, 16th November 2009.

⁴ Solidarity in Munir Case and National Human Rights Commission public discussion, 16th April 2010 at the Commission offices, among others, the results of examination conducted by and National

From 2005 until June 2009, the Judicial Commission had received 1586 complaints report related with alleged breaches of the code of ethics and code of judicial conduct. Of this amount, which follow by inspection there are 69 judges of files, where the number of judges who inspected as many as 195 people. Of the 195 judges under investigation, 29 people have recommended to the Supreme Court to be subject to sanctions. As for the types that are recommended dismissal from office of judges (2), during the two-year suspension (one), the suspension during the 1.6 years (1) of the suspension during the first year (5), the suspension for six months (six), not permanent suspension (2) and a written reprimand (12)⁵. Even as early as the Honorary Board of Judges was established (in 2009) consisting of the Judicial Commission and the Supreme Court, four judges have decided that Sudiarto (Head of Banjarmasin District Court), Ari Siswanto (judges in Rantau Prapat District Court), Benjamin Rafael Rizet (judge in Kupang District Court) and Aldhitya Kurniansa Sudewa (Judge in Muara Bulian District Court)⁶.

While the Attorney Commission (CC) only in 2008 received 424 reports containing complaints against the performance and behavior of prosecutors. After going through the process of checking and analysis, Attorney Commission has submitted 251 reports to the Attorney General for further action. From these reports, 169 related to the performance behavior of the prosecutor and the prosecutor amounted to 82 reports. In terms of location, the report's most lots of complaints directed against the prosecutor in the High Court of Jakarta as many as 88 reports, followed by East Java, 58 reports, 31 reports of Central Java, West Java, 21 reports and 17 reports of West Kalimantan⁷.

Based on data released by the National Police Commission in the first semester of 2009, there were 774 complaints. Of this amount, most of the complaints against the performance of detectives (ie 723 complaints). Jakarta District Police Office is the top with 166 complaints, 95 of East Java Regional Police and the North Sumatra Police 78. Still based on data national Police Commission, policeman is the biggest office which discharged its member. In the first semester of 2009, there were 169 members who are dishonourably discharged, while the year 2008, there were 246 personnel⁸.

Closing

Performance of the judiciary in Indonesia has not shown a high level of independence. This is evidenced by the high of the President of legislative intervention in the recruitment of judges, the difference of verdict character between Supreme Court and Constitutional Court and the involving the mafia law enforcement agencies themselves. Therefore, there are two approaches needed:

- Reducing the legislative intervention in the recruitment of judges and the President.
- Prevention action by strengthening both internal and external oversight.

Human Rights Commission, Solidarity in Munir Case and the Judicial Commission. Judicial Commission stated that there are violations against the code of conduct made by a judge. National Human Rights Commission stated that there are many irregularities in the verdict between Pollycarpus and Muchdi PR that injure the common sense of justice, so Commission requested that the case was reopened (re-trial). Read also www.repubika.co.id and www.sahabatmunir.com.

⁵ Judicial Commission Annual Report: 4 years Judicial Commission, 2005-2009

⁶ www.komisiyudisial.go.id, 14 Mei 2010.

⁷ <http://www.legalitas.org>, 14 Mei 2010

⁸ <http://nasional.vivanews.com>, 14th May 2010