

## BOOK REVIEWS / BUCHBESPRECHUGEN

*Simon Butt*, *Judicial Dysfunction in Indonesia*, Melbourne University Press, 2023, 372 pages, AUD \$40, ISBN 978-0-5228-7991-9

### The Path to Meaningful Judicial Reform

#### A. Introduction

The title of this book—*Judicial Dysfunction in Indonesia*—is provocative given its evaluative stance. It raises the questions: Why is the title so pointed and sharp, in particular on how severely does the author describe the condition until it is deemed dysfunctional? Beyond the title itself, this invites reflective questions, especially from an internal perspective, about how the judiciary should respond or raises other critical inquiries such as this one. In this context, this book is best understood as a critical perspective of a foreign scholar who is offering an evaluation of the judicial reform agenda in Indonesia, and the ongoing need for reform in the future.

Professor Butt has spent over two decades exploring the challenges and issues faced by the Indonesian judiciary. Understanding the book's content is much easier if we are already familiar with his previous work on judicial corruption and Indonesia's constitutional court.<sup>1</sup> It is not surprising that, especially in this work, he bases the foundation of his research on the Anti-Corruption Court, the Constitutional Court, and, of course, the Supreme Court itself.

Drawing from the complexity of the sources, the difficulty level in writing this book is quite high. The author must possess a comprehensive understanding of Indonesia's historical and current political and legal landscape and must clearly grasp the inherent legal culture of society, government, and especially the legal enforcers. At the same time, he must have a strong understanding of the intricate structure of the judiciary, its officials, and their primary duties, as well as the technical terminology commonly used not only in the criminal justice system but also in civil and constitutional law.

However, Professor Butt succeeds in meticulously depicting how the complexity of Indonesia's judicial system operates, not merely anchored in the law or existing legislation, but in practical realities that most people hardly understand. He also recognizes the authoritative sources required to explain and support his findings.

1 See among others, *Simon Butt*, *The Constitutional Court and Democracy in Indonesia*, Leiden 2015; *Simon Butt*, *Corruption and Law in Indonesia*, Oxfordshire 2012, and *Simon Butt*, *Indonesia's Anti-Corruption Courts and the Persistence of Judicial Culture*, in: Melissa Crouch (ed.), *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, Cambridge 2019, pp. 151-173.

## B. Quality, Effectiveness, and Specialization

This book is organized around three key themes: quality and judicial performance, judicial effectiveness, and specialized courts.

*Firstly*, Professor Butt discusses the debate surrounding how to conduct judicial evaluation. He criticizes the Supreme Court for placing greater emphasis on performance aspects of the court rather than the quality of the decisions themselves in Chapter 2. To emphasize the contrast in this account, Chapter 3 examines three significant Supreme Court decisions on high-profile cases that were widely reported in the media in the Miscarriages of Justice sections.

Professor Butt places the debate on measuring judicial performance at the forefront of discussion to emphasize its paramount significance, asserting that the ultimate aspect of judicial success is the quality of decisions, rather than other factors.

As clearly depicted in Chapter 2, the Supreme Court implements the Main Performance Indicators (Indikator Kinerja Utama) in every annual report, as stipulated in Chief Justice Letter Number 192/KMA/SK/XI/2016. These indicators include disposition rates, case resolution times, productivity, and the reduction of case backlogs as measures of judicial success. He acknowledges that the figures in the annual report, neatly arranged in tables, are important. However, these figures cannot describe the quality of the courts in a more complete and fundamental way.

He examines three critical decisions made by the Supreme Court to elucidate his earlier claims and concludes that the performance report cannot justify the subpar quality of these rulings regarding the sexual harassment case involving a Canadian teacher at Jakarta International School in 2015, the Kopi Sianida murder case in 2016, and the blasphemy case of former Jakarta Governor Basuki Cahaya Purnama, known as Ahok, in 2017. He finds that these decisions disregard fundamental rules of Indonesian evidence law, rely on evidence lacking probative value, incorporate questionable expert testimonies, and overlook seemingly valid defence evidence and arguments.

Evaluating judicial performance is complex, as it encompasses the fundamental principle of how the judiciary functions, its role in the constitutional and political landscape, and the methods of assessment.

According to Colbran (2003), judicial performance evaluation encompasses three kinds of accountability. *First*, traditional forms of judicial accountability include public scrutiny, media surveillance, appellate review, parliamentary accountability, professional review, academic commentary, the chief justice, and collegiate judiciary. *Second*, judicial attributes consist of legal ability, impartiality, temperament, diligence, communication, management skills, and settlement skills. *Third*, court and administrative performance measurement includes productivity measures, benchmarking, and time and motion studies. While the first

and second employ a qualitative approach, the third uses a quantitative one.<sup>2</sup> While the first involves outsider scrutiny, the second and third pertain to insider evaluations. Using this framework, Professor Butt pointed out that the Supreme Court too much focus on the court's administrative measures while almost neglecting the assessment of judicial attributes.

To address this challenge, he suggests reviving the *Eksaminasi* mechanism, a method for evaluating the quality of judicial decisions, to assess judges' competence and ability in the decision-making process.<sup>3</sup> However, he argues that several weaknesses of the existing rule of *eksaminasi* should be discussed further. Some crucial issues include the necessity for cases to be selected randomly, the priority of assessor quality, the fact that almost all cases in Indonesia are tried by three judges, complicating the identification of individual judges' quality, the limited amount of facts presented during hearings in written judgments of civil cases, and the need to ensure the accountability of the process, as it is not easily manipulated.

To elaborate this issue further, Professor Butt discusses the most intriguing aspect of this book concerning judicial corruption in handling cases in chapter 4. As noted, more than 22 judges have been arrested for bribery in the last 10 years (from 2010 to 2020). From these significant cases, he outlines patterns of judicial corruption involving the judges, detailing common methods of negotiating bribes, the process of delivering the bribe, and how it was transferred to the judges.

One aspect that is not discussed much by Professor Butt regarding judicial corruption is the involvement of non-judge officers or high-ranking administrative officials in the Supreme Court. While they may not preside over cases like a judge, these court officials influence how judges decide cases. This is an area in need of future research, and may explain another epicenter of the issue of judicial corruption. For instance, within the last five years, two secretaries of the Supreme Court were sentenced to prison for bribery cases. The Secretary of the Supreme Court occupies a highly strategic position, as this role includes authority over human resource management (including judges), which encompasses more than 32,000 personnel, as well as budget allocations and facilities and infrastructure across all courts. This authority provides unrestricted access to courts nationwide, spanning all judicial branches. Another high-ranking official, a former Head of the Judicial Training Center of the Supreme Court, was convicted of receiving a bribe for his role in connecting a defendant with the Supreme Court justices, so that the defendant could influence the decision of the judge in that case.

These high-ranking strategic positions in the Supreme Court are vulnerable to structured judicial corruption due to their significant influence and high accessibility to all

2 Colbran Stephen, *The Limits of Judicial Accountability: the Role of Judicial Performance Evaluation*, *Legal Ethics* 6 (2003), p. 56.

Circular Letter of the Supreme Court Number 1 of 1967 regarding Examination, Monthly Report, and Appeal Case List.

human resources in the first instance courts, high courts, and the Supreme Court. Given this, Professor Butt's assertion that the cases discussed in this book represent only the tip of the iceberg appears to be accurate.

*Secondly*, the next part of this book discusses judicial effectiveness, focusing on the complexities of implementing judicial orders in civil and criminal law in chapters 5 and 6, while highlighting shortcomings in the government's response to the judicial decisions of the constitutional court in chapter 7. He argues that all entities should cease following or applying statutory provisions that the Constitutional Court has invalidated. However, in practice, regulations tend to remain on the books and continue to be enforced until expressly revoked by their creators. The Court has no recourse in this matter.

The enforcement of court decisions is one of the pressing challenges faced by the Indonesian judiciary today. In criminal cases, this study identifies both internal and external issues. Internal problems include unfinished written decisions that judges announce publicly and inadequate supervision of verdict implementation. External factors involve convicted defendants absconding or evading imprisonment, at least temporarily, after the trial, as well as inmates paying bribes to receive special treatment while incarcerated.

In civil cases, internal issues include unclear written orders in the judge's decisions regarding sanctions for the losing party, the absence of parties during the execution process, and the ability and capacity of court officials responsible for executing judicial orders. External issues encompass a disrespectful party and the challenges involved in the takeover and vacancy of the disputed object.

Unlike in criminal cases, the responsibility for implementing the verdict in civil cases lies with the court. The Supreme Court pays attention to this by issuing the *Pedoman Eksekusi pada Pengadilan Negeri* (A Guidance for the Implementation of Court Decisions in General Court) in 2019.<sup>4</sup>

The problem is even more complex in reality. The implementation of judicial decision is not only expensive but also takes a long time sometimes. When I was assigned as a serving judge at a regional court, we found that one case process took more than two years to execute, and for vacating a house in a non-performing loan dispute, the winning party had to spend more than thirty million for a security account to the police, far higher than the court fee, which was only around one million rupiah.

Another case involved a party coming to court for execution approval on an inheritance dispute that had been pending for over 20 years. As Professor Butt describes in this chapter, the main problem lies in the decision itself. The disputed objects, which consist of thousands of meters and dozens of buildings, were not clearly verified. When we inspected the location of the objects, the position, size, and ownership did not align with the verdict, making execution impossible.

4 Directorate General of the General Court of The Supreme Court (n.d.), *Pedoman Eksekusi pada Pengadilan Negeri*, <https://badilum.mahkamahagung.go.id/86-publikasi/2820-pedoman-eksekusi-pa-da-pengadilan-negeri.html> (last accessed on 20 September 2025).

*Thirdly*, the final section of this book examines specialized courts, focusing on the Anti-Corruption Court and the Constitutional Court (chapters 8-11). During the Soeharto era, the independence of the courts was significantly influenced by the executive branch, and corruption became a prominent issue within the judicial process. The establishment of specialized courts after Reformasi 1998 occurred in this context.

Professor Butt poses several questions regarding this topic, such as why lawmakers decided to establish a specialized court for a certain jurisdiction rather than allowing existing courts to preside over it, why the specific model (which includes ad hoc judges) of the specialized court was chosen, and whether this strategy succeeds in reforming the judiciary as a whole.

According to this book, a quarter of the 22 judges arrested by the Corruption Eradication Commission in the last ten years are ad hoc judges (that is, non-career judges who work for a short period of time as a judge). For context, judicial recruitment in Indonesia is conducted with a closed recruitment system, which is the common type in civil law countries, where judges are recruited from fresh graduates of law school, following a bureaucratic structure with intricate administrative details. In contrast, open recruitment requires candidates from a broader field, commonly from senior lawyers, the private sector, and esteemed academics; this system is prevalent in common law systems. The significant involvement of ad hoc judges in bribery cases contradicts the initial expectation that the introduction of ad hoc judges would reduce corruption in the judicial system. Lawmakers have adopted the recruitment model commonly implemented in common law countries and combined it with the existing closed recruitment system to try to improve the quality of judicial appointments. However, according to Professor Butt, there is no evidence indicating that their expertise decreases or increases the quality of the verdicts provided by the court.

### C. Conclusion

The Indonesian judicial system has experienced significant fluctuations throughout its history. After gaining a meaningful opportunity to reclaim its dignity following the 1998 reformasi, some improvements have been made, including better case administration, enhanced court infrastructure, and improved public services; however, some fundamental issues persist. Recent legal developments in Indonesia reinforce Professor Butt's depiction of judicial dysfunction. These issues range from the arrest of two Supreme Court justices and two former high-ranking officials to dozens of assistants and staff of the Supreme Court, as well as the pervasive political intervention in the Constitutional Court during last year's presidential election.

Completed in 2022, this book offers a diverse and comprehensive examination of the current Indonesian judiciary from a doctrinal and positivistic perspective, providing valuable information along with rigorous analysis. What is discussed in this review is only a small part of the diverse topics that this study offers. This book is a significant contribution to understanding the most vulnerable aspects of judicial corruption practices

and highlights crucial areas of the judicial system as a whole that still need improvement. It represents the latest important work alongside the seminal contributions of Daniel S. Lev, Sebastian Pompe, Tim Lindsay, Mark Chamack, Adrean Badner, Melissa Crouch, Stijn Cornelis van Huis, and Dian Rositawati, among others, on modern Indonesia's judiciary.

Professor Simon Butt raises significant concerns that demand serious attention from all stakeholders: Parliament, the government, the Supreme Court, academia, and Non-Governmental Organisations. . Amid the decline of democracy and some indicators of political interference over the judiciary, the coming years will be more challenging for the Indonesian judiciary. The decline of public trust due to deficient integrity will become a ticking bomb for our national commitment to the rule of law if not addressed.

*Abdul Halim*

Judge at the Islamic Court of Bekasi, Indonesia; PhD student at the School of Law and Justice, University of New South Wales, Australia, Email: [abdul.halim@unsw.edu.au](mailto:abdul.halim@unsw.edu.au)

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## Making Room for Difference\*

### A. Introduction

In 2024, the New York Times published a list of hundred books which it considered the 'best' books of the twenty-first century.<sup>1</sup> The list sparked criticism, predictably, as the assumption of the 'best' centred primarily American stories told in English by mostly English speaking authors to the exclusion of all other vast human stories, cultures, and emotions.<sup>2</sup> The exercise, however, tells us two things: first, that the world is full of stories. And second, that, unfortunately, only certain kinds of stories often occupy our hearts and minds. Many stories remain untold because we simply do not bother about them. We see that the one living or telling the story is too *far* from us, is too *different* from us and we close our eyes and ears. But what would happen if we moved the centre and changed the

\* I am thankful to Prof. Rosalind Dixon and Douglas McDonald-Norman for their comments. Mistakes are all mine.

1 New York Times, The 100 Best Books of the 21<sup>st</sup> Century, <https://www.nytimes.com/interactive/2024/books/best-books-21st-century.html> (last accessed on 5 September 2025).

2 The Bookshop Inc, Not the NYT List: 100 Fine Books from Around the World (and Not Just the USA) of the 21<sup>st</sup> Century, <https://scroll.in/article/1070853/not-the-nyt-list-100-fine-books-from-around-the-world-and-not-just-the-usa-of-the-21st-century> (last accessed on 5 September 2025).