

## **Safeguarding Court from Economic Capture: Undue Influence of Wealthy Individuals and Powerful Economic Actors on Indonesia's Judicial System**

---

*Key words:* Court Captured, Undue Influence, and Economic Actors

### **Abstract**

Judicial systems in Indonesia have long been under the undue influence of powerful economic actors, especially a small number of wealthy individuals, giant companies, and business association groups. This has become common knowledge, but it is very difficult to prove, makes it a mere speculative, and become rumour. In this article, we try to examine the situation. We identify how undue influence can occur. A number of cases and several courts have characteristics that have a high risk of being under undue influence or even captured by large economic powers as mentioned above. Systematic measures are needed to protect and safeguard the judicial system from undue influence and court capture. This is very urgent as one of our efforts to restore the rule of law in Indonesia.

### **Introduction**

1. Currently, we see growing concern from the public, civil society organizations, experts, and United Nations agencies on the situation of undue influence of wealthy private individuals, corporations, and other powerful economic actors on judicial systems. More recently, the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Margaret Satterthwaite, invites Member States, national human rights institutions, other relevant State institutions, international and regional organizations, civil society, scholars, activists, and other interested individuals and organizations to provide written inputs for her next thematic report on the undue influence of economic actors on judicial systems. The report will be presented at the 79th session of the UN General Assembly in October 2024.
2. Unlike the issue of political interference and undue political influence on the court that has extensive research, attention to the disproportionate influence of judges or court by economic actors' interests is still very limited.
3. In Indonesia, previous in-depth research portrays more of the conditions of the political co-optation of the judiciary during the New Order military regime (Pompe, 2005; Lev 1990). After the new order ended, attention to undue economic influences was still very limited. The 2017 Judicial Commission Research, for example, reviewed economic factors only briefly and said they were limited to the financial conditions of judges, including salaries, remuneration, and

other supporting facilities. It did not even mention how economic forces outside the judiciary affect judges and court institutions. (KY, 2017)

4. There are some attempts to study the influence of economic actors from the angle of the judicial corruption phenomenon. Generally, this research does not focus directly on the role of economic actors but touches on the political-economy aspects or discusses economic influences in general. For example, about the response of civil society movements to the Jokowi regime's economic development orientation (Mann, 2023) or in discussions related to the role of the constitutional court in responding to lawsuits related to labour, environmental, and natural resource issues (Busch, 2019; Warburton, 2023).
5. There is also little attention from the judicial reformer community in Indonesia on the theme of undue economic influence. However, they keep maintaining their critical voice and conduct several initiatives to address the threat and actual interference of political actors on the independence of the judiciary.
6. The lack of research on this issue resulted in an absence of policy or regulation to safeguard the court and prevent the court from undue influence of economic actors, and wealthy individuals. It also affects the lack of understanding of the consequences of the court's capture of the rule of law, democracy, and human rights.
7. This working paper, therefore, aims to examine the issue of the undue influence of economic actors in Indonesia. The paper is developed into several sub-themes. It started by briefly discussing the concept, identifying the economic actors, form or practice, and area where the risk of undue influence is occurring, the consequences, and the ways for and including some recommendations to safeguarding the judicial system;

### **The Concept: What do we know about Court Capture and Undue Influence?**

8. How do we explain the phenomenon of court capture and undue influence? The literature review revealed that there are a range of studies and projects that focus on how politics affects specific judiciaries and judicial systems. However, studies that focus specifically on patterns of undue influence of economic actors on judicial professionals are limited. Those researchers also often focused on specific specialized courts, such as the Tax Court, The Commercial Bankruptcy Court, and even the Constitutional Court.
9. Cambridge Dictionary defines undue influence as a situation in which 'someone unfairly uses their power or authority to influence a legal decision'.
10. Meanwhile, specifically in politics, 'Undue political influence' means the manipulation of policies, institutions, and rules of procedure including, but not exclusively, the allocation of resources and financing by political decision-makers who abuse their position to sustain their power, status, and wealth. See also the definition of interference.
11. The concept of undue influence is different from 'Interference' which means the direct misuse of authority, political or otherwise, exercised to manipulate procedures and decision-making to ensure a specific and desired outcome. See also the definition of undue political influence.
12. Undue influence may be considered as another form of judicial corruption which means 'all forms of inappropriate influence that may damage the impartiality of

justice and may involve any actor within the justice system, including, but not limited to, judges, lawyers, administrative Court support staff, parties, and public servants'. (Siri Gloppen, 2014).

13. When the interference and undue political economy influence on the judicial system reaches the worst situation resulting in the collapse of independent of judiciary, we call it 'court capture'. Court capture refers to the condition of the court becoming controlled –partly or fully-- by both the political and the economic wealthy actors. It also refers to actions taken by corporations, economic interest groups, or wealthy individuals that risk undermining the independence of judges or the functioning of the justice system in the public interest.
14. The term of court capture was influenced by the concept of state capture, which was commonly identified as a form of grand corruption. Some observers view court capture as an ultimate form of judicial corruption. According to Transparency International, judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system.
15. According to a 2007 study by Transparency International, two main types of corruption are said to affect judiciaries prevalently: political interference in judicial processes by either the executive or the legislative branches of government and bribery. Through political interference, judges and court personnel face pressure to rule in favour of powerful political or economic entities rather than according to the law. Such interference is carried out through a variety of actions, including threats, intimidation, bribery, manipulation of judicial appointments, and pressure on salaries and/or conditions of services.
16. There are four key elements for undue influence: 1) vulnerability of judicial systems. It could be its financial dependency on economic actors 2) the influencers, in this context are wealthy elites, groups, and corporations and it's all intermediary and or agency; 3) form and evidence of tactic. The common form may traditional form of corruption such as bribery (direct and indirect) and to some extent may use more coercive acts, violence, and fatality acts; 4) the result. The common result is a favourable judgment and treatment or services.
17. Undue influence may come from the imbalance of power within the relationship which one party dominates another. A presumption of undue influence will arise where certain types of unequal relationships exist. Judges may be vulnerable to their surrounding circumstances such as the loyalties of judges to political, social, and cultural organizations. Judges are also vulnerable from any kind of patronage.
18. Judges, especially in areas where economic activities are enormous are vulnerable to direct forms of judicial corruption such as Bribery in the form of cash, gifts, or hospitality, including sexual favours, dining, entertainment, and holidays abroad.
19. Form and evidence of tactics used to undue influence may take an insidious form of corruption like favouring a particular company, or law firm, close association with selected companies, or law firms, and the promise of opportunities after retirement from either government sources or public corporations, or consultancy work from law firms.
20. There are levels of undue influence. 1) Minor undue influence; 2) normalization of undue influence; and 3) Legalization of capture means an ultimate court capture through legislation making the court fully co-opted by political and economic power.
21. Bribery in the form of cash, gifts, or hospitality, including sexual favours, dining, entertainment, and holidays abroad, has been reported as a direct form of judicial

corruption. Favouring a particular law firm, close association with selected lawyers, the promise of opportunities after retirement from either government sources or public corporations, or consultancy work from law firms are the most insidious forms of corruption.

22. The judiciary may be subject to undue influence by particular economic interests in many motives. Among of them, guaranteeing impunity of wealthy elites is one of the motives of undue political and economic influence over the judiciary.  
(Basel Institute and IBA)

### **Who are Powerful Economic Actors? And how big their risk? The Influencer**

23. Economic actors are certainly very broad, but this study will limit its scope to the aspect of control or powerful economic actors. They include national and international corporations or companies, the richest people or economic conglomerates, international financial institutions, or certain corporate associations.
24. This study also includes other actors who act as intermediaries or become intermediaries, agents, and nominees of wealthy economic entrepreneurs, including in this case legal professionals such as lawyers, tax consultants, and notaries.
25. Wealthy Indonesian entrepreneurs have very great influence and have a high risk of influencing or abusing their influence in the justice system. This is because, in addition to having capital power, they also have dual positions as political rulers.
26. Currently, the dividing line between political and economic rulers in Indonesia is increasingly blurred and this has been happening for at least the last 5-10 years, as the position of the oligarchs in the political and economic arenas becomes increasingly central. The employee and corporate background occupy more than 50% of the seats in the parliament.
27. The economic actor who captures the court may come from a Law Firm. It is not necessary for big law firms. It can come from malls with specialized lawyers who are well known as intermediaries of wealthy individuals. Some law firm and rich lawyer is known publicly to offer and provide scholarship to judges;
28. Economic interest groups like business associations also have a strong influence on the judicial system. Despite no clear, evidence that transnational corporate actor and their legal advisors driving the creation of new dispute resolution processes or remedy frameworks that undermine human rights protections. However, there is a strong public perception that some business association creating remedy mechanisms that undermines human rights protections. For example ISPO and other frameworks.
29. Indonesian super rich, especially local oligarchs have significant influence and risk to local court and overall judicial actors, including law enforcement agencies.

### **How and where the economic actors capture the court. The scheme to capture and control the judicial system**

**1) Vulnerability of judicial systems. It could be its financially dependency to economic actors**

30. There are studies shows the vulnerability of judicial systems in Indonesia. Previous research revealed that judges are vulnerable to its surrounding circumstances. (KY, 2017)
31. Financially, the court relatively dependent to the executive power in Indonesia. The courts are dependent on government for appropriating funds necessary to carry out the work of the judiciary.
32. Currently the salary of the judges in Indonesia is relatively small compare to other professional. Following the increase salary of the judges, there is no clear evidence show more independent judges.
33. Judges working in remote areas are economically vulnerable since the expensive cost of transportation, accommodation, and logistics. Even though there has recently been special budgeting and allowances for judges working in remote areas, they still face economic vulnerability. For example, in the case of judges at the Mimika District Court, they are known to have obtained and used housing facilities and other facilities provided by the company. Furthermore, Judges who work in remote areas are also vulnerable regarding security.
34. Judges have political independence, but that independence does little to shield the court from private influence.
35. Constitution of Indonesia, UUD 1945, provide guarantee to the independent of judiciary through (1) the

**2) Scheme and tactic to capture, control and undue influence the Judiciary**

36. How powerful and wealthy elites exercise undue influence on judiciary? There are various forms of scheme that corporations, economic interest groups or wealthy individuals may undermine and capture the independence of judges in Indonesia. It starts by creating economic and political dependency or using traditional classic economic capture, for example bribery, gratification, revolving doors, into more cultural capture by using cultural and political influence persuasively association to organizations, ideology, racial background, religious organizations, etc.
37. There are some reports that Judges may be captured by threat and more coercive actions like violence. Some judges may become a hostage for corruption, fraud, and sexual scandals. In Indonesia, there have been several cases that have threatened the lives of judges who handle sensitive cases related to power. Several decades ago, a Supreme Court judge was even assassinated.
38. Judges may face pressure from political elites or powerful business interests, which can impact their impartiality. In a system where political connections matter, judges may feel compelled to favour influential parties.
39. Wealthy economic actors may buy the judges and court long before the actual cases or trial where public has paid attention and concern on the court decision. The connection of judges and wealthy individual or groups may be built since the early stage as a judge and even before become elected or selected as a judge. It has occurred by for example by giving the scholarship to the judge or the individuals.

40. It is also understanding that the form of undue influence to judicial system by the wealthy is occurred indirectly and or via intermediary. It can be occurred through professional legal enablers –like lawyers -or other agents.
41. Informal networks and more cultural connection can be used by the wealthy elites to undue influence the judges. Undue influence through closed informal networks representing particular economic or political interests: Informal networks can span public and private sectors and operate across government, business, politics and judicial systems. Like in some countries, there exist informal social networks that may be based on kinship, ethnicity or other types of particular connections, such as where one was educated. Informal networks are not inherently corrupt. However, their present means there is a potential risk that individuals of influence can, through their networks, penetrate judicial systems with the intention of selectively influencing the outcomes of cases. Alternatively, it may be that the membership of an informal network means one non-member of judicial professional is treated discriminately than another who is a member.
42. Undue influence through closed informal networks representing particular economic or political interests: The influence of informal networks can extend beyond undue influence and undue political influence to direct interference. Where such informal networks are particularly strong, members of those networks may seek to directly intervene in the judicial selection process or in judicial decision-making to ensure particular interests – political, commercial or social – remain protected. Although this pattern may take different specific forms, where political and economic power is concentrated and monopolized by informal networks, it is often the case that strategic appointments embed individuals in the judiciary who perform a function as ‘gatekeepers’ to those in power. For example, informal networks of political and business interests may work together to deliberately manipulate political, business and legal structures and appointments to preclude any potential opposition from securing access to positions of power and influence. As with undue political influence, this can be done by strategically appointing regime insiders, including to high positions in the judiciary, but in this case with the expectation that they can be and will be directed to make decisions that will guarantee protection and impunity of those in power.
43. Undue influence through appointments based on particular but transparent criteria: Key appointments are controlled, either directly or indirectly, by powerful actors and openly reflect practices of nepotism or other forms of favouritism. In such cases, accountability tends to be weak and therefore, although such instances may be openly identifiable and their impact on judicial performance evident, there are limited mechanisms to circumscribe this type of political interference. Examples of such practices would be found where a politician may exert pressure on a judge who is due to be re-elected, encouraging the judge to make unduly favourable decisions on matters that have political resonance, or in highly autocratic regimes where high-level nepotism is the norm (eg, members of the president’s family are openly appointed into high-level positions in government) and key state institutions, such as the prosecutorial agencies, are openly and effectively captured by private interests
44. In fact, undue political influence on the appointment and promotion of judges, their tenure and working conditions have been highlighted in the literature as one of the biggest risks at the institutional level.

45. Funding for education and trainings of judges---In the US, There have been a wide variety of reports regarding special interest sponsorship of judicial program.
46. Corporations, economic interest groups or wealthy individuals may play an inappropriate role in judicial selection and promotion. So far, there is no clear evidence on that in Indonesia.
47. There is no clear evidence that judges are improperly motivated in a way that undermines their independence, or are perceived to be improperly motivated, by incentives related to their career prospects after their retirement or exit from the judiciary.
48. Undue influence of powerful economic actors may take a form of “revolving door.” Former judges become consultant of company. The revolving door phenomenon, where former judges transition to careers as lawyers or consultants, can significantly undermine the independence of the judiciary in several circumstances. Conflicts of Interest may happen as a result of this scheme. When former judges represent clients in cases they once adjudicated or were involved in, it can create conflicts of interest. This can lead to perceptions of bias or favouritism, eroding public trust in the judicial system. In addition, Ex-judges often maintain relationships with current judges and legal professionals. This can create an environment where personal connections influence judicial decisions, compromising impartiality.
49. There is no clear evidence that economic actors promote and control systems of arbitration, denying people and States access to independent tribunals to determine their rights and obligations
50. The wealthy economic actors may distort the function of justice system by the use of strategic litigation and strategic lawsuit against public participation and use strategic litigation to block law reform. Tax Justice Networks, for example, categorized the lawsuit of beneficial owner registries as an example of form of the action of wealthy individuals to undermine the court. (TJN 2024)
51. Judges frequently engage with corporations, economic interest groups or wealthy individuals in ways, which risk undermining judicial independence, for example, at private donor retreats or members' clubs where wealthy private actors are given a special opportunity to mingle with judges. Sport clubs –Golf, Tennis -- have long been suspected as a place to lobby judges including the Supreme Court justices. (ICW, 2008)
52. Identifying when a court has been captured is a highly speculative endeavor. The capture of the judicial system by wealthy individuals and big companies often involves a combination of financial power, political connections, and lobbying. Here are some key mechanisms through which this influence manifests:
  - a. Corruption and Bribery: Some companies may resort to bribing judges or court officials to secure favourable outcomes in legal disputes. This undermines the rule of law and can lead to decisions that prioritize corporate interests over justice.
  - b. Political Connections: Wealthy companies often have strong ties to political elites, which can influence judicial decisions. These connections can facilitate the manipulation of legal outcomes, especially in cases involving regulatory or environmental disputes.
  - c. Legal Manipulation: Companies might exploit loopholes in laws or engage in strategic litigation to delay or obstruct legal processes. This can involve filing excessive lawsuits or appeals, overwhelming the judicial system and making it difficult for less powerful entities to seek justice.

- d. Regulatory Influence: Some companies engage in lobbying efforts to shape laws and regulations in their favour. By influencing the legislative framework, they can create conditions that make it easier to manipulate judicial processes.
- e. Public Relations Campaigns: Companies may employ aggressive PR strategies to sway public opinion, potentially affecting the judiciary's perception of a case. This can create pressure on judges to rule in favour of corporate interests, especially in high-profile cases.
- f. Weaknesses in Judicial Oversight: The lack of robust mechanisms to hold judges accountable can lead to an environment where corruption thrives. Insufficient oversight allows companies to exploit the system without fear of repercussions.

53. These factors contribute to a judicial environment where corporate interests can dominate, raising significant concerns about fairness and equity in legal proceedings.

### **3) Riskier Areas of undue economic influence**

- 54. Type of case and dispute that risk of undue Influence of big business such as: commercial and investment dispute, labour dispute, licensing in plantation, forestry and extractive sector.
- 55. Environmental case, especially in relation to mining and plantation business sector is fragile from undue influence.
- 56. Labour dispute is also risk with undue influence of giant corporations. In some regions where the big business exist, local labour court is extremely under influence of the economic interest of the companies.
- 57. There are many doors for the economic actors, groups and wealthy individuals to interference and undue influence the judicial system, such as:
  - a. the process of judge selection and recruitment of the judges
  - b. the process of judgment making or case decision –
  - c. lucrative services, including gratification and bribery to create economic dependency
  - d. Membership in sport club, medical insurance, etc.
- 58. Type of relationship between judicial actors and wealthy powerful economic actor in Indonesia may come in form of imbalance of power relationship and economic dependency.
- 59. There are also some regional courts that very vulnerable from undue influence of local oligarchs, wealthy elites and big firms. The courts where mining and plantation companies operated may face significant challenges to maintain their independency, especially when they are also received some facilities from those powerful economic actors.

### **3) Case Study: examples evidence of the allegedly Undue Influence cases**

#### **3.1 Commercial and Business Dispute**

60. The Commercial Court in bankruptcy and debt restructuring disputes is suspected to be very vulnerable to being under the undue influence of wealthy individuals and companies. The Judicial Commission some time ago also confirmed the many complaints and reports from the public regarding the integrity of commercial court judges. According to KY data, in general, in the last four years, reports on Commercial Court judges have shown a downward trend, where in 2020, the KY received 170 reports, in 2021 as many as 80 reports, in 2022 as many as 60 reports, and in 2023 until August 24, the KY had received 41 reports. (Komisi Yudisial, 2022)
61. There are some cases that public perception has strong to the indication and allegation of the commercial court under undue influence of wealthy elites. The cases show some pattern like local protectionism, irregularities and weird decisions, favouritism to wealthy individuals and corporations.
62. Local favouritism and protectionism through court decision is an example of undue influence of wealthy local elites on judiciary. The phenomena of local favouritism are not only occurred in Indonesia, but also in other country, for example in China. In China local court has experienced in giving a decision in favour of local company and local wealthy individual. In Indonesia, the famous example for this pattern is the way of Indonesian wealthy elite-Bakrie Family seek protection in Indonesia Court to avoid bankruptcy and debt restructuring. Since 2014, companies linked to the family have defaulted on billions US dollars in debt issued under US and Singapore jurisdiction. The family have refused to deal with international arbitration other than in Indonesian commercial courts. Indonesian commercial courts ignored the contractual arrangement to settle disputes in US or Singapore courts, and issued rulings that favoured the Bakri's company. This has helped the Bakri's company avoid bankruptcy, and forced creditors to accept debt-to-equity swaps on terms that effectively means the entire debt is removed.
63. In 2014, the administrator in PT Bakrie Telecom's PKPU rejected a \$380 million claim by The Bank of New York Mellon as trustee of USD bonds issued to international investors. The administrators instead recognized intercompany claim in respect of the same debt and allowed the debtor's owned SPV to vote the claim on the basis that PT Bakrie Telecom's direct creditor is the SPV who issued the bonds, not the trustee and/or bondholders. Other example is the Sinar Mas which defaulted on US\$ 13.9 billion in debt in 2001.
64. One of Indonesian court weird and suspicious decisions was rendered by the Commercial Court at Central Jakarta District Court in a court-supervised Suspension of Debt Repayment ("PKPU") of PT AKT case. In 2016, the administrator in the AKT PKPU rejected a \$628 million claim by Standard Chartered Bank as lender under a facility agreement on grounds that the debt was null and void because the debtor itself failed to make a required regulatory filing with the Ministry of Energy and Mineral Resources at the time it borrowed the funds. This further affirmed by the Supreme Court at the cassation level ruling that Standard Chartered Bank is the creditor of Borneo instead of AKT since AKT is the only guarantor of the debts owed by Borneo to Standard Chartered Bank.
65. There are many more suspicious cases where the Commercial Court decisions seem to be influenced by parties, especially from the more powerful one.

### **3.2 Environmental and SLAPP Case**

66. The judiciary is also very vulnerable to co-optation and undue influence from wealthy individuals and corporations in handling strategic lawsuits from citizens and CSOs in environmental cases by plantation, forestry and mining companies.
67. Another significant example of court capture by oligarchs in Indonesia is the case of illegally clearing land in protected areas by palm oil companies. Many palm oil companies were involved in a controversial land dispute, where it faced allegations of illegally clearing land in protected areas. Local communities and environmental activists challenged the company's operations in court. Despite overwhelming evidence against companies, including reports from environmental organizations, companies were able to secure favourable rulings from the judiciary. Investigations revealed that the company had strong ties to influential political figures and business elites, which raised suspicions about corruption and undue influence. This case illustrates how powerful companies can leverage their connections to manipulate judicial outcomes, often sidelining the rights of local communities and undermining environmental protections. It highlights the broader issue of judicial integrity in the face of oligarchic power in Indonesia.
68. In the Riau Courts, several citizen lawsuits demanding the continuation of criminal investigations into companies responsible for forest fires were rejected by judges.(see ICEL, Walhi & Jikalahari)
69. Decade years ago, a number of large companies in Indonesia have escaped court punishment in cases such as the Lapindo mudflow, Buyat Bay pollution, tailings pollution in Papua and many more.
70. Examples of wealthy economic actors distorting the functioning of the justice system may include the use of Strategic Lawsuits Against Public Participation (SLAPPs) by them to repress environment and human rights activism.
71. Law enforcement officials ranging from the police, prosecutors and judges will very likely be under pressure and influence in handling and processing SLAPP cases which are generally carried out by powerful authorities and influential businessmen. Research shows that corporations and wealthy individuals who have significant influence over law enforcement agencies and the courts file a number of the SLAPP cases (Lokataru, 2020).
72. The direct or indirect influence and intervention of wealthy individuals and companies to the judicial apparatus in SLAPP cases is indeed difficult to prove. In many cases, civil society and defenders in SLAPP cases generally witness and experience differences in treatment from legal apparatus from the investigation stage to the trial, for example starting from a fairly fast investigation process, unnecessary coercive acts and detention, to a biased trial process.

### **3.3 Tax dispute**

1. As in other courts, it is very difficult to prove that the tax court has been captured by the wealthy elite. There are not many facts that strongly indicate this situation. However, there are number of studies that examine tax court decisions that generally favour large companies in tax avoidance cases with significant nominal disputes. There are many other examples of tax treaty shopping by Indonesia coal companies. (Prakarsa & SOMO, 2019)
2. According to the judicial commission report related to public complaints on unethical conducts of Tax court judges are very few. From 2015-2023 there were

only 23 written complaints and four of them were processed and stated that there was no proof of violation. The small number certainly does not reflect a good tax court situation; the lack of public participation in supervision could be one factor. (KY 2023)

3. Currently, along with the strengthening of the state's interest in maximizing tax revenue, the risk of the tax court being captured by the interests of the ruling government may be more dominant than by corporations. Nevertheless, still the risk of the tax court being in undue influence and/or being captured by the wealthy elite may be greater.

## Consequences

4. Undue influence of wealthy individuals and economic group has big consequences to the economy sector itself. Court capture and undue influence of powerful economic actors legitimize local protectionism. The alleviation of local court capture can reduce judicial local protectionism and thereby foster economic integration.
5. A political and economic captured judiciary hurt the credibility and damaging the integrity of Indonesian judicial system. Court capture undermines and ruins judge's professionalism. Without this independence, courts lack the ability to interpret the laws in accordance with legal principles rather than political and economic pressures. In those cases, the judiciary is often considered "captured," or dependent, on other political and economic actors—most frequently, the oligarchs.
6. Politically, Court capture legitimizes autocratic legalism or autocratic constitutionalism.
7. Court capture undermines and weakens public participation and shrinking civic space. The practice of Strategic Law Suit against Participation (SLAPP) and the lack of independence of judiciary in facing and handling SLAPP case is damaging democracy, freedom and civil liberties.

## Recommendations: Safeguarding judicial systems of undue influence of economic actors

8. **The role of Judicial Commission** – The processes of appointing and selecting judges emerge as critical when the issue of court capture is examined. Judicial appointments can easily be manipulated by the executive or legislative branches or by private sector interests in the election of specific lawyers financing their campaigns, which can lead to the selection of non-independent judges or judges biased towards particular political or economic interests. It is stipulated in principle 10 that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives”. However, the selection process in the Judicial Commission often neglect the influence of economic and or private sector interests.
9. **Mapping the riskier courts** – the judicial commission may take a survey and other methods to identify and mapping the local court which has greater risk of

undue influence, controlled and captured by local wealthy individuals and companies. It can be followed by some adequate measures to prevent them from interference and undue influence and to reduce its vulnerability.

10. **Eliminate “revolving door” behavior.** In Indonesia, the period of tenure is limited according to the pension age of the judge. With a little amount of pension money, former judges may take an opportunity to work as lawyers or consultant in dealing with the court. We have to consider to ensure a life tenure for judges who serve with good behavior. It can be an effective way to prevent a revolving doors behavior. Other measures may be explored to prevent it.
11. **Guaranteeing salary and life tenure.** Recently, judges calls for boycott because of low salary. In the future if the problem is not resolve, some judges may be leaving the bench. The judge's salary should be adequate. It should be different with general state apparatus. The Government must respect the Supreme Court Decision No. 23 P/HUM/2018, stated that the provisions of Article 3 paragraph (2) of Government Regulation Number 94 of 2012, which stipulates that the basic salary of a judge is equal to that of a civil servant, contradict the norms in several laws.
12. **Institutional management and resources** -- When court procedures and judicial proceedings, whether in the criminal or other justice systems, are bureaucratic, complicated, unclear and inefficient, the door is open to all types of corruption. Such acts would have a great impact on the delivery of justice, deterring or even negating the ability of victims to access the justice system. Operational efficiency and transparency are essential in order to prevent corrupt behaviours by court personnel and other actors in the judicial system, including lawyers, prosecutors and judges.
13. **Adequate budgeting** --Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to meet their needs; they should also have the power to manage such resources autonomously, independent of any external interference. The terms and conditions of service of both the judiciary and prosecution services, including job security, adequate remuneration, promotion, working conditions and status, should be safeguarded by law. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to discharge their functions and be empowered to manage their own budgets autonomously and independently of any external interference.
14. **Transparency**--The Special Rapporteur has observed that a non-transparent and subjective **case-assignment system** is vulnerable to manipulation and corruption. The same applies to prosecutors. In some countries, the court president has sole discretion on assignment (including the possibility of retaining a case), which provides avenues for corruption and greater opportunities for external interference. Information on the system of case assignments should be clearly available to the public in order to counter suspicions of malpractice and corruption in the assignment of cases and provide greater transparency.
15. **Transparency** --- a transparent **court proceeding** especially in commercial court is important. A Circular Letter Number 2 of 2016 on Handling Efficiency and Transparency for Bankruptcy Cases and Suspension of Debt repayment Obligation Cases by Courts (“Circular Letter”) aims to ensure greater legal certainty and efficiency in handling bankruptcy or PKPU cases by commercial courts. Examination and evaluation can be taken to see the effectiveness of that guidance.

16. **Protection** is crucial. Special attention should be paid, and concrete measures taken, to ensure efficient protection of judges, prosecutors, lawyers, witnesses, victims, whistleblowers and other stakeholders involved in processing and judging big cases, especially corruption cases, especially large-scale corruption or corruption cases related to organized and white-collar crime. Development and implementation of a national plan of security for judges, prosecutors and lawyers should be considered.

## REFERENCES

1. Rositawati, D. (2019). *Judicial governance in Indonesia: Judicial independence under the One Roof System*. [Doctoral Thesis, Tilburg University].
2. Maroef, T.M., (2010). *The Shareholder Settlement Program: A Pragmatic Resolution to confront a Systemic Banking Crises in view of the Dysfunctional Legal System and Tradition of the Republic of Indonesia*.[PhD Dissertation. University of Leiden, Leiden.]
3. Busch, Matthew., (2019). *Indonesia as a weak state? Bank restructuring after the Asian Financial Crisis* [PhD Dissertation, University of Melbourne, Melbourne]
4. Siri Gloppen, '(2014) *Courts, Corruption and Judicial Independence* in Soreide T and Williams A (eds), *Corruption, Grabbing and Development: Real World Challenges* (Edward Elgar Publishing 2014).
5. Pompe, S., (2018) The Indonesian Supreme Court: A Study of Institutional Collapse, Cornell University Press
6. <https://welpartners.com/resources/WEL-Paper-Undue-Influence-LESA-2017.pdf>
7. <https://www.agora-parl.org/sites/default/files/agora-documents/Examining%20State%20Capture%20-%20Undue%20Influence%20on%20Law-Making%20and%20the%20Judiciary%20in%20the%20Western%20Balkans%20Turkey.pdf>
8. <https://indonesiaatmelbourne.unimelb.edu.au/20-years-of-judicial-reform-mission-not-accomplished/>
9. <https://www.hukumonline.com/berita/a/cerita-di-balik-layar-penanganan-perkara-pkpu-di-pengadilan-niaga-1t6517ca2809196/?page=2>
10. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2023/04/GFoE-Article19-SLAPPs-paper-3.pdf>
11. <https://news.detik.com/berita/d-4631387/10-kericuhan-di-pengadilan-dari-hakim-dibunuh-hingga-kobra-disebar>
12. <https://news.ddtc.co.id/berita/nasional/1794906/begini-kata-komisi-yudisial-soal-pengawasan-hakim-pajak>
13. <https://www.somo.nl/wp-content/uploads/2019/08/DTA-report-SOMO-Prakarsa.pdf>
14. <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/captured-courts-and-legitimized-autocrats-transforming-kazakhstans-constitutional-court/9FBA81335B393E06A7A49DA70F83278B> or 'Though on "autocratic legalism," see, for example, Scheppele 2018 .

15. [https://www.nordchamindonesia.com/sites/default/files/2020-09/Challenges%20of%20Doing%20business%20in%20Indonesia\\_0.pdf](https://www.nordchamindonesia.com/sites/default/files/2020-09/Challenges%20of%20Doing%20business%20in%20Indonesia_0.pdf)
16. <https://www.americanbar.org/news/abanews/publications/youraba/2019/april-2019/special-interest-groups-sponsoring-judicial-education/>
17. <http://dictionary.cambridge.org/dictionary/english/undue-influence>

---

© 2024

Andriyani+Hidayat | Counsellors at law

If you would like to contact us, please send an e-mail to the following address. inquiry, general, consultation, work and internship (English /Bahasa)

| E-mail: o-desk@andriyanihidayat.com

<https://andriyanihidayat.com/>