

Restoring Public Trust in Indonesia's Courts

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The Supreme Court conducted covert surveillance called 'mystery shopping' on various district courts in Jakarta and its surrounding areas in January.

The move received thumbs up from stakeholders. Chief Justice Hatta Ali and the Chairman of the Criminal Chamber, Artidjo Alkostar, said the initiative was aimed at verifying the integrity of the courts.

Such a field observation is common when it involves other institutions, but looks special when performed in the judicial environment. Why? Because it relates to public confidence, which, although cliché, is very important for the court.

Renowned legal thinkers such as Roscoe Pound have examined this issue since the last century. The Supreme Court is dependent on public trust because it has neither budgetary (purse) power like the legislative branch, nor the power of execution (sword) of the executive branch. The court simply relies on public trust for its rulings to be respected and enforced.

Public trust is a theme raised in official forums quite often. Different provisions in the judicial code of ethics endorsed by the court and the Judicial Commission in 2009 highlight the need to increase public and justice seekers' trust in the judiciary power.

However, doubts over the Indonesian courts still linger among not only outsiders, but also members of the judiciary themselves. To have a basis for this assumption, empirical data needs to be put forward to support it.

One of the indicators could be the number of appeals filed with the Supreme Court. The blueprint for reform of the court says the lack of confidence in lower courts is one of the reasons for cases pouring into the court.

In 2016, the appellate courts settled 16,349 cases and the Supreme Court received 11,045 petitions for cassation.

This could mean that 67,5 percent of the litigants were dissatisfied with the decisions of the appellate courts and turned to the Supreme Court.

The number of case reviews can also be regarded as a signal of the deficit in public confidence. According to the annual report of the Supreme Court, 74,7 percent of the case review motions in 2016 were filed against the Supreme Court's own decisions at the cassation level. A study once revealed that the main ground used for revision was a judge's mistake and manifest error, which is closely related to the trust in a judge.

Public trust is determined by different perceptions about the courts. The more positive the public perception, the stronger public trust in the court.

When negative perception is rife, the court may face a crisis in public trust.

There are various data sources to find out how the public perceives the judiciary. The richest and most up-to-date source is the coverage of mass media. The courts and judicial proceedings are a constant and an appealing focus of media observations everywhere.

Another source is opinion makers' statements, especially from civil society groups and scholars. Public complaints delivered through either formal channels or through alternative means should be regarded as a further source of data.

Similarly, various surveys of performance and court services - such as the integrity survey regularly conducted by the Corruption Eradication Commission (KPK) on the public sector and studies performed by global institutions like the World Bank's Ease of Doing Business - could indicate levels of public trust.

Last but not least, the court's rulings themselves are also an interesting source of data, since they are likely to contain the judges' own assessment on the performance of other judges or the courts as a whole.

From the abundant data sources, different perceptions about the judiciary can be mapped and they have unfortunately not been very positive. A number of factors can be identified as negatively affecting public trust in the judiciary.

The first perception is the judicial process comes with a high price. Litigation in courts, especially in civil cases, costs a lot. Moreover, the services of lawyers are often generalized as part of the cost of judicial proceedings.

The second perception concerns the integrity of the judicial process. The gap between judges and their independence, according to various sources, is still mostly associated with bribery and brokering practices.

Third is inconsistency in court decisions, which causes legal uncertainty.

Fourth is the length of the litigation process. Although the Supreme Court has provided guidelines on the duration of case settlement, the ability of judges to comply with the timeline varies. Incentives to work swiftly and disincentives to drag feet on cases are not strong enough.

Fifth is an ineffective court decision. When a court's decision is binding and irrevocable, the legal problem may not necessarily be solved because its execution encounters many obstacles.

Last is the limited quality of public services in court. One of the most highlighted aspects of a court's public services are delays in court hearing schedules which may reach a few hours or even days.

For better or worse, the Supreme Court needs to be more open to input and periodically map out public perceptions of the courts. The mystery shopper method is merely one of the techniques and is certainly not enough.

Public perception is dynamic, depending on judicial performance and reform efforts. The perceptions may also be incomplete and their relevance might change overtime. The Supreme Court needs to direct each of its working units to be more sensitive to public perception and take them into account in policy making.

From there on, the Supreme Court can start an analysis on who and which behaviors contribute to the negative perceptions about the court.

Finally, it is important to communicate this process to the public, as per the adage, "not only must justice be done, it must also be seen to be done". Now is always the right time for the Supreme Court to restore public trust by addressing the negative perceptions through actions.

Although some are already been in place, they need to be more institutionalized by involving partners from both the state and civil society.

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