

Research and Study

Concerning

**Disclosure of Judicial Decisions
in Indonesia**

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Foreword

Establishment of “rule of law” has been on the Indonesian government’s national agenda since the fall of President Suharto’s authoritative government in 1998 and the “legal certainty/predictability” is the crucial concept of “rule of law”. In addition, it is often said that lack of legal certainty/predictability is one of the significant obstacles for investments and businesses in Indonesia. In Indonesia, lack of legal certainty/predictability usually means ambiguity of laws and regulations, discretionary application by the Indonesian government of laws and regulations, and low predictability of court decisions.

The Indonesian Supreme Court has been enthusiastically implementing the judicial reform in accordance with its Blueprint 2003 – 2008 since the fall of President Suharto’s authoritative government in order to promote “rule of law” and enhance trust by the Indonesian people in the Indonesian judicial system. However, at this point in time, such judicial reform has not achieved optimum success, and thus trust by the Indonesian people in the judicial system has not been fully garnered. In addition, the media has kept reporting on corruption cases involving judges, including corruption conviction against the former Constitutional Court Chief Justice who received a life sentence in 2014. Eradication of corruption in the judicial system is a matter of utmost importance for promoting the trust of the Indonesian people in the judicial system.

We prepared this report in response to the assignment, “Research and Study Concerning the Disclosure of Judicial Decisions in Indonesia” entrusted by the Research and Training Institute of the Japanese Ministry of Justice. In Indonesia, disclosure of court decisions was very rare until the early 2000s. The courts are where legal disputes between private parties as well as legal disputes between the Indonesian government and private parties are finally settled. Needless to say, it is important for individuals and Indonesian and foreign business entities to be able to predict how the laws and regulations will be officially and finally interpreted for compliance in their daily activities. In addition, it is also important for parties in civil litigations to predict decisions by judges through the interpretation of laws in relation to their own particular cases. It is often said that civil litigations are rarely settled through mediation or amicable reconciliation in Indonesia and there is a high possibility of appealing the court decisions in the first instance or the second instance to the high courts or to the Supreme Court respectively. Without predictability in court decision, parties to civil

litigations would find it difficult to amicably settle their cases before the court decision, as they cannot estimate the possibility of winning or losing their cases, such parties may try to appeal a lost case, because they cannot know the possible outcome of the appeal. Such facts increase the burden on judges and they hinder the access to justice in Indonesia.

As for the corruption involving judges in Indonesia, if more court decisions are disclosed in a well-organized manner, then more court decisions are subject to evaluation and criticism by the public, which is expected to suppress corruption. If the predictability of court decisions through interpretation of laws and regulations were improved, corrupt judges would find it difficult to render a decision that is far different from the predicted decision without any proper reason.

It seems that judges, legal practitioners and academics have a wide variety of views on the concept of jurisprudence in Indonesia. It is often said that judges and legal practitioners do not need to follow the jurisprudence because Indonesia does not belong to the common law system. Having said that, the development of court decisions publication system would lead to accumulation and better function of the jurisprudence. In this report, we also analyze how the jurisprudence is currently viewed and treated in Indonesia.

As described in this report, systematic publication of court decisions has significantly improved in the past few years. However, the number of published court decisions is not necessarily enough, and there are several points to be improved in the publication system. Judicial reform in Indonesia still has a long way to go, and we hope that this report is of help for better systematic publication of court decisions, improvement of legal certainty/predictability, more trust by the Indonesian public and business entities in the Indonesian judicial system and ultimately firm establishment of “rule of law” in Indonesia.

1. The Judicial System in Indonesia

a. Court System

In Indonesia, judiciary power is assumed by the Constitutional Court and the Supreme Court. Under the Supreme Court, there is the General Court, the Religious Court, the Military Court, and the State Administrative Court¹ (collectively, the “**Lower Courts**”). Furthermore, under the jurisdiction of the General Court, there are special courts, the Children’s Court, the Human Rights Court, the Labor Court, and the Commercial Court; while under the State Administrative Court, there is the Tax Court² (collectively, the “**Special Courts**”).

The General Court settles criminal and civil disputes, while the Military Court settles issues pertaining to military crime. The Religious Court settles disputes for Muslims in accordance with Sharia law recognized by the state, mainly family matters, but the court also includes commercial matters governed by Shariah law. Lastly, the State Administrative Court settles administrative disputes in relation to the state.³

b. Supreme Court

The Supreme Court is the highest court presiding over all of the Lower Courts.⁴ It has the following authority:⁵

- i. to judge at a cassation level judgment issued by the courts below it, unless the law states otherwise;
- ii. to test regulations under the law; and
- iii. other authority granted by the law.

The Supreme Court also has the leadership of all the courts in Indonesia in a judicial technical sense. It supervises and controls the Lower Courts. The Supreme Court can provide warnings and advices to the Lower

¹Article 18 of Judiciary Power Law.

² Mahkamah Agung RI, *Indonesian Legal System*, Jakarta: Mahkamah Agung, 2005, Print, p. 61.

³Articles 25 paragraph. (2), (3), (4), and (5) of Judiciary Power Law.

⁴Articles 20 paragraph. (1) of Judiciary Power Law.

⁵Article 20 paragraph. (2) of Judiciary Power Law.

Courts in relation to their performance, usually in the form of a Supreme Court Circular Letter (Surat Edaran Mahkamah Agung).

There are 49 judges as of 19 February 2016 in the Supreme Court, comprised of the Chief Justice, the Deputy Chief Justice, six Junior Chief Justices, and Associate Justices. The court is divided into eight chambers, each led by a senior judge.

c. **Constitutional Court**

The Constitutional Court in Indonesia became possible because of an amendment to the Constitution. The Constitutional Court is regulated under Law Number 24 Year 2003 regarding the Constitutional Court. Before the establishment of the Court, judicial review was one of many functions of the Supreme Court. Today, the function to conduct judicial review towards the laws under the Constitution is held by the Constitutional Court⁶, whereas the function to conduct judicial review of regulations against the law is still held by the Supreme Court.

Other than judicial review, the Constitutional Court also has the function to try cases involving (i) disputes between State institutions; (ii) dissolution of political parties; (iii) resolution of disputes related to the results of the general election; and (iv) determination of criminal offences against the President and Vice President based on a petition of the Parliament.⁷ The Constitutional Court's decision is final and cannot be appealed.

There are nine judges in the Constitutional Court, and two of them are appointed as the Chief Justice and Deputy Chief Justice, respectively, for a period of three years. The rest of the judges are associate justices.

d. **Disclosure of Judgment**

In 2003, the President's Instruction Number 3, Year 2003 regarding National Policy and Strategy on E-Government Development ("**President Instruction**") was issued. It instructs all state institutions to take the necessary

⁶ Art. 10(1) of Law Number 24 Year 2003 concerning Constitutional Court jo. Law Number 8 Year 2011 concerning Amendment to Law Number 24 Year 2003 concerning Constitutional Court ("**Constitutional Court Law**")

⁷ *Ibid.*

steps to develop an e-government nationally.⁸ Under the instruction, the strategy for development is divided into the following:

- i. to develop a reliable and trustworthy service system accessible to the public;
- ii. to wholly reorganize the government's work system and process;
- iii. to take advantage of information technology optimally;
- iv. to improve private roles and develop the information technology and communication industry;
- v. to develop manpower capacity and improve the public's e-literacy; and
- vi. to develop it systematically through realistic and measurable phases.

As part of the President's Instruction, the Supreme Court prepared a blueprint in 2003. They believed that transparency is a principle that must be held in a good court, and it can be proven by ensuring the public's access to information.⁹ In regard to the disclosure of court decisions, Article 226, paragraph (3) of the Criminal Procedure Code stipulates that a copy of court decision can only be given to a person under the permit of the Chief of Court by considering the interest of such request. Even the Supreme Court thought that this regulation contradicted the spirit of Article 18 of the Judiciary Power Law, which states that a court decision is only valid and legally binding if it is read in a trial open to the public. This means that once a court decision is read in public, it should be deemed as public information. Furthermore, Article 35 of the Judiciary Power Law encourages the publication of court decisions for the sake of checks and balances.¹⁰

Before publishing court decisions on the website (<http://putusan.mahkamahagung.go.id>) where the Supreme Court is publishing its judgments now, they distributed the selected Supreme Court

⁸ Read: Instructions of President of Republic of Indonesia Number 3 Year 2003 concerning the National Policy and Strategy on the Development of E-Government

⁹ Mahkamah Agung RI, *Cetak Biru Pembaruan Mahkamah Agung RI*, Jakarta: Mahkamah Agung RI, 2003, Print, p. 205.

¹⁰ *Ibid*, p. 213.

decisions, especially those that became jurisprudence, in collective books. Obviously, these collective books would not be able to accommodate all judgments issued by the Indonesian courts. Thanks to the e-government development, decisions issued by the courts in Indonesia can be accessed through the Supreme Court's website today. In its 2003 Blueprint, the Supreme Court posed a number of success indicators regarding the establishment of this website:

- i. there is an improvement of budget for the Supreme Court to issue judgments/jurisprudence;
- ii. more Supreme Court judgments are published and more often;
- iii. cooperation between the Supreme Court and the private sector to publish judgments; and
- iv. the public is more active in analyzing court judgments.

As described in more detail later, we are of the view that the Supreme Court has been successful in terms of the first two indicators above (improvement of budget and number of published cases), but the achievement of the Supreme Court has not been optimal in terms of the last two indicators (cooperation with the private sector and analysis of court decisions by the public). According to our informal interview with a Justice ("**Justice**") of the Supreme Court on 2 February 2016, it is unknown how active the public is in analyzing court judgments today, but at least the Supreme Court has given them access to do so.

2. Relevant Laws and Regulations

a. Law Number 14 Year 1985 concerning the Supreme Court as amended through Law Number 5 Year 2004 and Law Number 3 Year 2009 (“Supreme Court Law”)

This law specifically outlines about the independence of the Supreme Court as a judiciary body. Article 2 of the Supreme Court Law states that the Supreme Court is the Highest State Court and that in conducting its duties it is independent of influences from any other parties. The law describes the structure of the organization of the Supreme Court as well as the requirements for the candidates in a respective position in the Supreme Court such as the Chief, Vice Chief and also the Supreme Court Judges (*Hakim Agung*).

As the highest judiciary body in Indonesia, the Supreme Court has the obligation to examine and decide on cassation, disputes on relative competence¹¹ and Special Reviews over final and binding cases. The Supreme Court also has a supervisory function over the courts below it. Article 32 of the Supreme Court Law provides that the Supreme Court has the obligation to conduct the highest supervision over the works and performance of all judiciary bodies. The Supreme Court also must oversee the performance of the judges and has the right to issue guidance, reprimand and warning that is deemed necessary to all courts. Due to its distinctive function, the Supreme Court has the right to issue Court Information Disclosure (as defined below) even before the enactment of the Information Disclosure Law.

b. Law Number 48 Year 2009 Concerning Judiciary Power (“Judiciary Power Law”)

This law is the initial law that describes the justice system in Indonesia. It clearly states the judiciary body in Indonesia. Article 18 of the Judiciary Power Law states that judiciary power in Indonesia is exercised in the Constitutional Court and the four courts under the Supreme Court, namely (1)

¹¹ Relative competence refers to the issue of which district court has the jurisdiction to try a case. This matter is regulated under Article 118 of HIR. HIR (*Herzien Inlandsch Reglement*) is the applicable civil procedural law during the Dutch’s colonialization era that inherited by Indonesia up until today. In general, the civil suit shall be submitted to the district court where the defendant is residing.

the General Court, (2) the Religious Court, (3) the Military Court and (4) the Administrative Court. As the highest court, the Supreme Court has the obligation to supervise the works of other courts.

This law also describes how the judiciary system in Indonesia operates by briefly mentioning the appeal, cassation and special review procedures, open and close court system, the elements and the execution system of court decisions.

c. Law Number 14 Year 2008 Concerning Information Disclosure (“Information Disclosure Law”)

This law was enacted due to the acknowledgment that access to information and the disclosure of public information are part of human rights as well as a characteristic of a democratic state that firmly respects the people’s right to maintain a good governance system. This law classifies the information into four types namely: (1) information that must be made available and periodically announced, (2) information that must be made available at all times, (3) information that must be announced immediately and (4) exempted information.

Article 7 of this law emphasizes that the Public Agency has the obligation to provide, give and/or issue public information. This law specifically elaborates that the Public Agency refers to the executive, legislative, judicative and other agencies whose activities are funded by the state budget or a non-governmental organization that is fully or partially funded by the state budget and donations from both local and international entities. Due to this definition, the court also qualifies as a Public Agency that bears the responsibility to disclose relevant Public Information. This obligation is prescribed further in several Supreme Court’s Circular Letters as an implementing guide.

Another notable aspect of this law is the recognition of a Public Information Dispute which is the dispute between a Public Agency and a Public Information User relating to the rights to obtain and use such information in accordance with the prevailing laws and regulations. Such dispute can be settled through the Information Commission or through the

Court. Thus, here we would like to highlight that for the past few years, the Government of Indonesia has been more concerned and is more committed to ensuring the availability of Public Information.

d. Supreme Court Circular Letter Number 6 Year 2010 Concerning Implementation Instruction of Information Disclosure in Court (“Court Information Disclosure Instruction”)

The issuance of this Information Disclosure Instruction is entailed in the enactment of the Information Disclosure Law and the Court Information Disclosure Decision (defined below). To ensure the implementation of court information disclosure in the court of the first and second instance, the Chief of the Supreme Court mandates the following actions:

- i. to make sure that all bodies under the Supreme Court fully understand and commit to performing their obligations under the Information Disclosure Law and Court Information Disclosure Decision;
- ii. to grant full access to public information as required under the Court Information Disclosure Decision and Information Disclosure Law, particularly those following information that the public needed the most:
 - a) Court decision and declaration, regardless of whether it is final and binding or not;
 - b) Information regarding case costs, clerkship costs, bail costs, evidence costs and also legal assistance costs for the financially incapable society;
 - c) Information on how to make a complaint and the handling of the complaint.
- iii. to publish all information on the above points, except the decision and declaration that is not final and binding yet;
- iv. to ensure that the Court must not charge for the copies of public information. People will only pay the copying costs to the third party who does the copying; and
- v. to ensure that the Information Disclosure Law will prevail in the case of any discrepancies between the Information Disclosure Law and Court Information Disclosure Decision.

e. Chief of Supreme Court Decision Number 144/KMA/SL/VII/2007 Concerning the Court Information Disclosure (“Court Information Disclosure Decision”)

As it can be seen, the regulatory framework on court information disclosure had been started and initiated even before the enactment of the Information Disclosure Law. This Court Information Disclosure Decision not only classifies information into several types, but also stipulates the standard method of publication and how the public can access certain types of information. The attachment of this law also specifically provides the clear guidance on how certain information must be disclosed i.e.. the name of the witnesses in certain cases must be concealed.)

This Decision, however, has been renewed through the issuance of Guidelines of Information Service in Court (defined below).

f. Chief of Supreme Court Decision Number 1-144/KMA/SK/2011 Concerning the Guidelines of Information Service in Court (“Guideline of Information Service in Court”)

The issuance of this guideline entails from a commitment by the Supreme Court to reform the bureaucracy of the Indonesian courts. This guideline is issued in order to reform the Court Information Disclosure Decision that was issued in 2007. This guideline, through its attachments, has clearly described how court information must be disclosed. It also emphasizes that any officers that obstruct court information disclosure in any way will be subject to a disciplinary action and/or criminal sanctions as provided in the Government Regulation Number 53 Year 2010 concerning the Discipline of Civil Servants and Information Disclosure Laws. Through the issuance of this guideline, the Court Information Disclosure Decision is no longer effective and all regulations relating to the information service will remain effective as long as it does not contradict this guideline.

This guideline also classifies the information that must be disclosed into three categories: (1) periodically disclosed information, (2) information that must be available to the public at all times and (3) exempted or concealed

information. Final and binding decisions are included in the information that must be made available to the public at all times.

3. Publication of Court Decisions in the Framework of Indonesia's Judicial Reform Plan 2010 – 2035

Since 2003, the Supreme Court has aspired to rejuvenate the positive image of the judiciary in Indonesia through the issuance of the Blueprint 2003; however, based on the Organization Diagnostic Assessment held in 2009, it is noted that the Supreme Court had barely reached half of the goals of the *Court of Excellence*. The causes of this situation were the lack of embodiment of the Supreme Court's vision and mission, technical issues, and organizational management (human resources, assets, IT, and infrastructure).

It is the mission of the Judiciary Bodies in 2010 – 2035 to enhance the credibility and transparency of judiciary bodies. Therefore, it requires the reformation of the case management system that strongly relates to the decision publication system which aims to enhance the credibility, accountability and society's trust in the judiciary bodies.

The Blueprint of Judicial Reform 2010 – 2035¹² provides that the agenda of case management reform consists of three major components, namely:

- a. Modernization of case management;
- b. Reorganization of case management;
- c. Reorganization of the case management process.

Case management reform is divided into three five-year stages as shown below.¹³ Such division is made in the prioritization scale based on its public implication, complexity of the issue, readiness of other relevant elements and the need for resources.

¹² Cetak Biru Pembaruan Peradilan 2010 – 2035 (*Supreme Court Blueprint 2010 – 2035*) can be accessed on this link <https://www.mahkamahagung.go.id/images/CETAK%20BIRU%20PEMBARUAN%20PERADILAN%202010-2035.PDF>

¹³ Mahkamah Agung RI, *Cetak Biru Pembaruan Peradilan 2010 – 2035*, Jakarta: Mahkamah Agung RI, 2010. Available online, p. 35

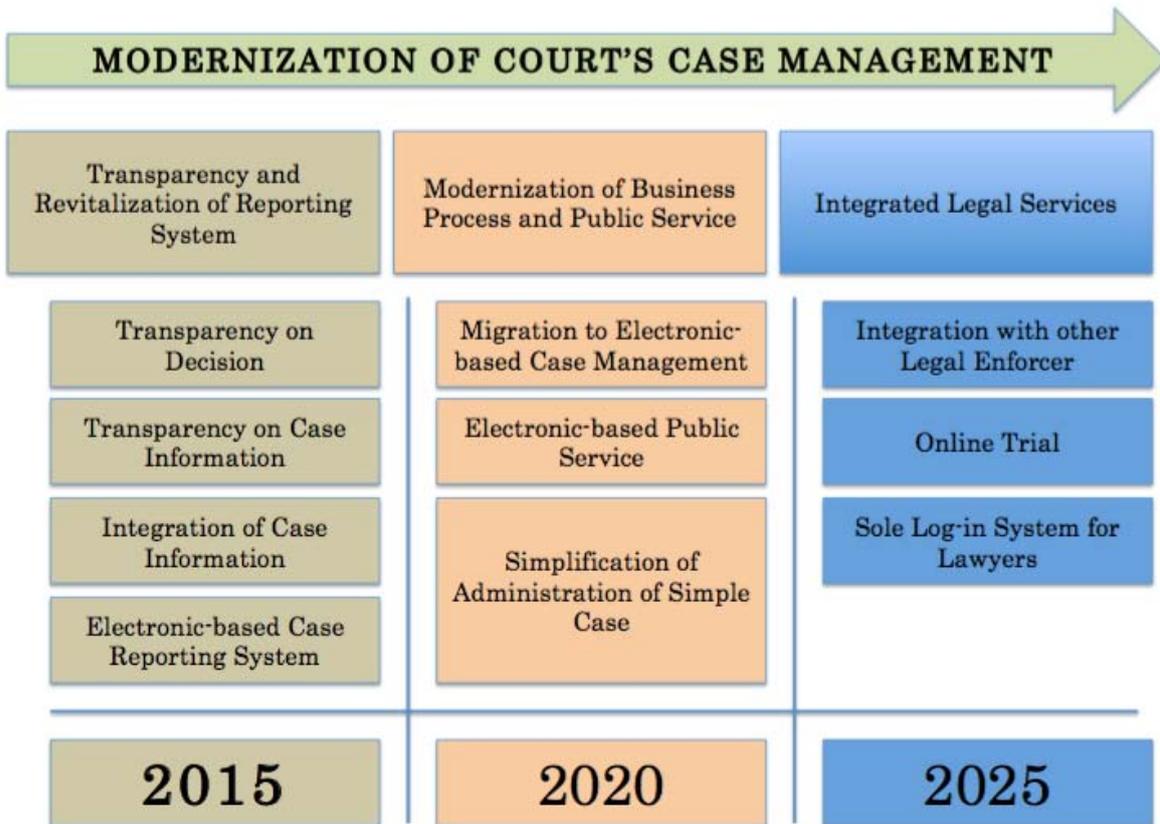


Chart 1

Direction of Modernization of Court's Case Management

Based on the above chart, it seems that the transparency and revitalization of the reporting system should have been achieved by 2015. We are of the view, particularly in terms of the quantity of the decisions that have been published electronically, that the Supreme Court has been making significant progress. However, the employed systems as well as the quality of the published decisions require sustainable development that adapts to the changes in and needs of the society.

Assessing further the Blueprint of the Supreme Court 2010 – 2035, we are of the view that such sustainable development in the publication of decisions is also supported by the following work plan included in the Blueprint that integrates the restructuring of the relevant organs as well as improving the quality and efficiency of such organs through the implementation of the Chamber System in the Supreme Court.

a. Consistent application of the Chamber System

Implementation of the chamber system in the Supreme Court was started in 2011 through the issuance of Chief of the Supreme Court Decision Number 142/KMA/SK/IX/2011 concerning the Implementation of the Chamber System in the Supreme Court (“**Decision No. 142/KMA/SK/IX/2011**”). Based on the aforementioned decision, the handling of cases of cassation and special review in the Supreme Court were divided into five chambers:

- i. Criminal Chamber
- ii. Civil Chamber
- iii. Administrative Chamber
- iv. Religious Chamber
- v. Military Chamber

Each Chamber consists of a Chief of Chamber (the Chief of the Supreme Court, Vice Chief of the Supreme Court or the Junior Chief of Judiciary Technicalities), Supreme Court Justice (Hakim Agung) as a member of the Chamber, a Junior Registrar of the Chamber and a Substitute Registrar.¹⁴ Each Chamber holds Routine Chamber’s Plenary Meetings and Case Chamber’s Plenary Meetings. The Routine Chamber’s Plenary Meeting is held at least once a month to control and monitor the flow of cases handled in the Chamber; the Case Chamber’s Plenary Meeting which is held at least once a month, is purported to maintain the consistency and accountability of decisions made within the Chamber. In the meeting, the Chamber discusses questions of law in the cases handled by the Chamber, interprets such questions of law and then renders what will be invoked by the Chamber within its decision.

Aside from aiming to maintain the consistency of the decision, the implementation of the Chamber system has also shown the commitment of the Supreme Court to shift the traditional storing and publication system of decisions into an electronic-based method. Decision No. 142/KMA/SK/IX/2011 provides that a court decision that has been signed by

¹⁴Article 27 of Law Number 2 Year 1986 concerning General Court jo. Law Number 8 Year 2004 concerning the Amendment of Law Number 2 Year 1986 that provides that the Registrar of the Court shall be assisted by a Vice Registrar, several Junior Registrars, several Substitute Registrars and several Executors.

the Panel of Judges as well as the minutes must be stored in the electronic database and then published.

Although the Chamber system is currently only employed in the Supreme Court, on the program of 2015 – 2019, the Chamber System should also be applied in the Appeals Court through the establishment of the Civil Chamber and the Criminal Chamber. However, the Chamber system will not be applied in the court of the first instance, but the judges will be categorized and assigned based on their specialization to handle certain cases. The judges will be certified for their specialization, and the certification must be renewed periodically.¹⁵

b. Restructuring of the Registrar

In the Blueprint of Judicial Reform 2010 – 2035, the Supreme Court is committed to improving the registrar body in the Supreme Court by using the approach of the Structure Follow Function, meaning that the registrar of the Supreme Court will be divided into three work units that will perform the works as having been assigned to such work units. Those three work units are the following:

- i. A Technical Junior Registrar with the following responsibilities:
 - Receive and review the admitted case files
 - Case files registration
 - Maintain the cost of the case
 - Send out the case files
 - Make reports to every Junior Registrar
 - Provide secretarial support to every Junior Registrar
- ii. Registrar Secretariat with responsibilities to provide support to the administration of the Supreme Court's registrar, including the development and the maintenance of human resources, infrastructure, logistics, and the registrar's financial matters.

¹⁵ *Supra* note 13, p. 30

- iii. Judiciary Junior Registrar with responsibilities to process the data and statistical information, documenting the cases and consolidating the reports from other courts.

We are of the view that this clear and specific division of tasks will avoid the hoarding of tasks that must be completed by the registrar of the Supreme Court. Particularly for the matter of publishing decisions, having a specific body which is in charge of management, the processing and the publication of the decisions seems to be a very strategic action to actively improve the publication of decisions in Indonesia, both quantitatively and qualitatively.

Although this system is currently only available in the Supreme Court, the Blueprint of Judicial Reform 2010 – 2035 seems to indicate the commitment of Indonesia to find the most effective and efficient organizational design for the court of the first instance and the appeals court by taking the implementation of technology and information into account.¹⁶

c. Developing more advanced information technology for judiciary purposes

It is no longer debatable that a reliable information management system is vital to secure the accountability, credibility and transparency of the judiciary bodies. The Supreme Court is a modern organization that envisioned becoming a Court of Excellence; it needs IT-based information management. Therefore, it was not a surprise that the rejuvenation and updating of information technology of Indonesia's judiciary bodies is included in the Blueprint of Judicial Reform 2010 – 2035.

The Supreme Court is envisioning using or implementing information technology to reach the following targets:¹⁷

- i. improving the quality of decisions and giving access to all relevant information;
- ii. improving the court administration system, including to access information relating to the court's activities away from the court's

¹⁶*Ibid.*, p. 37

¹⁷*Ibid.*, p. 64

building, such as the registration, requests for information and even testimonies;

- iii. to be more efficient by reducing the manual works and shifting into more computer-based works;
- iv. establishing a performance-based organization and using technology to control that performance; and
- v. providing e-learning opportunities within the organization that allow sustainable learning processes despite the time and place boundaries.

To obtain efficient and effective funding for the maintenance of this integrated IT facility, the IT supply to all lines of judiciary organizations will be centralized in the Supreme Court. All judiciary bodies across Indonesia will have access through the integrated computer network to a sole system that is maintained by the Supreme Court. This system is preferred in order to ensure its consistency and make its technical supply and maintenance easier.¹⁸

At this point, we are of the view that in every aspect of development that the Supreme Court is striving for as included in the Blueprint of Judicial Reform 2010 – 2035, one aspect that is always relevant is the management of information as well as its accessibility. The restructuring of registrar bodies and the implementation of the Chamber System are expected to make the publication system clearer, more effective and efficient, because now the court (particularly the Supreme Court) has a more specific body that is responsible for the publication of court decisions, namely the Judiciary Junior Registrar.

A review of the Blueprint of Judicial Reform 2010 – 2035 clarifies that the Supreme Court does not only concern itself with the efficient publication system, but also the quality of the decisions themselves. It is expected that through the Chamber System which routinely conducts plenary meetings,¹⁹ it will increase the consistency

¹⁸ *Ibid.*, p. 65

¹⁹ Rapat Pleno (Plenary Meeting) is a meeting done by the judges within the Chamber. There are two types of plenary meetings namely routine plenary meeting and case plenary meeting. Routine plenary meeting is purported to control the number and status of cases handled by the chamber. Case plenary meeting, which can be done at least once a month, whenever is deemed necessary by the Chief Judge of the Chamber. This meeting discusses the cases handled by the chamber (relating to the interpretation or when there is contradicting decision made by the judges in the chamber). Read: Chief of Supreme Court of Republic of Indonesia Decision of Number 142/KMA/SK/IX/2011 concerning the Guideline on the Implementation of

and the quality of reasoning used in the decision making. Having highly qualified and consistent decisions will not only improve the reliability of the judiciary bodies and thus society's trust, but they are also beneficial for legal studies in Indonesia.

All in all, improvement in the organizational system and the quality of the decisions paired with the commitment to advance the use of integrated information technology indeed promises a better decision publication system that can be accessed easily by society despite any time and place barriers. This state is hoped to be reached by 2035.

4. Current Publication System

Year 2008 marked ten years of reformation in Indonesia, which pressured the government to make changes in the system by applying the good governance principles. The implementation of these principles requires accountability, transparency and people's participation in every public decision-making.²⁰

Article 7 point 3 of the Information Disclosure Law requires every public agency to make and develop information and a documentation system in order to maintain the public information well and efficiently. Further, the public agency also has the responsibility to ensure the accessibility of information that is easy, quick, and accurate.

Transparency of justice is needed not only for the public but also for other legislative bodies. By having transparency of justice, it is hoped that the accountability, professionalism and integrity of the legislative organs will be strengthened. The availability of an accountable information system is vital to implement the Information Disclosure Law as well as to achieve its noble purposes.

Effective and efficient information disclosure is one of the Supreme Court's commitments in order to achieve the court's bureaucracy reformation; even the Supreme Court has been implementing this idea far before the enactment of the Information Disclosure Law in 2008. For the implementation of this idea, the Supreme Court issued the Guideline of Information Service in Court and the Decision on Court Information Disclosure.

a. Statistical Data of the Published Decisions on the Supreme Court's

website: <http://putusan.mahkamahagung.go.id>²¹

i. Number of decisions uploaded into <http://putusan.mahkamahagung.co.id> during the period 2007 – 2016

Year	Total
2007	1,122

²⁰ Mansyur, Ridwan, (n.d.), Keterbukaan Informasi Pada Pengadilan, Retrieved from <https://www.mahkamahagung.go.id/images/news/ridwanmansyur.pdf>

²¹ This information was retrieved and generated from <http://putusan.mahkamahagung.go.id> on 11 February 2016. Total numbers in these tables do not match for unknown reason.

2008	5,246
2009	6,411
2010	5,747
2011	11,873
2012	8,373
2013	9,242
2014	9,344
2015	10,768
2016	103
Total	68,332

Table 1

Number of Uploaded Decisions Year 2007 – 2016 as per 11 February 2016

ii. Number of decisions published in each area of law

Areas of Law	Total
Civil Court	7,125
Tax Court	256,466
Administrative Court	16,327
Criminal court	194,299
Military Court	9,404
Special Civil Court	9,890
Religious Court	100,4571
Special Criminal Court	72,894
Jurisdictional Dispute	1
Total	1,570,977

Table 2

*Number of Uploaded Decisions in each Areas of Law
as per 11 February 2016*

iii. Latest Statistic²²

Total decisions	:	1,662,995
Uploaded decisions this month	:	8,247
Uploaded decisions in the previous month	:	32,267
Uploaded decisions within the past three months	:	40,514
Uploaded decisions this year	:	40,514

Table 3

Latest Statistic of Uploaded Decisions as per 11 February 2016

b. Procedure of Publication System

(a) Classification of Information

Attachment I of the Guideline of Information Service in Court provides that in the court's information disclosure system, there are three types of information namely:

i. Information that must be published periodically by the court

a) Profile information and the court's basic service

- Court's profile
- Court's procedure for every type of case that is within the court's jurisdiction
- Costs relating to the dispute settlement in court
- Court's agenda on First Instance trial

b) Information relating to the people's rights

- Rights of the party in the proceeding, such as the right to legal assistance, pro bono trial and other basic rights in the proceeding
- Complaint procedure pertaining to the judge or the court's other employees
- Procedures on the information desk service
- Costs on obtaining a copy of requested information

²² As retrieved from <http://putusan.mahkamahagung.go.id/pengadilan/mahkamah-agung/periode/upload> on 10 February 2016.

- c) Information relating to the court's work program, financial condition, and performance
 - d) Information relating to the information access record, including reasoning on any rejection for information access
 - e) Other information, such as an early warning system in the case of disaster and evacuation procedures in the court
- ii. Information that must be published periodically by the Supreme Court
- a) Information on the admission of judges and/or other employees
 - b) List of draft and procedure on the enactment of Supreme Court regulations
 - c) Supreme Court jurisprudence
 - d) Supreme Court decisions
 - e) Supreme Court annual report
 - f) Supreme Court strategic plan
- iii. Information that must be made available and accessible to the public at all times
- a) Information on the disputes and proceedings
 - All court's decisions (both that have and have not been final and binding)
 - Information on the Case Register
 - Case statistics
 - Stages of handling the case
 - Report on the use of case cost
 - b) Information on supervisory and disciplinary actions towards judges and court employees
 - c) Information on the regulations, stipulations and research results
 - d) Information on organization, administration, personnel, and financial conditions
- iv. Exempted information
- a) Information that if it is disclosed, may halt the law enforcement process
 - b) Information that if it is disclosed, may endanger the protection of intellectual property rights and unfair competition

- c) Information that if it is disclosed, may endanger the state's defense and security
- d) Information that if it is disclosed, may reveal the state's natural resources
- e) Information that if it is disclosed, may injure the state's national economic resilience
- f) Information that if it is disclosed, may jeopardize foreign affairs
- g) Information that if it is disclosed, may reveal someone's personal deed or will
- h) Information that if it is disclosed, may reveal someone's personal information
- i) Memorandum between the court or other state agency that in the case of disclosure, may severely jeopardize the regulation-making process
- j) Information that may not be disclosed based on the Article 17 and 19 of the Information Disclosure Law
- k) Included in the above exemptions are the following:
 - Information on the chamber of the panel of judges
 - The complete identity of judges or other court employees subjected to sanctions or punishments
 - Performance evaluation reports of judges or other court's employees
 - Complete identity of the reported judges or other court's employees who have not been known by the public
 - Records and documents obtained through court mediation
 - Information that may disclose personal information of certain people in the court's decisions or stipulations in certain cases.²³

(b) Responsible Organs²⁴

²³ It must be noted that the exemption on certain part of the information will not entirely exempt the disclosure of other part of the information.

²⁴ Attachment I of Guide Guideline of Information Service in Court, p. 7

The structure of the responsible court organs for the court's information disclosure is as follows:

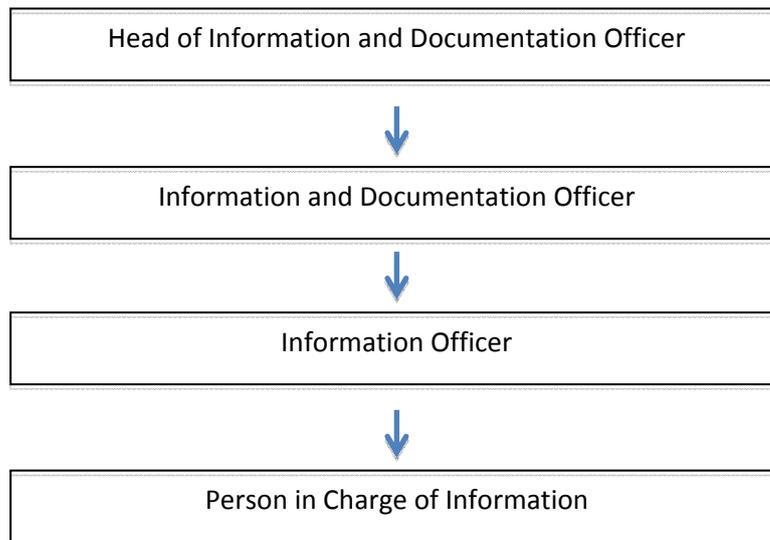


Chart 2

Structure of Responsible Court's Organs for the Disclosure of Court's Information

(c) Other Procedures

Attachment I of the Guideline of Information Service in Court also provides the procedures for the information disclosure system, as follows:

- i. Information that must be disclosed periodically will be made public through the announcement board or other media that can be seen or noticed by people in the court building
- ii. If it is possible, the disclosure of information can also be done through book/periodic publication in hard copy or on the court's website
- iii. Specifically for the Supreme Court, information disclosure will be made through the Supreme Court's website
- iv. The court's website will be run and under the responsibility of the court's clerk (to deal with the case related information) and the court's secretary (and to deal with the organizational information) or other officer appointed by the Chief of the Court
- v. The Supreme Court's website is managed and under the responsibility of the Head of Law and the Public Relations Bureau

- vi. The Working Unit under the Supreme Court may make its own official website under the responsibility of each respective Information and Documentation Officer
- vii. The Information and Documentation Officer has to update the information that must be disclosed periodically at least once every six months, except for the following information:
 - a) Court decisions and stipulations must be disclosed within two weeks after its announcement in an open court trial
 - b) The Supreme Court Regulation and Circular Letter must be disclosed within one week of its execution
 - c) An annual report must be disclosed within one week of the open launching
 - d) A trial agenda must be updated once a week
 - e) Recruitment matters must be disclosed within a maximum of one month before the recruitment process
- viii. The announcement must be written in a simple manner as well as stating the name of the Information and Document Officer or the Information Officer and the proper contact number, so that a person who needs further information may contact him directly
- ix. Information that must be disclosed periodically will be collected by the Information and Documentation Officer every 1st December to be announced on 2nd January of the following year, and every 1st June to be announced on 1st July of that year.

The Supreme Court claimed that now all of the District Courts have uploaded the decision to the Decision Directory of Supreme Court.²⁵

c. Current Publication System on the Supreme Court's Website

Direktori Putusan²⁶ (<http://putusan.mahkamahagung.co.id>) is a web-based system that publicizes the decisions of the Supreme Court so that they are easily accessible for the public. The Direktori Putusan was launched in

²⁵ Nursobah, Asep, 12 November 2015, *Kini*, 100% Pengadilan telah Mengunggah Putusan di Direktori Putusan MA [Blog Post]. Retrieved from <http://kepaniteraan.mahkamahagung.go.id/kegiatan/1208-kini-100-pengadilan-telah-mengunggah-putusan-di-direktori-putusan-ma>

²⁶ Direktori Putusan is literally translated as Directory of Decisions

2007 in the National Meeting of the Supreme Court held in Makassar. However, in 2011, the Clerk's Office of the Supreme Court, supported by Tim Asistensi Pembaruan Keadilan (Judicial Reformation Assistance Team) expanded the system of Direktori Putusan by allowing the courts across the country to upload the decisions made in each court to the directory. Each court has its own username and password to access the backend of the directory.

By making all courts submit their decisions to the Direktori Putusan, the Direktori Putusan is now regarded as the National Judgment Repository (NJP). The "role model" that became the ideal vision in the development of the Direktori Putusan was the Asian LII (Asian Legal Information Institute)²⁷ that was developed by the University Technology of Sydney.²⁸ Since its launching in October 2015, the Direktori Putusan has collected more than 1.5 million decisions.²⁹ In 2015, the Direktori Putusan collected 464,204 decisions from the courts across the country.³⁰ The participation level of the court in Indonesia has been increasing annually. In 2011, only 36.98% of all courts of all courts participated in the publication of decision, but that has increased to 70.82% by the end of 2012. In 2013, the percentage was 86.41%, which increased to 95.93% by the end of 2014. Finally, in 2015, all of the courts in Indonesia had participated in the publication of the decisions of the Direktori Putusan.³¹

Such active and massive submissions of court decisions to the Direktori Putusan cannot be separated from the pro-active and firm enforcement of the Supreme Court itself. The Supreme Court actively checked

²⁷ AsianLII (www.asianlii.org) is a non-profit and free access website for legal information from 27 countries and territories. Asian LII is being developed by the Australasian Legal Information Institute (AustLII), a joint-facility of the Law Faculties at the University of Technology, Sydney and the University of New South Wales, in cooperation with partner institutions in Asian countries and other legal information institutes belonging to the Free Access to Law Movement.

²⁸ Kepaniteraan Online, 3 March 2011, *Direktori Putusan MA Menjelma Menjadi Pusat Data Putusan Nasional* [Blog Post]. Retrieved from <http://kepaniteraan.mahkamahagung.go.id/kegiatan/124-direktori-putusan-ma-menjelma-menjadi-pusat-data-putusan-nasional.html>

²⁹ Kepaniteraan Online, 16 October 2015, *Alhamdulillah, Saat ini Direktori Putusan Telah Mongoleksi 1,5 Juta Putusan* [Blog Post]. Retrieved from <http://kepaniteraan.mahkamahagung.go.id/kegiatan/1195-alhamdulillah-saat-ini-direktori-putusan-telah-mengoleksi-1-5-juta-putusan>

³⁰ Kepaniteraan Online, 4 January 2016, *2015: 464,204 Putusan Terunggah di Direktori Putusan* [Blog Post]. Retrieved from <http://kepaniteraan.mahkamahagung.go.id/kegiatan/1229-2015-464-204-putusan-terunggah-di-direktori-putusan>

³¹ YOZ, 30 Desember 2015, *Ini Capaian Mahkamah Agung Sepanjang 2015* [Blog Post], Retrieved from <http://www.hukumonline.com/berita/baca/lt5683bdbc95b57/ini-capaian-mahkamah-agung-sepanjang-2015>

the submission rate from each court and then publicized the result of each inspection.³² The result of such firm and open enforcement method is proven to be effective in boosting court's participation in the publication. The significant increase of the decision publications is in line with the number of users of the Direktori Putusan. Research from AIPJ (Australia Indonesia Partnership for Justice) found that in 2013, the Direktori Putusan was visited 388,847 times with an average visiting time of 7:41 minutes.³³ The visitors came from various social groups, including the law students, law practitioners, as well as journalists.³⁴

The Structure of Direktori Putusan



Picture 1

Outlook of Direktori Putusan (<http://putusan.mahkamahagung.go.id>) as per 10 February 2016

The above is the outlook of the Direktori Putusan that we see when we access <http://putusan.mahkamahagung.go.id>

³² Nursobah, Asep, 29 June 2015, *Publikasi Putusan 50 Pengadilan ini Belum Update* [Blog Post], Retrieved from <http://kepaniteraan.mahkamahagung.go.id/kegiatan/1083-publikasi-putusan-50-pengadilan-ini-belum-update>

³³ Detik News, 14 May 2014, *Peneliti AIPJ: Pengakses Putusan MA Meningkatkan dari Berbagai Kalangan* [Blog Post], Retrieved from <http://news.detik.com/berita/2582077/peneliti-aij-pengakses-putusan-ma-meningkat-dari-berbagai-kalangan>

³⁴ *Ibid.*



Picture 2

*Screen Capture of the Statistic of the Uploaded Decision
as per 11 February 2016*

Based on the statistics available on the the Direktori Putusan (as retrieved on 10 February 2016), the total number of court decisions uploaded into the Direktori Putusan up until January 2016 was 1,662,995 decisions.

Depan
Direktori
Semua Direktori
Pajak (1492 putusan)
Perdata (24061 putusan)
Perdata Agama (2891 putusan)
Perdata Khusus (7164 putusan)
Pidana (13485 putusan)
Pidana Khusus (9736 putusan)
Pidana Militer (1249 putusan)
Sengketa Kewenangan Mengadili (1 putusan)
TUN (6754 putusan)
Tahun
Putus : 2015 (3315) 2014 (9657) 2013 (9477) 2012 (8091) 2011 (7865) 2010 (5701) 2009 (4343) 2008 (4574) 2007 (4053) 2006 (2368) Selengkapnya..
Register : 2015 (1575) 2014 (6857) 2013 (8350) 2012 (10372) 2011 (11820) 2010 (5835) 2009 (5344) 2008 (3667) 2007 (3173) 2006 (2356) Selengkapnya..
Upload : 2016 (29) 2015 (10770) 2014 (9344) 2013 (9242) 2012 (8373) 2011 (11873) 2010 (5747) 2009 (6411) 2008 (5246) 2007 (1122) Selengkapnya..

Picture 3

*Screen Capture of the Tabs Based on the Field of Law
as per 15 January 2016*

On the left side of the webpage, the user can find the directory where all decisions are categorized under their field of law (i.e. civil, criminal, tax, etc.). The user can click on one of those tabs and find all decisions for that particular field of law. The user can also find a decision based on year. There are three types of year, “Putus” which means the year when the case is decided, “Register” which means when the case is registered at the court and “Upload” which means the year when the decision is uploaded to the Direktori Putusan.

Perdata		
-(9867)	Pembagian Harta(67)	Perbuatan Melawan Hukum(4019)
Perceraian(289)	Perjanjian(827)	Tanah(6427)
Wanprestasi(1377)	Waris(1505)	PHI(2)

Picture 4

Screen Capture of the Contents of “Civil” Tab as per 15 January 2015

For example, if the user clicks on the tab of “Perdata” (civil case), the user will find the above options and pick the issues that he or she is looking for, such as “Perceraian” (divorce), “Wanprestasi” (breach of contract) or “Perbuatan Melawan Hukum” (unlawful act).



Picture 5

Screen Capture of the Singular Search Tool as per 15 January 2015

The right side of the webpage has a search tool with a singular search category in which the user can type the relevant keywords. The search tool will generate the decisions that include the typed keywords.



Picture 6

Screen Capture of the Results on the Search of “Arbitrase” through Singular Search Tool as per 15 January 2016

For example, when the user types “Arbitrase”, the search tool immediately generates 2,040 results that the user can choose and open.

Putusan

Putusan PT BANTEN Nomor 5/PDT/2015/PT Btn Tahun 2015
I R A W A D Y, ; PT. NICHIAS LEAKLESS TELISON GASKET MANUFACTURING
(PT.NCT), ; NIPPON LEAKLESS INDUSTRIES. CO. LTD (NLK) / NIPPON
LEAKLESS CORPORATION, ; NICHIAS CORPORATION, ;

Nomor	5/PDT/2015/PT Btn
Tingkat Proses	Banding
Jenis Perkara	Perdata Khusus
Klasifikasi	Perdata Khusus
Sub Klasifikasi	Arbitrase
Jenis Lembaga Peradilan	PT
Lembaga Peradilan	PT BANTEN
Para Pihak	I R A W A D Y, ; PT. NICHIAS LEAKLESS TELISON GASKET MANUFACTURING (PT.NCT), ; NIPPON LEAKLESS INDUSTRIES. CO. LTD (NLK) / NIPPON LEAKLESS CORPORATION, ; NICHIAS CORPORATION, ;
Tahun	2015
Tanggal Musyawarah	18-03-2015
Tanggal Dibacakan	18-03-2015
Amar	Menguatkan

Picture 7

Screen Capture of the Display of the Web When the User Click on the Selected Decision as per 15 January 2016

When the user clicks one of the decisions, the above page will appear. It gives the administrative details of the case, such as the registration date, the date when the decision was rendered, the Panel of Judges and the status of the decision (whether it is already final and binding or if there is any further legal recourse against it).

Putusan Terkait	
Banding	5/PDT/2015/PT Btn
Lainnya	46/Pdt.G/2013/PN.Tng

Download Putusan dalam format zip(terkompresi)

 [Klik untuk Download](#)

Daftar Dokumen Putusan **Ukuran**

 5_PDT_2015_PT_Btn.pdf	3378.47 KB
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Picture 8

Screen Capture of Box that Contain Links into a Downloadable Electronic Decision as per 15 January 2016

The user can also download the full decision in a Zip or PDF format. Once the user clicks on the link, the document will be immediately downloaded.



Index Putusan
Direktori
Pengadilan
<u>Semua Pengadilan</u>
Mahkamah Agung
Peradilan Umum
Peradilan Agama
Peradilan Militer
Peradilan Tata Usaha Negara
Pengadilan Pajak
Tahun

Picture 9

*Screen Capture of Tabs in the Direktori Putusan
Based on the Areas of Law as per 15 January 2015*

The user can also search the decision based on the issuing court by clicking the tab “*Semua Pengadilan*” (All Court) which will direct the user to the following page.

Pengadilan

Keyword Semua Pengadilan

Pengurutan Standar Ascending (A-Z) Cari

Nama Pengadilan	Pengadilan Tinggi	Propinsi	Jumlah Putusan / Publikasi
MAHKAMAH AGUNG			71,803 / 68,157
PA JEMBER	PTA SURABAYA		50,208 / 50,205
PA KAB MALANG	PTA SURABAYA		42,019 / 41,983
PA BANYUWANGI	PTA SURABAYA		31,283 / 31,277
PA SURABAYA	PTA SURABAYA		30,298 / 30,285
PA KABUPATEN KEDIRI	PTA SURABAYA		27,030 / 27,029
PA BLITAR	PTA SURABAYA		26,075 / 26,075
PA TULUNGAGUNG	PTA SURABAYA		22,427 / 22,427
PA LUMAJANG	PTA SURABAYA		19,225 / 19,189
PA BREBES	PTA SEMARANG		16,182 / 16,172
PA SITUBONDO	PTA SURABAYA		15,270 / 15,264
PA LAMONGAN	PTA SURABAYA		15,114 / 15,113
PA MOJOKERTO	PTA SURABAYA		14,724 / 14,723
PA PURBALINGGA	PTA SEMARANG		14,556 / 14,556
PA NGANJUK	PTA SURABAYA		14,289 / 14,287
PA BOJONEGORO	PTA SURABAYA		13,528 / 13,527

Picture 10

Screen Capture of the Results from “Semua Pengadilan” Tab as per 15 January 2016

Then we can type in the region of the district court, and select the type of court in the column, whether it is the general court, religious court, military court, or administrative court. The search tool will generate the list of relevant district court in the selected area of law. Below is the result when we input word “Jakarta” in the column reward and select “Pengadilan Umum” (*General Court*) in the category.

Umum

Keyword

Pengurutan

Nama Pengadilan	Pengadilan Tinggi	Propinsi	Jumlah Putusan / Publikasi
PN JAKARTA BARAT	PT JAKARTA		2,049 / 1,592
PN JAKARTA PUSAT	PT JAKARTA		2,756 / 1,862
PN JAKARTA SELATAN	PT JAKARTA		3,865 / 2,924
PN JAKARTA TIMUR	PT JAKARTA		2,959 / 2,418
PN JAKARTA UTARA	PT JAKARTA		1,649 / 1,358
PT JAKARTA	BADAN PERADILAN UMUM		1,680 / 1,525

Total 6 pengadilan

Picture 11

Screen Capture of the Results with the keyword “Jakarta” and “Pengadilan Umum” category as per 29 February 2016

d. Periodical Magazine and Publication of Decisions by the Supreme Court.

Aside from publications through the website, the Supreme Court has numerous routine publications relating to its decisions through books and magazines.

Since 1992, the Supreme Court and several publishers had started to compile their decisions and published them. One of the most famous publishers is Tata Nusa.³⁵ Tata Nusa Publisher makes a compilation of decision from time-to-time in various legal areas.

The habit of compiling court decisions actually is not a new thing. Even during the colonization era, the court also used a primer instrument called *Tijdschrift van het recht voor Nederlandsch Indie*, which is similar to jurisprudence.

Since its very inception, compiling court decisions was independently initiated by legal scholars or other parties who were concerned about the

³⁵ Muhammad Yasin, 31 Agustus 2011, *Menjaga Tradisi Menghimpun Putusan* [Blog Post], Retrieved from <http://www.hukumonline.com/berita/baca/lt4e5dd9c3e2bf4/menjaga-tradisi-menghimpun-putusan-pengadilan>

compilation and implementation of law in Indonesia. One impetus in the history of compiling court decisions was the publication of “*Majalah Hukum*”.³⁶ This magazine was run by numerous famous Indonesian legal scholars and was first published in 1953. It contained the profiles of famous legal scholars, legal reviews and also the important dates for upcoming legal events. In its development, this magazine changed its name to “*Hukum dan Masyarakat*”³⁷ and the publication was made by an organization called “*Persatuan Sarjana Hukum Indonesia*”.³⁸ They contained decisions and legal reviews.

A similar type of publication was also made by IKAHI (*Ikatan Hakim Indonesia*)³⁹ through a magazine called “*Varia Peradilan*”. This publication started in 1960, but it did not contain any decisions. Since 1990, *Varia Peradilan* was directly maintained by the Supreme Court and it finally included court decisions. *Varia Peradilan* was directly maintained by the Supreme Court, and it finally included court decisions. *Varia Peradilan* is still in operation up until today and it is now a monthly publication. In its about 150 pages, *Varia Peradilan* comprises about five articles written by various famous legal scholars, articles on the Supreme Court’s activities, pictures, obituaries and selected decisions.

The public can subscribe to *Varia Peradilan* by registering at the Library of the Supreme Court. The cost for the subscription is IDR 450,000 per year (excluding the shipping cost).

Aside from *Varia Peradilan*, the Supreme Court also makes an annual publication titled “*Yurisprudensi Mahkamah Agung*”.⁴⁰ This publication, however, is not available to the public. This publication is distributed to the courts across Indonesia and it is not available for commercial sale. However, this publication seems to be available unofficially. We visited the library of the Supreme Court and managed to assess “*Yurisprudensi Putusan Penting*

³⁶ Literally translated as “Law Magazine”

³⁷ Literally translated as “Law and Society”

³⁸ Literally translated as “Indonesian Bachelor of Law Association”

³⁹ Literally translated as “Indonesian Judge Association”

⁴⁰ Literally translated as “The Supreme Court’s Jurisprudences”

(*Landmark Decision*) *Tahun 2012 dan Tahun 2013*”⁴¹ issued by the Supreme Court in 2013. This book comprised of eight decisions (three civil cases, one criminal case, one special criminal case, one religion case, one administrative case and one military case). We also managed to assess a book titled “*Yurisprudensi Mahkamah Agung Tahun 2014*”⁴². This book contained twelve decisions selected by the Supreme Court.

In addition to the Supreme Court or certain organizations who did the compilation and publication of the court’s decision, it is noted that some individual legal scholars and practitioners also did the compilation and published the court decisions. In 1967, L. Suryadarmawan, a prosecutor, compiled and published two bundles of decisions by the Supreme Court. Some other practitioners, such as Mr. Soedargo Gautama and Kuneng Mulyadi also followed this type of publication. Mr. Soedargo Gautama in 1997 published a book entitled “*Himpunan Jurisprudensi Indonesia yang Penting untuk Praktek Sehari-hari (Landmark Decisions) Berikut Komentar*”⁴³ which also comprised his numerous and invaluable legal interpretations. Kuneng Mulyadi also published a book titled “*Himpunan Yurisprudensi Hukum Waris*”⁴⁴ on 1980.

5. Jurisprudence

a. Definition of Jurisprudence

The term “jurisprudence” does not always mean the same thing; the definition depends on the legal system. Etymologically, the word is derived from the Latin word, *jurisprudencia*, which means knowledge of law. In Indonesia, the term “jurisprudence” has the same meaning as *jurisprudentie* in Dutch and *jurisprudence* in French, which means “permanent judging” or “law of the court”.⁴⁵

According to Black’s Law Dictionary (Seventh Edition), “jurisprudence” has several meanings: (1) originally (in the 18th century), the study of the first

⁴¹ Translation: Jurisprudence, Landmark Decision Year 2012 and Year 2013.

⁴² Literally translated as “The Supreme Court’s Jurisprudence Year 2014”.

⁴³ Literally translated as “Compilation of Indonesia’s Jurisprudence That Important for Daily Practice and Its Commentaries”

⁴⁴ Literally translated as “Compilation of Jurisprudence on Inheritance Law”

⁴⁵ Purnadi Purbacaraka and Soerjono Soekanto, 1989, *Perundang-undangan dan Yurisprudensi*. Bandung: PT Citra Aditya Bakti, p. 47

principles of the law of nature, the civil law, and the law of nations; (2) more modernly, the study of the general or fundamental elements of a particular legal system; (3) the study of legal systems in general; (4) judicial precedents considered collectively; (5) in German literature, body, or division of law; and (6) case law.⁴⁶

The equivalent term to the Indonesian meaning of “jurisprudence” shall be “case law” or “judge-made law” in English.⁴⁷ In German, the term *jurisprudenz* means the theory of law in a narrow definition. *Ueberlieferung* is the German term that is equivalent to the Indonesian term *jurisprudence*.⁴⁸ The word “jurisprudence” is used hereinafter for “permanent judging” or “law of the court” which is the meaning of “jurisprudence” in Indonesia.

b. Jurisprudence as a Source of Law

Generally, jurisprudence is recognized as a source of law. However, the degree of the recognition differs, depending on the legal system. It also depends on the role of judges in the legal system, which can be divided into the following schools of thought:⁴⁹

i. Legism

In this school of thought, written law is the primary source of law. A judge is bound to the written law, and his duty is to enforce the law. Jurisprudence itself is only a secondary source of law.

ii. Freie Rechtsbewegung

This school of thought is the opposite of Legism, in which jurisprudence is the primary source of law and the written law is secondary. Therefore, the role of the judge is to create law. Legism is considered to be unable to keep up with the development of society, thus this school of thought was introduced.

iii. Rechtsvinding

This school of thought is a combination of Legism and Freie Rechtsbewegung, in which a judge is bound to the written law, but he

⁴⁶ Bryan A. Garner, 1999, *Black's Law Dictionary (7th Ed.)*, Minnesota: West Group

⁴⁷ *Supra* note 48

⁴⁸ *Ibid.*, p. 48

⁴⁹ *Ibid.*, p. 49.

or she still has room to interpret the law. A judge's duty is to harmonize the written law with the development of society.

As a source of law, jurisprudence also serves the following functions:⁵⁰

- i. a similar judgment in similar cases would result in a similar legal standard, especially in the event of a legal vacuum of;
- ii. a similar legal standard would create legal certainty among people;
- iii. a legal certainty would further create a predictable and transparent judgment by the judges; and
- iv. a disparity in judgment would be avoided for similar cases.

c. Principles of Jurisprudence

The enforceability of jurisprudence depends on which principle a state practices. There are only two principles:⁵¹

i. Precedent Principle

This principle is followed by Anglo-Saxon states, like England and the United States. Under this principle, a judge may not deviate from previous judgments or judgments issued by a higher court. This principle is based on four factors:

- a) that the application of the same rule to successive similar cases results in equality of treatment for all who come before the court;
- b) that the consistent following of precedents contributes to predictability in future disputes;
- c) that the use of established criteria to settle new cases saves time and energy; and
- d) that adherence to earlier decisions shows due respect to the wisdom and experience of prior generations of judges.

There are two exceptions to the precedent principle:

⁵⁰ Paulus Effendie Lotulung, 2000, *Peranan Yurisprudensi Sebagai Sumber Hukum*, Jakarta: BPHN Departemen Kehakiman dan HAM, p. 17.

⁵¹ *Supra* note 48, p. 55.

- a) if the previous judgment being applied in the current case is deemed to be unreasonable and inconvenient; or
- b) whatever else the judges said was not necessary to their decision.

ii. Free Principle

This principle is the opposite of the precedent principle, in which a judge is not bound to previous or higher judgments. This principle is adopted by civil law countries such as the Netherlands, France, and Japan. However, in practice, this principle is not being applied strictly. It is better to do so for the following reasons:

- a) to prevent inconsistency between judgments that are not in line with the principle of legal certainty;
- b) to prevent a waste of unnecessary costs; and
- c) to prevent criticisms of superior judges.

d. Case Law in a Common Law System

It is to be understood that under the common law system, there are a number of applicable norms of law.⁵²

- i. law is a cultural institution that constantly develops;
- ii. law is the creation of human culture;
- iii. law does not need codification, because the codified law is only a part of the law;
- iv. court judgment is the real essence of law;
- v. a judge has the legality to create law; and
- vi. if there is a conflict between jurisprudence and the law, the jurisprudence prevails.

e. Jurisprudence in a Civil Law System

As opposed to the legal norms of the common law system, those applicable in the civil law system are the following.⁵³

- i. the law is conservative and closed;

⁵² Ahmad Kamil and M. Fauzan, 2004, *Kaidah-kaidah Hukum dan Yurisprudensi*, Jakarta: Kencana, p. 17

⁵³ *Ibid.*

- ii. a judge's duty is only to apply the law;
- iii. a judge's role is only as a speaker of the law; and
- iv. if there is a conflict between jurisprudence and the law, the law prevails.

Even so, in Japan, judges are fairly active in creating law.⁵⁴ Court judgments are respected and followed as one of the primary sources of law.⁵⁵ The Japanese court publishes its judgments through court reports, and through such publication, the public can actively participate in analyzing the judgments issued that may potentially create a new law. Japanese law is still primarily based on statutory laws, but the codes are deemed to be general, so the judges have to close the gaps through their judgments.

However, there is no specific or explicit provision in the Japanese law that provides the status of judicial precedent in regards to court judgments. The current prevailing view is that court judgments are sources of law in a supplementary way. In practice, the Japanese lower courts usually follow the Supreme Court's precedents to avoid the risk of having their judgments reversed.

f. Jurisprudence in Indonesia

i. Definition

Indonesia inherited the legal system from the Dutch colonial era, and Indonesia belongs to the Civil Law System. Indonesia recognizes jurisprudence as a source of law with the *rechtsvinding* school of thought.⁵⁶ Under Article 20 of *Algemeene Bepalingen van Wetgeving voor Indonesia* (“**AB**”), “A judge must judge based on the law.” However, Article 22 of the same law further stipulates, “A judge cannot refuse a case with a reason that the law is not clear or complete.” The AB itself, even though it is a legal product of Dutch colonization in Indonesia, it is still applicable under the Article II Transition Clause of the Constitution, which stipulates, “All existing

⁵⁴ Hiroshi Oda, 2009, *Japanese Law*, Oxford: Oxford University Press, p. 7

⁵⁵ *Ibid*, p. 42.

⁵⁶ R. Soeroso, 2005, *Pengantar Ilmu Hukum*, Jakarta: Sinar Grafika, p. 92.

state institutions and regulations are still applicable, as long as there has been no newly-stipulated law under this Constitution.”

There has been no recent research on jurisprudence in Indonesia other than the National Board of Law Development’s research in 1992. From such research, it is found that there are still different opinions among judges and lawyers about the definition of jurisprudence.

Even though there is no specific definition of “jurisprudence” in Indonesia, Professor Subekti, a former Chief of the Supreme Court defines jurisprudence as ”a legally binding judgment and confirmed by the Supreme Court in a cassation, or a Supreme Court’s legally binding judgment.” This raises criticism for dismissing the Lower Courts’ judgment. Based on Professor Subekti’s definition, a jurisprudence can only be created at a cassation level, which dismiss legally binding decisions issued by Public Courts and High Courts, despite the potentially significant legal impact they might have.⁵⁷

ii. Criteria of Jurisprudence

Related to the Supreme Court’s role in declaring a judgment as jurisprudence, a number of criteria must be fulfilled in order to recognize a court decision as jurisprudence, more popularly known as ”permanent jurisprudence.” Based on the research of the National Law Development Board in 1995, H.M. Fauzan defines permanent jurisprudence as a “judgment of a Lower Court, and the Appeal Court, or the Supreme Court, which is legally binding, for cases with no clear regulations, which contains justice and truth; and is followed repetitiously by the next judge for a long time in his consideration for similar cases; and is recommended as permanent jurisprudence, bound and printed under the budget of the Supreme Court, and is distributed to all courts in Indonesia, with the hope that it shall be a guide for all judges in the future in judging similar cases.”⁵⁸

⁵⁷ *Supra* note 55, p. 19

⁵⁸ *Supra* note 55, pp. 20 - 21

Based on the definition above, jurisprudence must undergo the following processes:⁵⁹

- a) there is a legally binding judgment;
- b) the judgment is made for a case with no clear law;
- c) it contains truth and justice;
- d) it has been repetitiously followed by judges for similar cases;
- e) it has been through the examination of the Supreme Court; and
- f) it is recommended as a judgment qualified to be permanent jurisprudence.

In our informal interview with the Justice on 2 February 2016, it seems that there are different views among the judges when it comes to jurisprudence. In the Justice's opinion, there is a misconception regarding the term "jurisprudence" itself, which many seem to think means a compilation of judgments. Moreover, the Justice himself views three types of judgment, namely 1) landmark decisions, which are decisions with significant legal elements; 2) jurisprudence, which means ordinary decisions or a decision that has come to pass; and 3) fixed jurisprudence, which means decisions selected by the Supreme Court under the criteria above.

iii. Role of Judges

According to R. Soeroso, an Indonesian judge takes the following actions in handling disputes:⁶⁰

- a) he places the dispute in proportion;
- b) he analyzes the law:
 - 1) if the law regulates it, the dispute shall be settled in accordance with the law;
 - 2) if the law is not clear, he will interpret the law;
 - 3) if there is a vacuum in the law, he will conduct a legal construction and analysis;

⁵⁹ *Supra* note 55, p. 21

⁶⁰ *Supra* note 59, p. 93

- c) he also considers jurisprudence and stipulations of religious law, adat law, and other law applicable in society.

In the past, the Supreme Court issued the Supreme Court Circular Letter Number 2 Year 1972 dated 19 May 1972 which encourages lower court judges to monitor and refer to jurisprudence, but this circular letter was not widely distributed to all judges in Indonesia.⁶¹ The Justice confirmed that currently, the Supreme Court is preparing a set of rules in regard to jurisprudence, but there has been no detail so far on how these new rules would be in nature.

According to Prof. Dr. Paulus Effendie Lotulung, S.H., lower court judges tend to refer to previous judgments, which are hierarchically above them for similar cases.⁶² The reasons are the following:

- a) they are of the same opinion as the previous judgments;
- b) if they judge differently, such judgment may be reversed by a higher court; and
- c) they are for the sake of legal consistency and certainty for similar cases.

iv. **Examples of Jurisprudence**

Despite the ambiguous view that Indonesian judges have on jurisprudence, there have been court judgments that are recognized as fixed jurisprudence by the Supreme Court and are still considered today when trying similar cases; some of them are as follows:

- a) Supreme Court Decision number 1072K/Sip/1982, in which if there is more than one defendant, it is sufficed to address the lawsuit to the defendant that expressly possesses the disputed object;
- b) Supreme Court Decision number 1875K/Pdt/1984, in which default and unlawful acts must be filed as separate lawsuits;

⁶¹ Badan Pembinaan Hukum Nasional, *Laporan Penelitian tentang Peningkatan Yurisprudensi sebagai Sumber Hukum*, Jakarta: BPHN Departemen Kehakiman dan HAM, 1992, Print, p. 24

⁶² *Supra* note 53, p. 11

- c) Supreme Court Decision number 5096K/Pdt/1998, in which compensation for loss of profit shall be 10% per annum as of the date of the lawsuit filed at the District Court until the debt is paid; and
- d) Supreme Court Decision number 1354K/Pdt/2000, in which when a husband and a wife have separated for four years, such separation can be grounds for divorce.

When a judge considers jurisprudence in a decision he makes, he usually will recite the referred jurisprudence in the court decision. Keyword search of “yurisprudensi” in the Supreme Court website shows 53,300 results as of the date of this report. Close examination of these cases is beyond the scope of this research, but this fact shows that jurisprudence is considered in making a court decision. For example, Supreme Court Decision No. 358 K/Pdt/2001 dated 20 February 2007 referred to Supreme Court Decision No. 916 K/Sip/1973 dated 19 December 1972 for the adat case that was being tried. The jurisprudence stipulates that in adat law, ownership of land title under the adat law shall not disappear even with expiry.

Indonesia generally accepts jurisprudence as a source of law through the following:⁶³

- a) when jurisprudence is stipulated as laws and regulations; and
- b) implicit acceptance, which can be observed from the practice of judges, lawyers, and lawmakers.

However, jurisprudence still does not bind the judges to comply, as confirmed further by the Justice in our interview, even though in practice, usually the judges would follow fixed jurisprudence.

⁶³ *Supra* note 64, p. 17

6. Assessment of the Current Publication System

a. Objectives of the Publication of Court Decisions

Publication of court decisions ultimately contributes to a firm establishment to rule of law and more directly contributes to the following objectives:

i. Transparency and Accountability of Courts

Courts are the government organs that finally settle legal disputes in society and they must maintain transparency and accountability. Court procedures must be open to the public to ensure transparency and accountability during litigation, while court decisions must be published to ensure transparency and accountability of the results of court procedures.

ii. Accumulation of Jurisprudence

The Indonesian legal system belongs to the civil law system, but needless to say, jurisprudence plays an important role even in the countries using the civil law system such as Germany, France, Japan, and so forth. The publication of court decisions is one of the preconditions for the accumulation of jurisprudence.

iii. Analysis of Court Decisions by the Public, Including Academics and Legal Practitioners

Analysis by the public, including academics and legal practitioners of court decisions is essential to ensure fair decisions by the courts and improve the quality of court decisions. Besides, court decisions must undergo analysis and criticism by the academics and legal practitioners to become jurisprudence. Court decisions should be published for such analysis by the public. In addition, such analysis would identify various issues in the laws and deepen their academic study.

iv. Prevention of Corruption in the Courts

Publication of court decisions for their transparency and accountability is expected to mitigate corruption in Indonesian courts. Obviously, the public can criticize the questionable court decisions that are published.

The current publication system of court decisions has been successful in terms of the first objective (Transparency and Accountability of Courts), because numerous decisions by the Supreme Court and the lower courts have already been published and such publication is ongoing. However, there is still a wide space for improving the current publication system in terms of the second objective (Accumulation of Jurisprudence), the third objective (Analysis of Court Decisions by the Public, Including Academics and Legal Practitioners) and the fourth objective (Prevention of Corruption in the Courts).

b. Points for improvement

After assessing the current publication system of court decisions, we are of the view that the following points can be improved for a better publication system in the near future:

(1) Printed Publication

- The printed publication of decisions is still scattered and is limited to the public. At this point, the only official decision published that can be accessed by the public is *Varia Peradilan*, whereas *Varia Peradilan* itself does not really focus on the publication of court decisions. The publication of a decision itself is also done loosely by certain private parties or publishers who are interested in doing so. This private publication system is good because it allows society to be actively involved in the publication. However, the drawback of this private system is the unreliability of the publication. Unified or centralized official publication of decisions (especially regarding landmark decisions or important decisions) is really necessary, so that the reader and the user can know first-hand which decisions and interpretations are admitted by the Supreme Court, subject to criticism by the public.
- We found that some publications that were meant to be limited to the court and/or judiciary organs only and we also found out that they have been available to legal practitioners unofficially. We are of the view that such practices occur due to the demand of society to have reliable literature references regarding court decisions and decisions that are

considered important by the Supreme Court. Therefore, to avoid such lack of general availability, the Supreme Court can sell such publications in the official stores run by the Supreme Court or through paid and registered subscriptions. Such publication is indeed thick and heavy and it may be inefficient to distribute physically. Therefore, the Supreme Court may also consider making such publications available in electronic form.

- We believe that there is urgency to have unified regular printed decisions published in order to maintain its regularity of publication, to ensure the reliability of information concerning decisions and to have decisions highlighted by the Supreme Court, and to avoid the unofficial distribution of such limitedly-available decision publications. Seeing such unofficial distribution, we are of the view that there is a high level of demand for official publications.
- For healthy and constructive judiciary reform, one must not neglect public participation, particularly from fellow legal scholars and practitioners. We are of the view that Indonesia needs an official publication to accommodate the comments and further scientific review against the decisions that have been made. This will not only enrich the discussion and interpretation on certain legal issues, but it will also be good learning material for law students and legal scholars.

(2) Supreme Court Website (<http://putusan.mahkamahagung.go.id>)

- The lack of partnership between judiciary bodies and private entities

As discussed earlier, it is noted that there are a number of private publishing companies interested in and concerned with the publication of the court's decisions that are independently working with some legal scholars to compile decisions. The Supreme Court may consider to embrace these publishing companies and make an official partnership with them to handle the decision publications. The Supreme Court may also consider engaging with private IT companies that are able to handle and manage electronic documentation systems.
- A user interface and experience that can be more user friendly

- a) One major issue relating to the user interface and experience of the website is about search tools. There is only one search tool that will generate very general result that includes all of the keywords used. This is particularly ineffective when the user intends to search for a specific case.

The search tool can be more advanced by adding the integrated search category so that the user can make his search as wide and as specific as needed. By having a more advanced search tool, the *Direktori Putusan* will be able to accommodate a more complex search.

- b) The directory does not have a comprehensive taxonomy that may help users search for cases. Such would be helpful also in terms of understanding a case. The more specific the categories and tags used in a decision, the more helpful it will be for a user to look for cases and others similar to it. One challenge for the Indonesian legal system is that the originals of some basic statutes, such as the civil code, criminal code, civil procedures law, etc. are still in the Dutch language and the unofficial translation of those statutes are used by judges and legal practitioners. Accordingly, there is no official terminology in the Indonesian language in relation to those statutes and it is difficult to search for court decisions involving certain key legal issues by using relevant official legal terms.
- c) The link that directs to the collection of the specific court also needs its own search tool so that the user can search a decision on specific issues made by a specific court.
- d) Sometimes, the users find some cases whose complete digital document cannot be downloaded. In some cases, the digital decision is not available at all. There are also cases where the scan quality of the decision is poor, making the decision practically unreadable. These problems are found, probably because this publication system is still at the start-up stage, and it is expected that there will be less problems in the near future.

- e) The website is entirely in Indonesian, although to have all decisions translated into English will require significant time and cost. However, it will be quite helpful to have the website in English as well in order to put foreigners at ease to access the website.
 - f) The website should display a list of cornerstone cases decided by the courts, or at least the Supreme Court. To advance the publication, it would also be helpful to have a court rapporteur that recaps cases and makes notes that compare the interpretation and implementation of the laws toward the cases.
- The quality of decisions themselves that lack legal reasoning

Although the publication rate is significantly increasing as well as the number of users with regard to *Direktori Putusan*, such progress is not necessarily in line with improvement of the decisions' quality, some of which are still far from what are expected by legal scholars and practitioners.

In a published decision, the readers, particularly those who have a legal background, are not only expecting the decision but also the reasoning behind the decision. Needless to say, the reasoning behind the decision is important, not only to give an understanding to the disputing parties, but also for non-disputing parties who might need such information for educational purposes, giving insight into the practical interpretation on the legal issues that have not been regulated specifically as well as to maintain legal certainty and predictability.

For legal practitioners, easy and efficient access to comprehensive decisions that are published well is very important. The reasoning from the published decisions may be used to add value to arguments, to assess strategy in litigation, to increase the accuracy of predictions of the outcome of future cases, and to prepare legal opinions on interpretation of laws. These issues are particularly important in order to help legal practitioners and litigators in Indonesia advise the clients, especially regarding litigation works.

It could be argued that Indonesia is a civil law country, therefore using and analyzing court decisions is not a legal tradition in Indonesia. However, Professor Rick Lawson, the Dean of Leiden Law School, in an interview stated that the gap between the common law and civil law system is getting smaller because in the Netherlands, judge-made law even can create rules or interpretations in the most substantial part of certain legal issues, such as in the matter of unlawful acts (*onrechtmatigedaad*), in which sometimes an interpretation is necessary to complement the implementation of the initial provision provided by the legislator in actual practice.⁶⁴ In that interview, Lawson also commented on how court decisions in Indonesia are now widely published and easily accessible to the public through the Internet. He stated that this level of publication should encourage more active participation from legal scholars and practitioners in Indonesia to analyze and criticize the decision issued by the court by scientifically analyzing and annotating the cases.⁶⁵ It is hoped that hand-in-hand improvements in both the publication system and the decision itself will create a better and healthier judicial system in Indonesia. The topic of jurisprudence is analyzed in the preceding section of this report.

At the end of the day, a good publication system without having a high quality decision to read and refer to, will not do much for the judicial system in Indonesia, since those decisions will only be published without having any legal significance. Accordingly and needless to say, all the decisions should have full and well-thought-out reasoning and the quality of the decisions should be improved.

(3) Accumulation of Jurisprudence

As described above in this report, the view on jurisprudence is not necessarily unified among judges, academics, and legal practitioners in Indonesia. In addition, the term “jurisprudence” is used for various

⁶⁴ ALI, 19 June 2014, *Prof. Dr. Jan. Michiel Otto: Ahli Hukum Indonesia Harus Sering Kaji Putusan* [Blog Post], Retrieved from <http://www.hukumonline.com/berita/baca/lt53a2eb91bd3ce/prof-dr-jan-michiel-otto--brahli-hukum-indonesia-harus-sering-kaji-putusan>

⁶⁵ *Ibid.*

meanings and there are other similar terms, such as “fixed jurisprudence” and “landmark cases.” In Japan, court decisions that strongly bind future cases as a matter of fact are called as “*hanrei*.” We believe that the concept of court decisions that strongly bind future cases as a matter of fact need to be discussed further and made clear in Indonesia which belongs to the civil law system together with Japan and other countries.

In Indonesia, there are almost 50 Supreme Court Justices, and the Supreme Court publishes thousands of its decisions every year (3,413 decisions in 2015, 9,694 decisions in 2014, 9,478 decisions in 2013, and 8,091 decisions in 2012). It is said that the quality of decisions by the Supreme Court is varied and it is quite difficult to confirm which decisions among thousands of published decisions should be treated as jurisprudence to be followed by judges in future cases as a matter of fact.

The Supreme Court has been endeavoring to make court decisions consistent. In our informal interview, the Justice stated that the Supreme Court formed a selection team to select the landmark decisions ruling the specific legal issues that are not stipulated in the statutes. The Supreme Court will issue Supreme Court Circular Letters (*Surat Edaran Mahkamah Agung / SEMA*) on such landmark decisions to be followed by judges for future cases. Furthermore, the Supreme Court implemented the chamber system and the chamber discusses the decisions made in the chamber to improve consistency in court decisions.

We believe that the selected decisions followed by judges for future cases should not only be made available to judges, but also published for the public as jurisprudence or landmark cases. If such decisions are published as jurisprudence or landmark cases, academics and legal practitioners can analyze and criticize them and/or use such decisions as guidance to interpret laws for future cases. The publication system for court decisions should be coordinated with the selection of jurisprudence or landmark cases.

c. Cooperation with Foreign Judiciaries, Academics and Legal Practitioners

i. Academic Discussion of the Concept of Jurisprudence

Full-scale publication of court decisions started a few years ago in Indonesia, and jurisprudence has been accumulated and followed by judges since many years ago in other countries that use the civil law system. Discussion and joint study with judges, academics, and legal practitioners from foreign countries can be helpful for developing of jurisprudence in Indonesia.

ii. Selection of Jurisprudence

There is a lot of jurisprudence that has accumulated over a long period of time in other foreign countries. Contents of the Civil Code, Criminal Code, and other basic laws in the countries using the civil law legal system are different from each other, but some of them share common concepts, provisions, and structures. We believe that the comparative studies of jurisprudence in foreign countries and in Indonesia would contribute to the faster development of jurisprudence in Indonesia.

iii. Publication System of Court Decisions

As described in the preceding sections, the current publication system on the Supreme Court's website is not very user-friendly. The registrar in charge of such publication may obtain useful inputs from publication systems used in other foreign countries. Technical assistance from foreign governments may be beneficial for such a purpose.

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