

'Democracy doesn't ensure access to justice'

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The Bojong waste treatment plant case, the 20 year-old unresolved Kedung Ombo land eviction case, land confiscation by military officers in Sidoarjo, East Java — these are just a few drops in the ocean of flawed justice in this country.

Certainly, there is more openness and freedom compared to the period of the previous Soeharto regime. But access to justice is still limited and selective due to the classical problems of corruption,

and a fetid legal culture that gives effective impunity to the military and the wealthy.

There has in fact been some institutional legal reform here in this country, with the establishment of a number of institutions, namely a Human Rights Court, a Corruption Eradication Commission, an Ombudsman, a Constitutional Court, and many others.

However, the commission establishment frenzy has yet to be effective in boosting access to justice.

A workshop on access to justice in "transitional" countries held here recently, concluded that while commissions like the ombudsman can help in offering solutions, it has to consist of honest and trusted members.

"The commissions are needed to provide external supervision, which is more objective and is not attached to an esprit de corps.

"However, it has to be rearranged as some (commissions) overlap with one

another, which will only lead to unnecessary burdens on the state budget and could create public confusion," said Maruarar Siahaan, a judge of the Indonesian Constitutional Court.

Organized by the Singapore-based Asia-Europe Foundation (ASEF), the Habibie Center and the Hans Seidel Foundation, the workshop implied that there is a need for a mechanism that will bring courts to the people.

The legal system could be simplified, for instance, with informal alternative dispute settlements and mediation, especially because there is deep public distrust of the judicial system.

In this case, legal aid schemes are pivotal and there should be improvement in the schemes, and possibly incentives for pro bono activities by lawyers.

Legal aid entails consultation and advice — not only on criminal cases but also civil and administrative cases — as well as provision of basic information on justice.

In terms of raising public awareness, it must be done using media that people are familiar with.

"Public education can be done through comic books and drawings. The government is sometimes too strict and bureaucratic. Don't hide

behind the complicated things. Everything is complicated but there has to be political will," said Deborah Stothard, executive director of Alternative ASEAN Network on Burma.

The love of justice, she said, already existed in Asian culture, so people just need to be given confidence.

ASEF's director for intellectual exchange, Bertrand Fort, said that to enhance access to justice, it requires budget allocations to the judicial system for training and educating the law enforcers, as well as giving them proper salaries.

"There are hundreds of international agencies which disburse money, but the question is how to channel the money properly," Fort said.

He pointed to well-off non-governmental organizations (NGOs) that had no grasp of the grassroots level.

"So, there must be genuine partnership between government, NGOs and the state apparatus to create efficient law enforcement," he said.

It has to be noted as well that not all judges are corrupt. Therefore, there should be a mechanism to protect them from punishment and threats.

On the notion of trust, there has to be critical and active trust, which means that people need to be committed to eventually trusting the system even

though the system is flawed.

All actions and decisions should also be taken at local levels, with assistance and information.

External actors, in this case other countries, need to be involved as international pressure often succeeded in pushing for resolution of legal cases, such as the cases of gang rape in Pakistan recently.

"In terms of international pressure, it has to be understood that Asia has diverse value systems. Sometimes punishment for past wrongdoings is not necessary because apology is enough. This has to be introduced," said Thai-based Malaysian activist Stothard.

However, there is still a reluctance to be open and honest in regional discourse.

"We have also fallen into the trap of raising ourselves in default. Like 'Oh, at least our situation in Malaysia is better than Indonesia', for instance," Stothard said.

A country with less access to justice, she added, can access it from other countries with a more established legal system, such as Singapore.

"It is possible. It's the moral obligation of these countries (with more established legal systems). Government to government work must also encourage access to justice that will also boost investment," Stothard said.