

Judicial Corruption: Some Consequences, Causes and Remedies

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Introduction

While corrupt activities are never easy to assess, this is even more true if the receiver of the bribe is a judge. Perhaps that explains why Transparency International does not have a special section on judicial corruption, and why there is so little literature on the issue (cf. Yonaba 1997: 87-98). Such a dearth of information is remarkable if we take into account that corruption generally is at the center of the international movement for good governance, not to mention the fact that so many reports, books, workshops, lectures and programs are dedicated to the issue (Taylor 2002: 40-42).

The main reason judicial corruption is so hard to assess, I suppose, is that the judicial process is of a so-called triadic nature: It involves not two but three parties (Shapiro 1981), with two of the three in an adversarial position.¹ While competition between parties before a public official occurs in many constellations – for instance in tender procedures – it is never as clear-cut as in the case of litigation, where the only reason to involve a third party is the other two's inability to solve their conflict on their own. And obviously a party who has paid the bribe will try to conceal his act in order not to endanger his position in any future proceedings. Those involved in the "triad" usually do not like to talk about this part of their "business," at least not while the relationship still exists or if there is a prospect of renewed involvement in the future.

Another reason has to do with the nature of the judicial office: No other official is held to the standards of impartiality required of a judge (Becker 1970: 26). Impartiality is the very essence of judicial office,² even if it has long been established that courts are political institutions (Shapiro 1964), and that judges usually represent to some degree the interests of the ruling elite (e.g., Griffith 1991).³ A judge who fails to maintain his impartiality will soon lose his legitimacy in the eyes of society. It is no wonder that the requirement of impartiality permeates legal education and is a basic cornerstone of the rule of law.⁴ Thus, by

profession judges are particularly sensitive about this issue, which has become a crucial element of their professional integrity (see also Bedner 2001: 235).

The final reason I would like to cite has to do with the nature of judicial conflict resolution, and maintains that the law is not always as straightforward as we would like it to be. It is often very difficult to tell from a judgment whether the judge has been subject to monetary or other improper influences in reaching his conclusion because the law is unclear, which, of course, is often the reason in the first place why parties take a case to court.⁵ This problem is particularly evident in legal systems that are not fully developed, where legislation may be unavailable or case law inaccessible (Churchill 1992, Pompe 1996, Yonaba 1997, Al-Zwaini forthcoming), or where in the course of the transition from a colonial to a post-colonial state, the coherence of the entire system may have been undermined by ruptures in the relationship between legal texts (Massier forthcoming). In summary, the absence of clear rules obscures what the judge is doing.

The question of how difficult it is to assess whether there is a case of judicial corruption further depends on how you define this concept. Do you speak of judicial corruption only if a judge produces a certain judgment after receiving an amount of money from a stakeholder and it is the money that determines this outcome, or do you choose to include other cases as well? For the purpose of this essay I define corruption rather narrowly: There is a case of corruption if a judge accepts money or services from a party to a dispute that may influence his decision in a case at hand.⁶

Having established some of the basic issues underlying my argument, I will now try to shed light on the consequences and causes of judicial corruption, and look at a few major obstacles confronting reformers.

The following questions will guide my inquiry:

- What are the effects of judicial corruption on judgments?

- How bad is judicial corruption for the legitimacy of the state and economic development?
- What makes judges corrupt?
- How can you reduce judicial corruption?

Consequences

What are the effects of judicial corruption on judgments?

As I have already indicated, this question is difficult to answer because often the law does not point straightaway at a certain outcome. Nonetheless, we can at least structure an examination by distinguishing various categories of influence.

On one side of the effects scales, we find cases where the judgment is in clear conflict with the law. Although one has to be careful not to draw any rash conclusions – the causes may also lie with insufficient legal training or judges may have been subject to political pressure – in many such cases corruption is the cause of the judicial decision. Good cases to illustrate this point are various judgments from the Indonesian commercial courts. These were established in the wake of the 1997/98 crisis to create a reliable process to pronounce bankruptcies and thereby settle the huge amount of bad debts in the private sector.

Several features of the commercial court make them an ideal research object for the purpose of judicial corruption. First, bankruptcy proceedings all over the world are often more of an administrative procedure than an adversarial lawsuit, and as regards the conditions for pronouncing a bankruptcy, bankruptcy law is not the most intricate of legal fields. Second, the courts were to apply a new Law on Bankruptcy (Government Regulation in lieu of Law No. 1 of 1998), specially drafted for this purpose and which apparently provided much legal certainty. Third, unlike most judgments in Indonesia, the judgments of the commercial courts are all published and accessible to a wide audience. This was supposed to lead to a clear case law based on precedent. And finally, the judges for the commercial courts were specially selected and given a thorough training course. The main drafter of the Bankruptcy Law was one of the teachers.⁷

These measures failed to promote good judgments, but they were quite successful in producing transparent bad administration of justice. Legal scholarly analyses of commercial court judgments have shown that the judges refuse to apply the law in a straightforward manner and have produced a range of incomprehensible judgments (Tahyar 1999, Lindsey 2000). While in certain cases

political considerations may very well have replaced money as an incentive – in particular in the cases against parts of the huge conglomerates – in others there are no grounds whatsoever to assume that the judges were under political pressure. In these cases, bribery seems to be the single explanation left.

This is shown most clearly by the widely publicized Manulife case, where out of the blue the judges declared the Indonesian subsidiary of Canadian insurance giant Manulife bankrupt, because in 1998 it would have failed to pay dividends to its former Indonesian partner PT Dharmala Sakti Sejahtera (*Hukumonline.com*, June 6, 2002). In fact, it was obvious to anyone with some knowledge of the case that this claim lacked any legal grounds and that the whole suit was only a way for PT DSS to bring pressure on Manulife in the negotiations over the consequences of the split (Backman 2002). In this case the judges of the Jakarta commercial court had miscalculated the effects of their actions. Worldwide negative reactions to the Manulife judgment brought such pressure on the Indonesian government and judiciary that, in a most unusual move, the Supreme Court launched an investigation into allegations of corruption which led to the suspension of three of the judges involved in the court proceedings (*Hukumonline.com*, June 21, 2002).⁸

While this is probably the kind of effect most people think of in relation to judicial corruption, the opposite also happens, and probably more often: The judge does receive a gift or a favor. But it has no influence on the outcome of the case, nor is it visible from the judgment. It can only be assessed from a combination of legal analysis and field research in and around courthouses, which is quite a rare form of research.⁹

There are several ways to explain the “bribe paid to no visible effect” cases. One is that both parties to a dispute negotiate with the judge to win a case. Judges who attempt to maintain at least a degree of integrity or impartiality may judge a case on its legal merits and accept the money from the party whose case they think is strongest (Bedner 2001: 236). Obviously, in situations where the law is less clear, the discretionary power of the judge increases and the nature of the negotiations may shift towards a bidding competition.¹⁰

An obvious side effect of this development is that judges take their decisions regarding the outcome of a case at a very early stage of the procedure (Bedner 2001: 239-40). Consequently, even if there is no intention on the part of the judges to let the money determine the outcome, they are tempted to take a decision based on perfunctory knowledge of the case. Information acquired

in court sessions then no longer serves to guide the judge, while evidentiary problems will be dismissed.

It is on this slippery slope towards a complete loss of integrity that another effect of corruption on the administration of justice becomes visible: It changes the nature of the procedure. This change relates to the triadic configuration, which is a sensitive one, and the legitimacy of the judge in the eyes of the parties.¹¹ While any losing party or his lawyer has a natural tendency to blame the judge for his decision (Shapiro 1981, Genn 1999: 202-04), this becomes even more salient when suspicions of corruption are "in the air." This struck me several times during my research on the Indonesian administrative courts, when in cases where I was convinced that the judges had produced a correct judgment the negative outcome was nevertheless blamed on the judges having been bribed (Bedner 2001: 241-42). In such an atmosphere judges tend to sustain their legitimacy by enhancing the feeling of procedural fairness. This may actually be highly detrimental to the efficiency of the procedure in terms of time and money. In the Indonesian administrative courts it led to interminable sessions during which parties were allowed to elucidate their points of view up to four times. The endless testimonies bore hardly any relation to the (legal) core of the matter (Bedner 2001: 245).

Having structured to some degree the effects of judicial corruption on the judicial process and its outcome, I will now look at the wider social and economic effects of the phenomenon. This leads me to the second question:

How bad is judicial corruption for economic development?¹²

To answer this question we need to make a brief detour first, to look at the conditions for economic development that could relate to judicial corruption. These, I would argue, include first and foremost legal certainty, which more or less requires a state that is legitimate in the eyes of the majority of the population. However, legal certainty is not the only type of certainty fostering entrepreneurial trust (as that is what we are mostly talking about in the context of economic development in capitalist systems). During the early 1990s, a whole body of literature developed to explain Asia's economic success as based on a type of capitalism supported by authoritarian states,¹³ not on strong judiciaries. One could say that in these states the certainty required for business expansion was provided by the executive instead of the judiciary. However, the main beneficiaries of the system

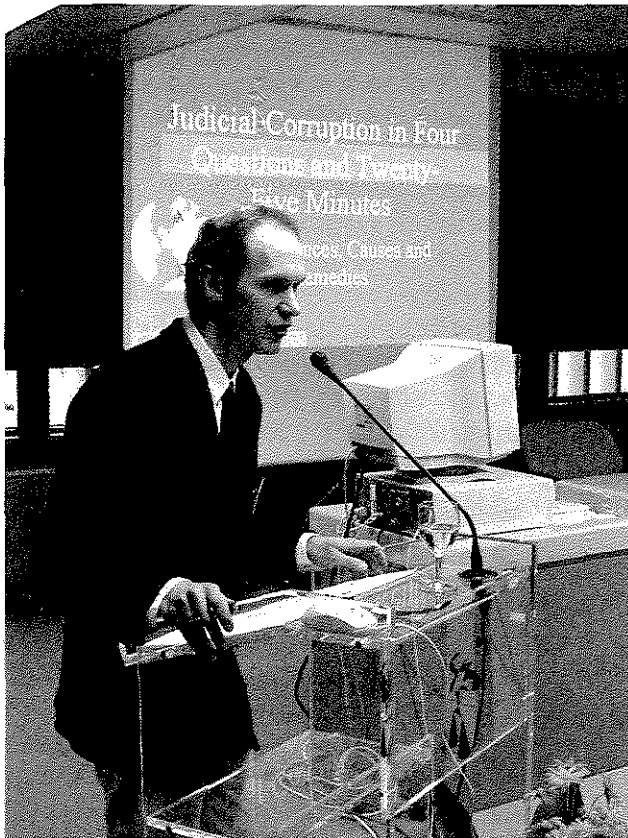
were large businesses and foreign investors, while smaller domestic industries suffered from high costs associated with this type of rule.¹⁴

The problems of such a system became evident when the crisis overtook Asia in 1997/98 and foreign investment dropped to an unprecedented ebb. In several of the countries concerned, severe problems with settling private debt emerged and investors lost much or all of their appetite for the region. While South Korea, Thailand and Malaysia in the end managed to restore investor confidence, Indonesia failed to do so, in large part because the government was unwilling or unable to reform the judiciary. This at least points in the direction of legal certainty having advantages over "executive certainty" in fostering economic development.

A related point is that economic policies laid down in law will largely fail if there is no judiciary to implement them. Courts are not only dispute resolvers – and according to some authors they are even very bad dispute resolvers (Galanter 1981: 3-4) – but they have a major task in creating "the shadow of the law" (Mnookin and Kornhauser 1979), or in granting citizens a "regulatory endowment" (Galanter 1981: 8-9). This all means that the courts are crucial to sustaining the general expectation that the law will be implemented, and this is an important incentive in structuring social action.

The absence of an impartial judge can also have unsettling effects on social cohesion. When no alternative system of certainty is in place, neither are disputes resolved nor is there any systematic implementation of law or government policies. In the worst case the situation will start to resemble a Hobbesian state of "Warre" (Henley 2002). Clearly, under such conditions there is not much of an incentive to undertake any meaningful economic activities.

However, while there obviously is a link between an impartial judge and economic development, there is no such thing as a shortcut from judicial corruption to bad economic performance, even if we disregard the availability of alternative systems of certainty. Many tend to overlook that what really matters from a macro perspective is whether a large proportion of the population is convinced that judicial corruption is a reality, not whether this conviction is supported by empirical facts.¹⁵ If we carry on this thought, we must conclude that there is a tenuous connection between general trust in the judiciary and trust by parties having had litigation experiences (cf. Bruinsma 1999). In short, legal certainty viewed from an economic angle exists if there is a degree of general trust in the judiciary's capacity to implement



altogether. Being a maverick is never easy, and particularly not if one serves as a living reminder of lost ideals and integrity.

The importance of acknowledging that corruption may become part of the organizational culture of a court of course lies in the fact that organizational culture is highly resistant to change. Tackling the problems underlying judicial corruption is simply not enough. The courts themselves are not isolated, but are situated in an environment that may constitute an important part of the problem. Very recently a member of the Indonesian Supreme Court and a former professor of public law, Laica Marzuki, referred to this issue when he claimed that "70% of the problems with judicial corruption can be solved by disciplining advocates" (*The Jakarta Post*, January 25, 2003). Unfortunately, he offered no suggestions as to why it would be easier to discipline advocates than judges. But his statements clearly indicated that corruption does not take place in isolation. On the contrary, in many cases there have been long-standing relations between judges and advocates that are hard to change, let alone cut off (cf. Bedner 2002: 240-41). Similar ties exist between judges and prosecutors and between judges and government representatives who often appear in court (Bedner 2002: 242-244).

Nonetheless, socialization of corruption is not a self-driven process, but likely to occur under the following conditions:

1) Unclear boundaries between the public and private spheres

The first condition is that the public and private spheres are not clearly demarcated. In many countries personal and public/professional relations are closely interwoven, which makes it more difficult for an official to refuse professional services for private purposes.¹⁷ This may even be officially condoned, as for instance in the Netherlands, where judges may hold positions on company boards of commissioners, a practice usually defended with the argument that this keeps judges "aware of the real world." Usually, though, the form of such a fusion of private and public is less transparent than in this particular example. The limits of this practice are to a large extent determined by general social perceptions of what is proper behavior, and by the education judges receive in this respect.¹⁸

2) Needs

A second condition promoting corruption is that judges have problems fulfilling their needs. These needs may

the law, while it does not matter much whether actual litigation experience confirms this perception.¹⁶

Nonetheless, if corruption persists on a certain scale it will inevitably emerge at some point and taint the image of the judiciary. It is likely, though, that public convictions are slower than practice and therefore it may take time to tarnish the judiciary's image, but restoration will be slow.

Causes

Having discussed some consequences of judicial corruption, I will now look at its origins. I suggest starting at the grassroots, or micro, level by asking:

What makes judges corrupt?

It is tempting to take a shortcut to matters such as judicial salaries in answering this question, but for a proper understanding one needs to realize that while judicial corruption may start as an isolated decision by an individual, widespread corruption is a social phenomenon. At a certain point judges are socialized into becoming corrupt. A judge who does not play along runs the risk of becoming an outcast, may gamble away his chances of promotion and is likely to leave the judicial profession

range from truly basic ones such as money for housing, medical treatment and transport, to maintaining the decorum of the status group the judiciary aspires to be part of. The latter issue is complex, as status groups are not so easy to define. The concept denotes a common lifestyle, based on “an effective claim to social esteem in terms of positive or negative privileges” (Weber 1978: 929, quoted in Swartz 1997: 150). To sustain this lifestyle, members of a status group draw from both economic and “symbolic” capital (Bourdieu 1966: 213, quoted in Swartz 1997: 151).

While economic capital always plays a role in determining status, the various resources constituting symbolic capital are not of equal weight under all circumstances. For instance, in societies where rapid transitions take place, elements such as descent from a noble family tend to lose importance. Similarly, holding judicial office in itself diminishes as a symbolic capital resource under conditions where the judiciary as a political actor is reduced, as happened in Indonesia during the 1950s and 1960s (Lev 1966). Under such conditions, I would argue that the relative importance of money as a determinant of social status increases.

This has two adverse effects on the judiciary. First, it reduces the attractiveness of the office for fresh recruits, but a related process is loss of self-esteem and erosion of professional values. “Why would I still bother to be a honest judge when my office is looked down upon and my income is lower than that of any other legal professional?” Second, while this transition is still underway and the judicial office has retained some of its value as symbolic capital, judges feel the need to maintain the status and living standards of the social group they aspire to remain part of – and this often requires more money than they earn.

3) Absence of and Incomplete Legal Information

The third condition promoting judicial corruption has to do with the nature of the legal system. Although no one argues anymore that the judge is only “la bouche de la loi,” judges are at least bound to some degree by law (Tamanaha 1997: 228-44). Legal clarity (an element of legal certainty) has two sides, a legal and an institutional one. The legal is most obvious: If legislators produce unclear laws and if judges produce judgments that are hard to use as guidelines for subsequent judgments, the discretionary power of judges in individual cases increases. This obviously makes it easier for judges to conceal influence from corruption on the outcome of a case.

The institutional side – often overlooked by academic lawyers – is the actual availability of legal information. No matter how brilliant a law or a judgment, it cannot serve as a source of law if it remains unknown to the judiciary or advocates. In many countries this is the prevailing condition: New laws remain shelved in ministries or even in parliament (Al Zwaini forthcoming), and no one bothers to publish judgments (to the extent that even parties can hardly get a copy [Churchill 1994: 12]), let alone discuss their impact in legal journals.

The problem is that once corruption has entered the courts, a vicious circle develops as corrupt judges hold a personal stake in maintaining their discretionary power. This allows them to play off one party against the other and conceal the true motive behind a judgment.

4) Imperfect Legal Education and Differences in Legal Style

This condition is closely intertwined with the previous one. Even if good legal information is available, one needs good jurists to apply it and in many countries these are in short supply. Decolonization has often caused painful ruptures with the legal past and various generations of jurists share different “bodies of text” in their professional activities (Massier forthcoming). However, there are obviously more mundane reasons, including overcrowded university classrooms, lack of materials, courses that are too short (see for instance Budiardjo et al. 1997: 61), and perhaps even corruption within universities.¹⁹ Lack of proper education leads to insufficient skills in legal reasoning and, consequently, to judgments that are either difficult or impossible to understand.

To this one may add the marked differences in legal culture. While the Anglo-Saxon legal style²⁰ and the German one require extensive reasons given for a judgment, this is certainly not the case for the Latin-French tradition (Zweigert and Kötz 1996: 126-27, 271-72). As these traditions have been carried over into the countries’ former colonies, the differences in style have had worldwide consequences, usually to the advantage of the former British colonies, I would say.

Lack of Transparency in Standard Operating Procedures (SOP)

Although judges are traditionally viewed as a sub-species of the tortoise, operating singlehandedly and shielded from their surroundings by protective shells, this image is clearly false. All over the world judges are part of organizations and the way these organizations are run to

a large extent determines what judges do and how they do it. While I have touched on some of these aspects in previous sections, the SOP in the court deserve special attention in the context of judicial corruption, as they have a direct impact on the way justice is administered.

The first type of rules concerns the allotment of cases. The basic system may vary from a monopoly in the hands of the court's chairman to the random selection of cases for councils of judges. The former type offers more possibilities for influencing corrupt activities, but whether it promotes or discourages corruption depends entirely on the chairman. Chairmen may use their power to send "wet" cases to judges they know will not engage in corrupt activities, but they may also monopolize corruption, sending cases with a message and part of the bribe to a selected council of judges (Bedner 2001: 224).

The way this system works much depends on the number of cases presented to the court. The higher the number of cases, the more difficult for a chairman to supervise what is happening in his court.²¹

The second type of rule is closely tied to the previous one and pertains to the composition of the councils of judges, councils being the most usual entity to administer justice in modern courts. Here the basic forms are more variable, running from councils handpicked on the basis of personal criteria (similar to the ones sketched above), to "traditional" councils composed of a senior judge and two junior ones, to a rotation system. The influence of these systems on the occurrence of corruption is much like in the first case: Handpicked councils offer the greatest opportunity for exercising influence, while the openness of traditional systems to corruption largely depends on the senior judge presiding over the council (Bedner 2001: 222-23). Rotating councils are more difficult to evaluate. While one could argue that they tend to spread corrupt activities by increasing the chances of "contamination," the system may also contain this by preventing mechanisms of corruption from becoming habitual.

A less clear-cut part of SOP are the rules regarding the reward of merit. One reason for this higher degree of complexity is that the issue takes us beyond the confinement of the single court. Whether merit is rewarded or not translates into judicial careers within the whole judicial system, not within the court.

However, in their capacity as supervisors, in particular of junior judges, chairmen can once again exercise great influence over the occurrence of corruption in their court (Bedner 2001: 221-26). If legal merit is translated into a prosperous career, this may at least deter judges from

graduating from illegal gifts to selling judgments to the highest bidder. However, I would argue that reinforcing attention to legal reasoning might keep judges aware at least to some degree of major values imbued in the law itself, such as impartiality, social justice, etc.

Of course, this only works if merit is rewarded throughout the career management within the entire court system. Efforts by individual chairmen are pointless if their policies are not followed up. A good example at the highest level are the promotions and transfers that were decided by Indonesian Chief Justice Subekti, but left unimplemented by the Justice Department (Pompe 1996: 93).

Another condition for merit to work is that supervisors use clear standards. Preferably there should be the possibility of appeal against an unfavorable evaluation of one's performance. The same applies to the rewards provided. As long as an official promotion is effectively a punishment – for instance, when the court to which one is promoted is officially at a higher level but perceived as unattractive because it is located in a backwater – mismanagement is concealed and therefore hard to address (Bedner 2001: 206).

The last type of SOP I want to pay attention to are very mundane, but need to be addressed nonetheless. Conducting corrupt transactions is made far easier if judges have single rooms, if they are allowed to receive visitors who are involved in cases or intend to bring cases, and if their home addresses are provided to whoever asks for them. While in thoroughly corrupted surroundings issues like these may not matter much, they do when the court has only been "contaminated" to a limited extent.

Remedies

How can you reduce corruption?

Most of the answer to this question automatically follows from my analysis in the previous sections: First you have to change the conditions that promote corruption. But this is no guarantee of success.²²

The main caveat is that judicial corruption as a socialized phenomenon takes time to be eradicated, because it takes time to change behavior. This behavior is embedded in the way a court functions, and it requires well-thought-out strategies based on individual circumstances to address this issue. One needs in-depth knowledge of a court.

This brings me to the second caveat that courts are not independent entities acting in isolation from the rest of the legal system. Judges deal with advocates who are

part of the problem because they usually pay the bribe for their clients, in the process probably pocketing part of it themselves (Bedner 2001: 236). The same applies to government agencies: in the first place to public prosecutors, but also to representatives of government agencies who may well have the official or unofficial power to impose their will on the courts.²³ This also helps explain why recent attempts to establish new and "clean" commercial courts in Indonesia ended in failure.

I will conclude with three obstacles that render attempts at reducing corruption useless. If these are in place, do not even try.

Substantial parts of the government and the legislature have an interest in maintaining a corrupt judiciary

In this case only half-hearted attempts can be expected. I admit that perhaps this is too bleak a picture, and that it can be more positive if the government has only limited powers over the management of the judiciary. However, in particular if it is only pressure from the international community that will start the process and keep it going, the chance of success is slim.

The corrupt top of the judiciary cannot be replaced

Fish rot from the head, but restoration does not start at the grassroots. As I have indicated above, courts are part of a wider system and if career management based on merit is not taken seriously at the top of the judiciary, corruption will continue to prevail. Nor should one underestimate the effects of a lost "sense of mission" if lower court judges know that the top of the judicial pyramid earns heaps of money from illegal transactions. It is therefore a *sine qua non* to establish a clean Supreme Court.

No investments are made in good legal education and familiarity with the rule of law ideology

If legal education is not taken seriously, there will not be good judges. Although it is difficult to prove, I am convinced that the lack of legal professional skills leads to lower self-esteem and a lack of professional pride, and that these make judges more prone to corruption. This also applies to the wider legal environment in which judges operate. I do recognize that there is a kind of vicious circle at work here: Students of law will not work very hard if they perceive that corruption within the judiciary in a way makes a mockery out of their efforts to master the law. On the other hand, if no efforts at improvement are made at this level, there will never be a professionally self-confident judiciary.

If one thing may have become clear by now, it is that judicial corruption has many faces and aspects. This essay has tried to unveil a number of them and in the course of doing so, it may have inspired in you a degree of hopelessness as regards the possibilities of reducing corruption. This was in no way my intention. Instead, I have aimed to show that the fight against judicial corruption is complex and should not be underestimated. Thus, some insight from those who deal with this issue professionally may serve to save others from unexpected disappointment.

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- the way from integrity to "becoming a devil" was the point where judges themselves would start to ask parties for money (interview with a Semarang administrative court judge, October 1994).
- 11 The fear of attracting few litigants may also play a part.
- 12 It is on purpose that I limit myself to the effects on economic development. While I certainly conceive of development as a process encompassing the pursuit of several objectives such as social justice, good public health, rule of law, etc. (Otto 1999: 18), the relationship between judicial corruption and economic development is of particular importance.
- 13 See, for instance, Jayasuriya 1999.
- 14 Obviously this type of certainty has a price, too (see, for example, Braadbaart 1996).
- 15 This is the so-called Thomas theory: It is not so much what happens as what people think happens that matters from a sociological point of view.
- 16 On legal certainty in developing countries, see also Otto 2002.
- 17 This situation actually underlies the policy in many countries of transferring officials and judges (De Zwart 1996).
- 18 It is interesting to note that lending judicial services in exchange for money is a marker of the transition from caste to class (Riggs 2000). Lending service to relatives and relations is in fact more exclusionary than doing the same for anyone who pays.
- 19 Personal communications from law students from various universities in Indonesia (July 1999 and August 2001).
- 20 For the notion of style, see Zweigert and Kötz 1992: 63-75.
- 21 But the higher the number of cases, one could argue, the less of a need to squeeze money out of all of them.
- 22 One rather efficient general measure I want to add is to put judges under the obligation to list their wealth and to establish an independent agency to check this, as was recently done in Indonesia.
- 23 A good example is the current situation in Italy, where the Berlusconi government pushes through legislation specifically aimed at protecting the Prime Minister from judicial trials (NRC Handelsblad, January 28, 2003).

Notes

- 1 While this model is derived from civil procedure, it can equally be applied to criminal or administrative procedures, even if in that case a state agency is one of the parties.
- 2 For an elegant elaboration of this theme in the colonial context, see Henley 2002.
- 3 The seminal argument goes back to Marx, of course.
- 4 Usually authors refer to the independence of the judge, not impartiality, when discussing the rule of law. To my mind, impartiality is the major manifestation of judicial independence during the judicial process. For a discussion of this subject, see Schmidhauser 1987.
- 5 However, there has been a tendency to overestimate the degree of discretion a judge possesses (Tamanaha 1997: 228-44).
- 6 The use of "may" allows me to exclude the need to establish a causal relation between the bribe and the outcome, which is in any case difficult and would prevent me from discussing the more subtle influences of corruption.
- 7 See the special issue of the *Indonesian Law and Administration Review*, No. 1, 1998, and Lindsey 2000.
- 8 The case is still pending.
- 9 At least in courthouses where corrupt practices occur.
- 10 According to one of my respondents, an important threshold on

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