Simon Butt  

The development of a Constitutional Court in Indonesia is important and has brought a significant message for democracy in Indonesia’s constitutional system. Indonesian parliament members have been visiting Northern Hemisphere countries to study their judicial systems since shortly after Soeharto stepped down in 1998. Those visits resulted in an idea to establish Constitutional Court. Vehement debate among parliament members following the initial plans to constitutionalize the Constitutional Court reflected a diversity of needs to reform the law and its institutions.

The story of this new judicial institution in Indonesia has been described comprehensively in Simon Butt’s book, _Constitutional Court and Democracy in Indonesia_. Among other constitutional studies, it is one of the most complete works written in English explaining its history, position, involved authorities, and current developments. Earlier studies written in a quite similar fashion to this book include Hendrianto (2008) and Stockman (2007). However, in terms of methodology, Butt’s study largely employs more textual analysis and he therefore relies on the court’s decisions, formal Court publications, and media reports. In addition, he also employs a socio-legal approach that focuses on historical context and the role of the court during a transitional period in Indonesia.

This review highlights some of the book’s most interesting issues in comparison with other similar studies. The book has 11 chapters, divided into four parts. The first part introduces the Indonesian Constitutional Court, especially looking at various developments in the post-Soeharto context.

Chapter 2 shows how the case of Abdurrahman Wahid’s presidential impeachment became an influential factor determining how the balance of power was to be developed further, by providing authority to the Constitutional Court to resolve ‘high-level’ disputes. One notable absence in this chapter is the influence of ‘transplanting ideas’ in making the Constitutional Court, which has actually been adopted into constitutional amendment, although the new court idea has been absorbed by parliament members from a short visit in Northern Hemisphere countries.

Butt’s description of ‘constitutional conflict’ as an influential factor is apt, however I would argue it is also necessary to explore the connection to the initial debate about judicial reform which enables political acceptance to create a new constitutional court in the context of a post-authoritarian regime. Studying the phenomena of constitutional change in early post-authoritarian
regimes is not new to scholarship, nor is Indonesia’s character in changing constitutional law special. In fact, the situation in many other countries in the world is similar (Saunders 2012).

I would have also liked to read more about the influence of ‘global constitutionalism’. From a ‘global constitutionalism’ perspective, the establishment of the Constitutional Court could be regarded as a result of studying and directly learning from other countries’ experiences, as reflected worldwide by political conversations on formal constitutional changes (Son 2016; Shaw 2000; Chambers 1998). Son (2016: 978–9) analyzes this issue from two perspectives. The first is the dialogic interplay of global and local sources and norms; in other words, constitution-making is a communicative process, and due to the forces of globalization, constitution-making processes are inevitably influenced by global sources and norms. Second, there is a connection between the constitution-making process and what is called ‘dialogic constitutionalism’. In accordance with the discourse on deliberative theories in political science, contemporary constitutional theorists conceive of ‘constitutionalism as a dialogic and conversational process’ (Shaw in Son 2016: 978). ‘Dialogic constitutionalism’ has received some attention in scholarly debates on constitutional court establishment and has been convincingly applied with regard to the role of Jimly Asshidiqie, who would become the first Chairperson of Indonesia’s Constitutional Court (see Hendrianto 2008: 50–7, 95–118). Inclusion of these studies would have added a more comprehensive level to the book.

That being said, I nevertheless consider Butt’s study to be the most comprehensive work in its field, since it covers several important and recent debates on case studies in detail. Besides analyzing many aspects of the Constitutional Court, especially discussing historical aspects of the establishment of the court and providing a wide ranging analysis of the institutional design of the court, this study also engages in constitutional case analysis focusing on thirty-five Constitutional Court decisions in the period of 2003–2014. Hence, this study provides much valuable data that helped readers to identify problems in the Indonesian Constitutional Court.

Of particular importance was the book’s argument that the Constitutional Court has poor accountability because of the Court’s lack of transparency, observing that the Constitutional Court in many cases fails to explain its legal reasoning decisions. This observation reveals a lack among Indonesian judges of rigorous training in constitutional law, with no external mechanisms in place to supervise these judges. More detail on this failure in the court could have been obtained from Bedner’s study on Indonesian legal scholarship (2013). The latter argues that the failures in making transparent legal reasoning decisions reflect how Indonesian legal education prioritizes mono-discipline studies.
rather than employing an interdisciplinary approach to law. Bedner states that Indonesian law faculties have no tradition of training their students in resolving legal cases, which means that Indonesian law graduates have never learned to 'do law'. In other words, they are not taught ways to acquire an effective 'internal legal attitude'. Rather, they acquire knowledge of the main features and outlines of the legal system, and of the principles of its sub-disciplines. The study of law in Indonesia is therefore highly theoretical, but at the same time superficial. With the absence of access to legal sources such as implementing regulations, judgments, minutes of parliament, customs, and to a lesser extent legal doctrine, students only learn about the existence of legal sources, but not how to use them (Bedner 2013: 257). Therefore, unsurprisingly, many court decision seems 'too doctrinal' without considering the context of law and its complex application to resolve legal cases.

In discussing the role of Indonesia's judicial reviews in the context of protecting fundamental rights under the Constitutional Court jurisdiction, Simon Butt has made an important point. He contends that the court has a weak form of judicial review due to its lack of jurisdiction to review inferior regulations (government regulations, presidential regulations, provincial/district regulations) (pp. 77–9). His observation is as basic as it is urgent, especially to strengthen the court jurisdiction in the future, since Indonesia continues to be challenged by what is known as 'legislation/regulation overdoses', while the quality of these legislation/regulation are very limited, and quite often contradict higher legislation and/or constitution. In addition, it takes time to enforce the Constitutional Court decision; since the effect of Constitutional Court decisions are quite weak, a certain amount of political will is required to enforce the decision.

The volume has a wealth information and reflects an immense amount of work. At the end, I would congratulate Simon Butt for this very valuable contribution to the academic literature on the Constitutional Court in Indonesia. Surely, this will be useful for those who need to get a general overview of current developments of Indonesia’s judiciary system in post-authoritarian times, including the historical context as well as selected and important legal rulings by the court.

Herlambang P. Wiratraman
Faculty of Law, Universitas Airlangga
herlambang@fh.unair.ac.id
References