



ACTIVE JUDGES IN ADVERSARIAL COMMON LAW AND THEIR RELEVANCE TO INDONESIA'S HYBRID CRIMINAL PROCEDURE

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Abstract

This research examines the relevance of adopting the concept of active judges within adversarial common law traditions to Indonesia's hybrid criminal procedure. The primary objective is to explore whether the active judge model can strengthen Indonesia's criminal justice reform without undermining its civil law foundation. This study employs a normative juridical method with a comparative approach, analyzing doctrinal sources, statutory law, and scholarly debates from both civil law and common law perspectives. The findings suggest that while the adversarial system traditionally restricts judges to a passive role, the notion of an active judge has emerged to prevent procedural abuses and ensure substantive justice. For Indonesia, integrating aspects of the active judge model may contribute to enhancing transparency, protecting defendants' rights, and harmonizing procedural justice with societal expectations. Nevertheless, challenges remain, particularly concerning judicial independence, consistency of application, and potential conflicts with established inquisitorial practices. This study concludes that the adoption of active judge principles must be carefully contextualized, reinforcing Indonesia's hybrid system rather than replacing its legal traditions.

Keywords : active judge, adversarial system, Indonesian criminal procedure

Abstrak

Sistem peradilan pidana di Indonesia berakar pada tradisi civil law peninggalan Belanda yang menekankan model inquisitorial dengan keterlibatan hakim yang aktif. Namun, globalisasi dan reformasi hukum membawa pengaruh sistem adversarial common law, terutama terkait peran hakim dalam menjaga keseimbangan antara keadilan dan efisiensi persidangan. Penelitian ini mengkaji relevansi penerapan konsep hakim aktif dalam tradisi adversarial common law terhadap prosedur pidana hibrid di Indonesia. Tujuan utama penelitian adalah menilai apakah model hakim aktif dapat memperkuat reformasi peradilan pidana Indonesia tanpa mengganggu fondasi civil law yang telah ada. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan komparatif, melalui analisis sumber doktrinal, peraturan perundang-undangan, serta wacana akademik dari perspektif civil law dan common law. Hasil penelitian menunjukkan bahwa meskipun sistem adversarial secara tradisional membatasi hakim pada



peran pasif, gagasan hakim aktif berkembang untuk mencegah penyalahgunaan prosedur dan memastikan keadilan substantif. Bagi Indonesia, pengintegrasian aspek-aspek hakim aktif dapat memperkuat transparansi, melindungi hak terdakwa, serta menyeimbangkan keadilan prosedural dengan ekspektasi masyarakat. Kendati demikian, tantangan tetap ada, terutama terkait independensi hakim, konsistensi penerapan, dan potensi konflik dengan praktik inquisitorial yang mapan. Penelitian ini menyimpulkan bahwa penerapan prinsip hakim aktif harus dilakukan secara kontekstual, memperkuat sistem hibrid Indonesia tanpa menggantikan tradisi hukumnya.

Kata Kunci : hakim aktif, sistem adversarial, hukum acara pidana

1. INTRODUCTION

The Indonesian criminal justice system is historically rooted in the civil law tradition, a legacy of Dutch colonialism that shaped the Indonesian Penal Code (*Wetboek van Strafrecht*) and procedural laws. Within this system, the inquisitorial model has been dominant, positioning judges as active figures who are deeply involved in examining evidence, questioning witnesses, and directing the course of trials (Lev, 1973). This stands in contrast to the common law tradition, particularly the adversarial system, in which the responsibility to present facts and arguments rests primarily with the prosecution and defense, while judges traditionally remain neutral and passive (Merryman & Pérez-Perdomo, 2007). However, contemporary debates have challenged the notion of passivity within the adversarial tradition, introducing the concept of the “active judge” as a mechanism to prevent procedural abuse, enhance efficiency, and safeguard substantive justice (Findlay & Zajdow, 2014).

Indonesia, as a postcolonial state, finds itself at the intersection of these two traditions. While its foundations are clearly civil law, its ongoing legal reforms and increasing exposure to global legal practices have introduced adversarial elements into its criminal procedure, resulting in what some scholars call a hybrid system (Strang, 2008). The 1981 Criminal Procedure Code (KUHAP) initially reinforced the inquisitorial model, but subsequent developments, including reforms proposed in the Draft Criminal Procedure Code (RKUHAP), have incorporated mechanisms that echo adversarial practices, such as plea bargaining and broader rights for defense counsel (Wibowo, Suparman, & Post, 2021). This hybridity raises a crucial question: to what extent can Indonesia benefit from incorporating the concept of active judges from the adversarial common law system into its own criminal justice structure?

Scholarly discussions in Indonesia highlight both the opportunities and risks of this potential integration. A study by Hidayat (2019) emphasizes that judicial activism in criminal trials may enhance transparency and accountability, particularly in cases involving vulnerable defendants who often face structural disadvantages. Similarly, Rukmini (2020) argues that judicial proactivity could act as a safeguard against prosecutorial dominance and prevent miscarriages of justice. In line with this, Saputra and Ismail (2021) observe that many Indonesian judges already adopt quasi-adversarial practices, intervening not only to clarify facts but also to ensure procedural fairness, reflecting a natural convergence toward the active judge model. These national perspectives are supported by comparative insights; Strang (2008), for instance, documents how the reformasi of KUHAP created a procedural environment that is “more adversarial, but not completely adversarial,” suggesting a gradual shift toward hybridity rather than wholesale transplantation.



Nevertheless, the integration of the active judge concept is not without challenges. A key concern lies in judicial independence and consistency of application. As noted by Aji and Hoesein (2025), excessive judicial activism risks undermining neutrality and could invite accusations of bias, particularly in politically sensitive cases. Internationally, research by Cape and Namoradze (2012) underscores that balancing active judicial involvement with impartiality is a recurring dilemma across hybrid systems, and failure to maintain this balance may erode public trust in the judiciary. Furthermore, the structural differences between civil law and common law traditions mean that direct transplantation of concepts often produces unintended consequences. Merryman and Pérez-Perdomo (2007) warn that legal borrowing must be contextually adapted, taking into account historical, institutional, and cultural specificities.

From a methodological perspective, this study adopts a normative juridical approach combined with comparative analysis. By examining doctrinal sources, statutory frameworks, and scholarly debates within both civil law and common law traditions, this research seeks to evaluate the potential role of active judges in Indonesia's hybrid criminal procedure. The primary objective is to determine whether this model can enhance Indonesia's ongoing criminal justice reforms, particularly in advancing human rights protections, ensuring procedural justice, and aligning judicial practices with societal expectations. At the same time, this study acknowledges the risks of overextending judicial powers and the need to safeguard core principles of neutrality and due process.

The relevance of active judges within adversarial common law traditions to Indonesia's hybrid system represents a pressing and timely subject of inquiry. As Indonesia continues to reform its legal institutions in response to democratic demands and global influences, exploring this concept may provide valuable insights for strengthening the legitimacy and effectiveness of its criminal justice system. This research ultimately argues that adopting elements of the active judge model, if carefully contextualized, has the potential to reinforce Indonesia's hybrid system rather than disrupt its civil law foundations.

2. RESEARCH METHOD

This research employs a normative juridical approach, which is primarily concerned with the examination of legal norms, doctrines, and principles that govern Indonesia's criminal procedure, as well as its interaction with comparative adversarial systems. According to Marzuki (2017), normative legal research is conducted through the study of legal texts, statutes, and scholarly opinions, with the aim of constructing arguments and interpretations that can provide prescriptive recommendations for legal development. Within this framework, the law is analyzed not only as a set of rules but also as a dynamic system that interacts with societal expectations and justice values.

In addition, this study also utilizes a comparative legal method. Ibrahim (2012) highlights that legal comparison serves to identify similarities and differences between systems, enabling researchers to understand the potential for transplantation or adaptation of foreign legal concepts into the domestic context. In this research, the comparative dimension is focused on the role of active judges within adversarial common law traditions, examining how these practices may be relevant and adaptable to Indonesia's hybrid criminal justice system. The comparative lens also allows the identification of challenges, such as the risks of bias or excessive judicial intervention, which must be carefully addressed in the Indonesian context.

The primary sources of this study include Indonesian statutory law, particularly the Criminal Procedure Code (KUHAP) and its proposed revisions (RKUHAP), as well as judicial



decisions that illustrate the practical application of judicial activism in criminal trials. Secondary sources consist of scholarly articles, books, and international journals discussing adversarial and inquisitorial systems. Data collection is conducted through literature review, while data analysis applies qualitative methods, emphasizing interpretation and contextualization. The legal doctrines are systematically compared, synthesized, and evaluated in order to produce reasoned conclusions.

Ultimately, the methodological choice reflects the dual objective of this study: first, to understand doctrinally how Indonesia's criminal procedure system positions the role of judges, and second, to evaluate normatively whether integrating the concept of active judges from adversarial systems can contribute to strengthening fairness, efficiency, and legitimacy in Indonesia's hybrid criminal justice system.

3. RESULTS AND DISCUSSION

Active Judges in the Adversarial Common Law Tradition and Their Relevance to Indonesia

In the adversarial tradition of common law, the criminal justice process is built on the principle that truth emerges through the contest between prosecution and defense. The judge's role has historically been conceived as a neutral arbiter, ensuring that procedural rules are respected without assuming a dominant function in the search for truth (Findlay, 2014). The adversarial model places the burden of proof and evidence presentation on the parties, while the judge acts primarily as a referee to guarantee fairness. Yet, contemporary developments in common law jurisdictions suggest that judges have gradually become more active, particularly in guiding proceedings toward efficiency and fairness. This transformation does not dismantle the adversarial principle but reflects the judiciary's responsibility to ensure that justice is both accessible and substantive.

The emergence of active judges in adversarial systems has been influenced by critiques that purely passive judging often leads to protracted trials, imbalance of resources between parties, and potential miscarriages of justice. Langbein (2003) argues that without limited judicial intervention, the adversarial system risks privileging wealthier parties who can afford better advocacy. Similarly, Summers (2007) observes that judicial guidance in questioning, case management, or evidence clarification can increase procedural efficiency without undermining impartiality. These perspectives indicate that the adversarial tradition itself has evolved, accommodating a more pragmatic role for judges.

When contrasted with the inquisitorial tradition of civil law countries such as Indonesia, the differences are striking. In inquisitorial systems, judges are central actors who actively engage in investigating the facts, questioning witnesses, and seeking the material truth. Indonesian criminal procedure, heavily influenced by its Dutch colonial heritage, has retained this inquisitorial orientation, emphasizing the judge's active role in uncovering the truth during trial (Lindsey & Butt, 2018). However, post-reform developments in Indonesia have increasingly incorporated adversarial principles, such as broader rights for defendants and the acknowledgment of due process values. This hybrid nature of Indonesia's criminal procedure creates a unique arena in which to evaluate whether active judicial practices in common law adversarial contexts could be adapted without creating systemic disharmony (Prayogo, 2021).

From a theoretical perspective, the debate about active judges is tied to broader questions of judicial philosophy. Progressive legal thought, particularly as articulated by Satjipto Rahardjo (2009), posits that judges are not merely "mouthpieces of the law" but agents of social



justice tasked with ensuring substantive fairness. This aligns with the evolving adversarial model, where judges, though still bound by procedural neutrality, are empowered to ensure that truth and justice are not obstructed by rigid formalism. Marzuki (2017) reinforces this notion by highlighting the contextual and purposive interpretation required of judges, which often necessitates active engagement.

Nevertheless, the concept of active judges has not been without critique. Critics warn that increased judicial intervention risks eroding impartiality, the cornerstone of adversarial justice. Ibrahim (2012) stresses that fairness in trial procedure depends on balancing a judge's passive role as a guarantor of equality with a more active role in truth-seeking. If this balance tips too far, judicial overreach may undermine the adversarial ethos. Thus, any transplantation of active judicial practices into Indonesia must be cautious and tailored, ensuring proportionality and compatibility with the existing hybrid structure.

In Indonesia, the Criminal Procedure Code of 1981 (KUHP) formally defines judges primarily as evaluators of evidence presented by the prosecution and defense. In practice, however, judges often take a more proactive role, particularly in clarifying inconsistencies and questioning witnesses directly (Harahap, 2019). This practice, though not fully codified, illustrates that judicial culture in Indonesia already tolerates a degree of activity from judges. Moreover, discussions surrounding the Draft of the New Criminal Procedure Code (RKUHP) increasingly emphasize fair trial guarantees, efficiency, and proportionality, all of which resonate with the rationale for active judicial engagement in adversarial jurisdictions.

The potential adaptation of active judges from common law into Indonesia's hybrid system is attractive for several reasons. First, it may help address systemic problems such as case backlogs, weak legal defense services, and disparities in prosecutorial resources. Comparative studies suggest that limited judicial intervention in adversarial settings can mitigate inequalities between prosecution and defense while preserving adversarial balance (Setiadi, 2020). Second, judicial proactivity may strengthen the realization of defendants' rights by ensuring that their claims are adequately considered, particularly when legal representation is weak or underfunded. Third, such adaptation resonates with Indonesia's own legal culture, which, despite its formal inquisitorial base, already reflects judicial activism in practice.

Yet, adaptation must proceed carefully. The risk of judicial overreach remains significant, particularly in a system where judicial independence and accountability are still evolving. Overburdened caseloads, uneven quality of judges, and a deeply entrenched legalistic mindset may hinder the effective implementation of active judicial practices. Lev (1973) reminds us that Indonesia's legal system has historically been shaped by bureaucratic control and limited judicial autonomy, raising concerns that active judicial roles could be co-opted to reinforce state power rather than protect defendants. Similarly, Lindsey and Butt (2018) caution that any reform in Indonesia must be grounded in a clear understanding of its hybrid structure, rather than uncritical transplantation from foreign systems.

Therefore, the relevance of active judges in adversarial common law traditions to Indonesia lies not in wholesale adoption but in selective adaptation. It demands careful reform of procedural law, judicial training, and legal education. The Indonesian judiciary must be equipped not only with technical competence but also with a strong ethos of impartiality and fairness to ensure that judicial activism remains a tool for justice rather than an avenue for bias or abuse. The debate, then, is not whether Indonesia should adopt the adversarial model of



active judges, but how it can incorporate the spirit of proactive adjudication in a way that strengthens the fairness and efficiency of its hybrid criminal procedure system.

Comparative studies between adversarial and inquisitorial systems shed light on how active judges may operate differently depending on legal traditions. Dammer and Albanese (2014) note that in adversarial systems, judicial activity is often confined to case management, ensuring procedural efficiency, and clarifying issues for the jury, while in inquisitorial systems, judicial activity is more investigative. This distinction is critical when considering the transplantation of judicial roles across systems. Indonesia, positioned within a civil law tradition but increasingly hybridized, must recognize that adopting active judge practices from common law adversarial jurisdictions requires careful adaptation rather than replication.

One of the most compelling arguments for encouraging active judicial roles in Indonesia lies in addressing systemic imbalances in legal representation. Studies reveal that Indonesian defendants often face trials without adequate legal counsel, particularly in rural areas or in cases involving marginalized communities (Sulistyowati, 2020). In such circumstances, a purely passive judge risks perpetuating injustice, as defendants may be unable to effectively assert their rights or challenge prosecutorial claims. Active judges, by intervening to clarify evidence or ensuring that defendants understand proceedings, may bridge this gap and promote substantive fairness. This resonates with the progressive legal philosophy advocated by Rahardjo (2009), which underscores law's ultimate function as an instrument for justice rather than mere formalism.

However, critics caution that judicial activism may inadvertently weaken adversarial principles by blurring the line between impartial arbiter and participant in the trial process. Such concerns are not unfounded. Research on adversarial jurisdictions shows that when judges intervene excessively, they risk creating perceptions of bias, thereby undermining public trust in the judiciary (Hodgson, 2005). For Indonesia, where judicial credibility has historically faced challenges due to corruption and political interference (Butt & Lindsey, 2018), any movement toward greater judicial activism must be counterbalanced with robust accountability mechanisms. Training, ethical codes, and institutional safeguards must accompany reforms to ensure that judicial interventions are proportionate and genuinely directed at advancing justice.

The role of comparative law in this discourse is significant. Scholars of legal transplants emphasize that the success of borrowing institutions or practices depends not merely on formal adoption but on their contextualization within the receiving system's culture and structure (Watson, 1993). Indonesia's hybrid criminal procedure is already an amalgamation of inquisitorial and adversarial elements. The introduction of cross-examination, the growing role of defense counsel, and the emphasis on due process reflect adversarial influences, while the judge's authority to interrogate and actively assess evidence mirrors inquisitorial heritage (Marzuki, 2017). This hybridity creates both opportunities and risks for integrating adversarial-style active judges. On the one hand, Indonesia's inquisitorial tradition already normalizes judicial activism, which could facilitate the adaptation. On the other hand, misalignment between adversarial expectations of impartial refereeing and inquisitorial expectations of truth-seeking may cause tension if not carefully managed.

Judicial reform debates in Indonesia often highlight the inefficiency of trials and the burdensome backlog of cases. Active judicial management, as practiced in adversarial jurisdictions, could provide useful models for expediting proceedings. For instance, case management conferences in common law systems allow judges to narrow issues, exclude irrelevant evidence, and establish clear procedural timelines (Findlay, 2014). If adapted to



Indonesia, such practices could address the chronic delays that undermine public confidence in the legal system. Yet, the success of these practices depends on judges' capacity and willingness to take on more proactive administrative roles, which requires significant institutional investment in training and resources.

Moreover, the Indonesian judiciary operates within a broader socio-political context that complicates reforms. Lev (1973) observed that the judiciary historically functioned within a bureaucratic framework, often subordinate to executive power. Despite reforms, remnants of this bureaucratic culture remain, manifesting in hierarchical decision-making and limited judicial independence. Active judges, if not properly safeguarded, may unintentionally reinforce state-centric interpretations of justice, privileging public order over individual rights. Thus, while active judicial roles may enhance fairness in theory, in practice they could risk legitimizing authoritarian tendencies if not accompanied by strong guarantees of independence.

Another challenge is the diversity of Indonesia's legal culture, which reflects pluralism across regions and communities. Judges in Indonesia must navigate not only statutory law but also customary law (*adat*) and religious law, especially in family and community disputes. Active judicial engagement in such contexts could either foster greater inclusivity or generate conflict if perceived as imposing uniform standards. Ibrahim (2012) emphasizes that contextual sensitivity is vital for judicial discretion, as law cannot be applied mechanically without consideration of social realities. Thus, the idea of active judges must be reinterpreted through Indonesia's pluralistic framework, ensuring that judicial interventions respect local norms while upholding constitutional rights.

The hybridization of Indonesia's criminal procedure has already sparked debates among legal scholars and practitioners. Some argue that excessive inquisitorial elements compromise defendants' rights by granting judges overwhelming authority, while others contend that adversarial elements without adequate defense resources create a façade of equality (Prayogo, 2021). Active judges in adversarial jurisdictions may offer a middle ground, combining proactive oversight with procedural fairness. Yet, the key lies in balance: ensuring that judges neither retreat into passivity nor dominate the trial process to the detriment of equality between parties.

From a normative standpoint, Indonesia's constitutional commitment to justice provides a strong basis for reconsidering the role of judges. Article 28D of the Indonesian Constitution guarantees fair legal processes, while the Constitutional Court has repeatedly emphasized the importance of protecting defendants' rights. These constitutional commitments align with the rationale for active judicial practices in adversarial systems, which are aimed at ensuring fairness even in the face of procedural inequalities. By drawing inspiration from adversarial jurisdictions, Indonesia can strengthen its constitutional mandate without undermining its legal identity.

Legal education and training are critical in this endeavor. As Marzuki (2017) and Harahap (2019) stress, the professional identity of judges is shaped not only by statutes but by the culture of legal education. If Indonesia seeks to incorporate active judicial practices inspired by adversarial systems, reforms must begin at the level of legal education, training future judges to balance impartiality with proactive engagement. This requires a paradigm shift from viewing judges merely as guardians of procedure to conceiving them as facilitators of justice.

In conclusion, the relevance of active judges in adversarial common law traditions to Indonesia lies in their potential to enhance fairness, efficiency, and defendants' rights within a hybrid criminal procedure. The adversarial experience demonstrates that judicial passivity is



not always synonymous with neutrality, and that limited intervention can serve the broader goals of justice. For Indonesia, the challenge is to adapt these practices in a manner consistent with its inquisitorial heritage, constitutional commitments, and pluralistic legal culture. Selective adaptation, rather than wholesale transplantation, offers the most promising path forward. By grounding reform in comparative insights, constitutional values, and socio-legal realities, Indonesia can cultivate a judiciary that is both active and impartial, ensuring that justice is not only done but seen to be done.

The Relevance of the Active Judge Model in the Adversarial System to Indonesia's Hybrid Criminal Procedure

The discourse on whether Indonesia should adopt active judges in adversarial common law traditions within its hybrid criminal procedure requires a deeper exploration of legal philosophy, procedural justice, and practical judicial performance. While Sub Bab 1 outlined the theoretical basis for examining the role of judges across inquisitorial and adversarial paradigms, this part delves into the pragmatic and normative implications of introducing active judges into Indonesia's legal landscape. Indonesia's criminal procedure currently represents a hybrid framework where civil law legacies are infused with selective adversarial practices. The hybrid character, however, does not necessarily mean the system seamlessly integrates the virtues of both models. Instead, tensions persist regarding judicial impartiality, access to justice, and the equilibrium between prosecutorial dominance and judicial activism. Against this background, evaluating the potential insertion of active judges inspired by adversarial traditions can shed light on Indonesia's trajectory toward a more responsive and just criminal process.

The core rationale for proposing active judges in an adversarial setting is the perceived need to balance the contestation between prosecution and defense. In adversarial common law jurisdictions, judges are often expected to act as neutral arbiters, refraining from undue intervention in the evidentiary process. Yet scholarship reveals that absolute passivity risks undermining substantive justice, particularly when one party, often the defense, lacks equivalent resources to mount a strong case (Clarke, 2016). Active judicial engagement in such contexts does not necessarily erode impartiality but instead safeguards equality of arms. For Indonesia, where structural inequalities exist between state prosecutors and indigent defendants, judicial passivity may perpetuate systemic injustice. Therefore, adopting a moderated form of judicial activism could enhance fairness while maintaining adversarial contestation as the primary mechanism of truth-seeking.

Critically, the idea of judicial activism in adversarial settings must be distinguished from inquisitorial excesses. In civil law traditions, active judges often dominate proceedings, directing investigations, questioning witnesses extensively, and sometimes shaping the factual matrix of the case. Critics argue this risks conflating the roles of judge and investigator, undermining neutrality (Faisal, 2019). In contrast, adversarial-inspired active judging, as contemplated for Indonesia, emphasizes facilitation rather than domination. Judges may step in to clarify ambiguities, ensure that evidence is not deliberately concealed, and prevent procedural abuses. This approach aligns with principles of procedural justice as elaborated by Tyler (2003), where perceived fairness of the process—rather than merely outcomes—strengthens legitimacy of judicial institutions. Consequently, moderate activism could foster greater trust in Indonesian courts, particularly in high-profile criminal cases where public confidence is often fragile.



Comparative studies provide further insights into how adversarial systems accommodate active judging without collapsing into inquisitorialism. For instance, reforms in the United Kingdom have empowered judges to manage cases more assertively through pre-trial directions, evidentiary rulings, and control over timelines (Ashworth & Redmayne, 2019). Similarly, in Australia, the principle of “judicial case management” allows judges to intervene in trial proceedings to minimize delays and promote efficiency (Findlay, 2018). These examples demonstrate that judicial intervention can coexist with adversarial contestation, provided boundaries are clearly defined. Indonesia, grappling with case backlogs and procedural inefficiencies, may benefit from such adaptive reforms. Active judicial management could ensure trials remain focused, prevent dilatory tactics, and ultimately serve the constitutional mandate of speedy justice.

Nonetheless, transplanting adversarial-inspired judicial activism into Indonesia is not without risks. Scholars of legal transplantation caution that borrowing institutions from foreign systems often leads to distortions if socio-political contexts are ignored (Watson, 1993). Indonesia’s judiciary operates within a socio-legal environment marked by hierarchical bureaucracy, varying levels of judicial competence, and susceptibility to external pressures. Empowering judges with greater discretion could exacerbate risks of arbitrariness or even corruption if adequate safeguards are not established (Said, 2021). Thus, reform proposals must be accompanied by comprehensive training, robust oversight mechanisms, and cultural shifts within judicial institutions. Without such complementary measures, judicial activism could devolve into authoritarianism under the guise of efficiency and fairness.

Furthermore, philosophical considerations also weigh heavily in this debate. The adversarial tradition is premised upon party autonomy: the notion that truth emerges from contestation between relatively equal adversaries (Damaska, 1986). Judicial activism, if overextended, could undermine this foundational principle. Indonesia must therefore navigate a delicate balance between empowering judges to protect vulnerable defendants and preserving party-driven litigation. This balancing act requires nuanced legal engineering, ensuring that judicial intervention is exercised only to restore balance rather than to substitute adversarial functions. For example, judicial questions should be limited to clarifying testimony rather than developing prosecutorial theories. Codifying such boundaries in criminal procedure law could provide much-needed clarity, preventing misuse of judicial authority.

In addition to doctrinal and procedural issues, socio-cultural dynamics in Indonesia also shape the viability of active adversarial judging. Indonesian legal culture is often characterized as deferential toward authority, with litigants and lawyers frequently expecting judges to assume a directive role (Lev, 1973). While this cultural trait may facilitate acceptance of more active judicial engagement, it also risks reinforcing hierarchical judicial dominance. A genuine adversarial culture—where parties actively contest evidence and arguments—remains underdeveloped. Thus, introducing adversarial-style active judges must go hand in hand with strengthening defense advocacy, improving access to legal aid, and fostering professional ethics among prosecutors and lawyers. Without empowering parties, judicial activism risks becoming a substitute for adversarial vigor rather than its complement.

The implications of adopting active adversarial judges extend beyond courtroom dynamics to the broader legitimacy of Indonesia’s legal system. Public perception of courts is shaped not only by outcomes but also by how processes are conducted. Studies on legal legitimacy underscore that citizens are more likely to comply with judicial decisions when they perceive procedures as fair, transparent, and impartial (Tyler, 2003). By intervening to correct



imbalances, active judges may bolster perceptions of fairness, enhancing institutional legitimacy. This is particularly relevant in Indonesia, where public trust in the judiciary remains fragile due to perceptions of corruption and inefficiency. Judicial activism, if properly designed, could serve as a counterbalance, signaling to the public that courts actively safeguard justice rather than merely observing contests between unequal parties.

The adaptation of the active judge model to Indonesia's hybrid criminal procedure is best understood through comparative and contextual analysis. In common law jurisdictions, the primary argument against judicial activism in adversarial trials is the risk of compromising neutrality. Judges are traditionally expected to act as impartial arbiters, not participants in the production of evidence. However, critics have noted that a rigid adherence to passivity can allow wealthier or more powerful litigants to dominate proceedings, creating substantive injustice (Jackson & Summers, 2012). To mitigate this imbalance, some jurisdictions have cautiously experimented with limited forms of judicial intervention, such as allowing judges to ask clarifying questions or ensuring unrepresented parties are not disadvantaged (Zuckerman, 2014). These developments suggest that a reconfiguration of adversarial models toward greater judicial engagement does not necessarily undermine the system but may enhance its legitimacy when properly regulated.

Indonesia's criminal justice system faces precisely the kind of asymmetries that justify judicial engagement. Defendants often encounter barriers to mounting effective defenses due to limited legal aid, inadequate investigative capacity, and systemic inequalities in access to resources (Butt & Lindsey, 2018). This is compounded by the strong institutional role of prosecutors, who represent state interests and often benefit from privileged access to investigative bodies such as the police and anti-corruption commissions (Bedner, 2016). If judges were to adopt a strictly passive adversarial posture, defendants might be left vulnerable to procedural disadvantages. By contrast, an active judge model allows judicial officers to safeguard the fairness of proceedings by stepping in to ensure that critical evidence is considered, that procedural rules are not manipulated, and that weaker parties are not overwhelmed by prosecutorial dominance.

The hybrid nature of Indonesia's criminal procedure offers a unique foundation for introducing such reforms. Unlike pure adversarial systems, Indonesia already recognizes the judge's role as an active truth-seeker (Pompe, 2005). In practice, Indonesian judges frequently engage with evidence, question witnesses, and even request additional investigation when necessary. This inquisitorial legacy provides legitimacy for a measured form of judicial activism that remains consistent with the local legal culture. The challenge lies in reconciling this tradition with the adversarial features that Indonesia has also adopted, particularly the recognition of party autonomy in presenting cases. A well-designed model of judicial intervention could harmonize these two traditions, creating a balanced framework where judges act neither as passive spectators nor as substitutes for the prosecution, but as guardians of fairness.

This approach also aligns with Indonesia's broader constitutional and philosophical commitments. The legal system is anchored in the values of *Pancasila*, which emphasizes justice, humanity, and social harmony. These principles encourage a vision of law that transcends procedural formalism and seeks substantive fairness (Asshiddiqie, 2006). An active judicial role in adversarial proceedings thus resonates with Indonesia's normative framework, where judges are entrusted not only with interpreting legal rules but also with realizing the moral aspirations of society. This distinct orientation allows Indonesia to develop its own



model of judicial engagement that reflects local values while also meeting international standards of fair trial.

Practical reforms to institutionalize the active judge model in Indonesia's hybrid criminal procedure must address several key considerations. First, clear procedural guidelines should be established to delineate the scope of permissible judicial intervention. Without such safeguards, judicial activism could slide into arbitrariness or overreach, undermining impartiality (Lindsey, 2022). Second, judicial training should emphasize the balance between active engagement and neutrality, equipping judges with the skills to intervene constructively without prejudicing outcomes. Third, reforms must strengthen oversight mechanisms, ensuring that instances of judicial overreach can be corrected through appellate review or disciplinary processes. These measures would not only protect defendants' rights but also reinforce public confidence in judicial impartiality.

Moreover, the relevance of the active judge model must be situated within Indonesia's ongoing criminal law reform. The enactment of the new Criminal Code and ongoing debates surrounding criminal procedure reform provide an opportunity to integrate judicial engagement explicitly into the legal framework. By codifying the role of judges as active protectors of fairness within adversarial proceedings, Indonesia can move toward a more coherent hybrid system. Such codification would not only align with existing practices but also provide clearer standards for judicial behavior, reducing inconsistencies across courts.

Another dimension of relevance lies in international human rights obligations. Indonesia is a party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to a fair trial. The United Nations Human Rights Committee has emphasized that fair trial requires not only equality of arms but also the active protection of weaker parties by the judiciary (Nowak, 2005). By adopting a calibrated active judge model, Indonesia can better fulfill its international obligations, positioning itself as a jurisdiction that integrates global standards with local traditions. This approach would also enhance Indonesia's credibility in international legal discourse, demonstrating its capacity to innovate while respecting universal principles.

Finally, the adoption of the active judge model in Indonesia's hybrid system must be understood as part of a broader project of legal modernization. The country faces pressing demands to enhance judicial efficiency, reduce case backlogs, and improve public trust in the legal system. Judicial activism, when carefully implemented, can contribute to these goals by preventing procedural abuses, expediting the clarification of evidence, and promoting substantive justice. It may also contribute to restoring the moral authority of the judiciary, which has been periodically undermined by perceptions of corruption and inefficiency. A judiciary that is both active and impartial can become a cornerstone of Indonesia's democratic consolidation, ensuring that criminal justice serves not only the state but also the rights and dignity of individuals.

In conclusion, the relevance of the active judge model to Indonesia's hybrid criminal procedure lies in its potential to harmonize adversarial and inquisitorial traditions, address systemic inequalities, and realize the constitutional mandate of substantive justice. By carefully calibrating judicial intervention, Indonesia can construct a criminal justice system that is uniquely adapted to its socio-legal context while aligning with international standards. This approach avoids the pitfalls of both excessive passivity and unchecked activism, offering a middle path that enhances fairness, efficiency, and legitimacy. The challenge moving forward is to institutionalize this model through clear regulations, judicial training, and robust oversight,



ensuring that active judges serve as true guardians of justice in Indonesia's evolving hybrid criminal procedure.

4. CONCLUSION

This study set out to examine two interconnected research problems: first, the transplantation of common law elements into Indonesia's civil law tradition, and second, the implications of this transplantation for the role of judges in shaping a hybrid criminal justice system that combines inquisitorial and adversarial features. The findings of this analysis highlight both opportunities and challenges for Indonesian legal development in the face of globalization, democratization, and demands for more responsive justice.

Regarding the first research problem, it is evident that the transplantation of common law into the civil law tradition of Indonesia has been neither complete nor linear. Historical legacies of Dutch colonial law established a strong civil law foundation, particularly in the codification of substantive and procedural criminal law. However, reform movements since the 1990s have increasingly opened Indonesia to influences from common law jurisdictions, particularly in criminal procedure, evidence, and the protection of human rights. This transplantation has contributed to a more balanced approach by incorporating adversarial mechanisms such as enhanced rights of the defense, cross-examination, and a stronger emphasis on fair trial principles. At the same time, challenges persist in harmonizing these imported features with the deeply embedded civil law tradition, which remains heavily reliant on codification, judicial passivity, and bureaucratic legal culture.

Concerning the second research problem, the role of judges illustrates the hybrid nature of Indonesian criminal justice. Judges in Indonesia are no longer confined to passive recipients of evidence as in the traditional inquisitorial model; instead, they are increasingly required to exercise active engagement in the courtroom. This "active judge" role reflects a synthesis between inquisitorial and adversarial elements, allowing judges to both safeguard substantive justice and ensure procedural fairness. In practice, this hybrid model aims to prevent miscarriages of justice by empowering judges to intervene where necessary, while also respecting the rights of defendants and maintaining the principle of equality of arms. Nonetheless, this transformation is not without risks. Judicial activism, if left unchecked, may blur the boundaries of impartiality and compromise the adversarial balance, while excessive judicial passivity may undermine the pursuit of substantive justice.

Indonesia's legal development demonstrates that legal transplants are never a matter of simple adoption but rather adaptation. The incorporation of common law elements into Indonesia's civil law framework, particularly through the evolving role of judges, has produced a unique hybrid system that reflects both continuity and change. Moving forward, the effectiveness of this hybrid model will depend on the ability of legal institutions to maintain coherence, safeguard judicial impartiality, and ensure that the ultimate goal of criminal justice—substantive fairness—remains at the center of reform.

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