

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

VOLUME 02/1, JULY 2009

MAIN REPORT |

Indonesia's Human Rights Projection: Post- election

Civil society groups and rights watchdogs have urged President Susilo Bambang Yudhoyono, just re-elected to another five years in office, to promote justice and come good on the government's promise of expanding human rights and resolving several ongoing cases. The government's lack of decisive action over the Lapindo disaster, the assassination of Munir Said Thalib and compensation for the victims of the May 1998 Riots are of particular concern. Also addressed in this section is the issue of "public amnesia" in reference to the re-emergence of certain political figures accused of gross human rights violations under the Suharto regime.

ADDITIONAL FEATURE |

Indonesian Children Crying Out for Justice

Through an examination of four cases currently being advocated by LBH Masyarakat, this report explores the weaknesses of the juvenile law and the government's failure to protect children in Indonesia. It also recommends the necessary steps needed to be taken by law enforcement, the government and other key groups to ensure these laws are strengthened and adhered to.

OPINION |

Indonesia's Outdated Laws Need Revision

Answer C. Styannes argues there are several elements missing, or just being ignored, in the endless debate surrounding Article 160 of the Indonesian Penal Code versus freedom of opinion

www.lbhmasyarakat.org

CAVEAT:

Let her or him be aware

CONTENT

THE EDITOR'S CUT | 2

MAIN REPORT | 3

Indonesia's Human Rights Projection: Post-election

ADDITIONAL FEATURE | 13

Indonesian Children Crying Out for Justice

OPINION | 16

Indonesia's Outdated Laws Need Revision

CAVEAT is published by the Community Legal Aid Institute (LBH Masyarakat), Jakarta, Indonesia. All rights reserved. Neither this publication nor any part of it may be reproduced without prior permission of the LBH Masyarakat.

CAVEAT invites feedback and contributions. If you are interested in contributing a guest editorial piece or article, please contact us: contact@lbhmasyarakat.org

Editorial Board:

Ricky Gunawan, Dhoho Ali Sastro, Andri G. Wibisana, Ajeng Larasati, Answer C. Styannes, Christine Tambunan, Pebri Rosmalina, Andy Wiyanto, Antonius Badar, Nur Annissa Rizki Santoso, Yura Pratama

Special Adviser:

Nick Perry

Finance and Circulation:

Zaki Wildan

Address:

Tebet Timur Dalam III D, No. 2, Jakarta 12820, INDONESIA

Phone:

+62 21 830 54 50

Fax:

+62 21 829 15 06

E-mail:

contact@lbhmasyarakat.org

Website:

www.lbhmasyarakat.org

THE EDITOR'S CUT

LBH Masyarakat welcomes you to the second edition of CAVEAT, our monthly report analyzing human rights in Indonesia. We extend our heartfelt thanks to all our readers who expressed their enthusiasm and support for the first edition in June. The feedback we received was positive, valuable and constructive. We appreciate your comments and welcome any thoughts about this current edition.

Similar to the inaugural edition, this month's CAVEAT consists of one main report, an additional feature and one opinion piece. With Indonesia holding its second-ever direct presidential election on July 8, the main report will look at what human right issues need to be addressed by the incumbent President Susilo Bambang Yudhoyono in his second-five tenure. We will outline which issues were not resolved in the last 5 years and address forthcoming challenges for the future government. The key hurdles facing the government in terms of human rights legislation is also examined in this part. Whether or not the government can offer a more practical solution to human rights issues, rather than simply rhetoric, is a key underlying message in this report.

We are also aware that Indonesia is facing many pressing human rights challenges in the next five years, and recognize that they will not all be solved tomorrow. These range from civil and political rights to economic, social and cultural rights. Issues of poverty and HIV/AIDS are of particular concern in Indonesia, and will probably take several years to address effectively. We did not attempt to overview all issues afflicting Indonesia in just this one edition, as we are aware that we are not experts in all fields. Instead, we focused on some key topics through which we evaluate the broader human rights perspective for Indonesia.

With National Children's Day being celebrated across the archipelago on July 23 in schools and community groups, we thought it pertinent to take a closer look at children's rights in Indonesia. Through an examination of four cases currently being advocated by LBH Masyarakat, this report explores the weaknesses of the juvenile law and the failures of child protection in Indonesia. It also recommends necessary steps needed to be taken by law enforcement, the government and other key groups to ensure these laws are strengthened and adhered to.

Ultimately, looking at the bigger picture, Indonesia needs to reform its juvenile law and base any new legislation on the quintessential elements of children's rights. The best interest of the child should be placed at the very heart of this consideration.

An opinion piece titled Indonesia's Outdated Laws Need Revision by Answer C. Styannes will round out this month's CAVEAT. She argues that there are several elements missing, or just being ignored, in the endless debate surrounding Article 160 of the Indonesian Penal Code versus freedom of opinion.

We hope this July's edition of CAVEAT will prove an interesting and insightful read and promote a greater understanding of the latest human rights developments and legal reform in Indonesia. If you have any constructive criticism or thoughts, please do not hesitate to send it through.

Thank you for your ongoing support!

- - **The Editor**

MAIN REPORT

Indonesia's Human Rights Projection: Post-election

THE PRESIDENTIAL ELECTION

For just the second time since gaining independence more than 60 years ago, Indonesians voted for their president in direct elections nationwide on July 8. Having emerged shakily from three decades of military rule under Suharto, Indonesia is today the third-largest democracy in the world and the only country from the Association of Southeast Asian Nations in the G20 economic bloc.

Incumbent President Susilo Bambang Yudhoyono (SBY), riding high on Indonesia's economic prosperity and countless surveys assuring his popularity, entered his bid for a second 5-year term at the nation's helm. Former President Megawati, having already lost to SBY in the 2004 presidential race, decided to try once more for the top job by pushing a populist campaign aimed at rural voters. The final candidate, then vice president Jusuf Kalla, launched his own campaign for presidency, an awkward contest considering his prior political relationship with SBY, and tried to shore up support by crediting successful government policies to his own initiatives.

The General Elections Commission (KPU) officially announced on July 25th the news everyone had been expecting to hear: SBY and his running mate Boediono had won the election by a landslide, confirming the results from unofficial exit polls and earlier predications, with around 60 percent of the national vote. It was the first time in Indonesian history that a president had won a second 5-year term in office. Trailing in distant second was Megawati with less than 30 percent of the vote, while Kalla suffered a resounding defeat with just a little more than 10 percent of the total votes.

When the curtain closed on Election Day, Indonesia had much cause for celebration. Independent surveys showed that 70 percent of the 170 million eligible voters had cast their ballots, a strong turnout in any democratic nation. Televised debates between candidates were held for the very first time in an attempt to educate the public about the policies and personalities they could be electing to run their country. And most importantly, the elections on the whole were held without many reports of violence, intimidation or military intervention, a proud first for Indonesia.

Controversy, particularly surrounding the KPU's inability to formalize a national list of registered voters, dogged the election both in the lead up to and ever since polling day earlier in July. In a situation echoing April's contentious legislative election, where millions of eligible voters were left off the electoral roll and prevented from casting a ballot, Megawati and Kalla claimed the KPU had not resolved the issue and the list was still largely incomplete. In a last-minute move, the Constitutional Court ruled on the evening of July 6 that eligible voters not on the electoral roll could use their family cards and IDs or a passport to take part in the election on the day.

The disorganization immediately opened the door for challenges to the election results, which have dominated official proceedings since then. Megawati, who claimed that a clause requiring unregistered voters to cast their ballots in their home towns disadvantaged large swathes of her supporters, called the election a "pseudo-democracy" and has not yet conceded. Kalla, while accepting defeat and congratulating SBY on his victory, has lodged a legal complaint with the Constitutional Court

over the election results. Discrepancies in KPU data, he claimed, had led to 27 million voters being registered on the electoral roll more than once, among other things.

Megawati did not attend the official announcement of the results at the KPU, and while Kalla was present, he did not sign the document declaring SBY the winner, saying he would do so after the Constitutional Court had resolved the election disputes. President SBY chose to delay his acceptance speech, saying “countries with huge number of voters and challenging geography, such as the United States, India and Brazil, are facing complexities in administering elections” and that to question the election was a democratic right.

The fact the KPU failed to resolve key flaws in the electoral roll, despite facing 600 cases of inquiry for the same reason after April’s legislative election, indicates much work is needed when it comes to organizing elections in Indonesia. Other short fallings, such as a shortage or absence of ballots papers at polling booths in remote parts of the country (mainly Papua), only serve to challenge the legitimacy of the elections and deprive citizens of their right to vote.

For those advocating for greater attention to human rights issues throughout the presidential elections, most were left wanting. The closest any candidate came to actually making human rights part of their campaign agenda was Megawati, who pledged to protect migrant workers overseas and address the Lapindo mudflow crisis. During televised debates, the only issue of human rights even vaguely touched upon was Lapindo, though the candidates generally just agreed with one another that action needed to be taken without outlining any concrete plans.

In what human rights observers dubbed a serious case of “political amnesia”, this election saw the return of two former Suharto generals, both accused of gross human rights violations in both Indonesia and East Timor throughout the late 1990s, running for the vice presidency position. Prabowo Subianto, former commander of

the Special Forces (Kopassus) and a powerful New Order figurehead, ran with Megawati while Wiranto, former commander of the Indonesian military, partnered up with Kalla.

Despite both candidates being defeated in the election, the mere fact that two Suharto strongmen could run for the vice presidency is alarming.

Following his military campaign against pro-independence supporters in East Timor in 1999, the United Nations Serious Crimes Unit indicted Wiranto for crimes against humanity. Prabowo on the other hand was convicted by the Military Honorary Council for kidnapping human rights activists during the tumultuous final years of Suharto’s rule.

Both men represent the impunity unjustly enjoyed by powerful politicians and military figures and the strong tradition of rewarding generals with political postings in Indonesia. They also not only represent but were key enforcers of authoritarianism in Indonesia, an era ended when the New Order regime was toppled by the people. Neither general was ever punished (bar Prabowo being exiled) for their involvement in human rights abuses.

Despite both candidates being defeated in the election, the mere fact that two Suharto strongmen could run for the vice presidency is alarming.

The following sections of this report take a closer look at some of the key human rights cases still to be adequately resolved by SBY in his new term.

MAJOR UNRESOLVED ISSUES TO BE TACKLED BY THE INCOMING GOVERNMENT

Resolution to the Lapindo Mudflow Disaster – In May 2006, a mud volcano erupted in Sidoarjo district, East Java, releasing poisonous gases and vast quantities of boiling mud into the surrounding areas. Hundreds of hectares of farmland and more than 10 villages were inundated with mud, displacing around 13,000 families from their homes and destroying vibrant local industries and infrastructure. Crucial roads connecting

Sidoarjo with the rest of Java were cut and 14 people were killed when the mudflow triggered an explosion at a gas pipeline.

More than three years on, efforts to curb the release of mud have failed. New geysers and leaks appear every month across Sidoarjo, and mud continues to pour into the district at a daily rate of 2,500 meters-cubed. Thousands still live in makeshift refugee shelters and flash fires, almost impossible to extinguish, frequently occur at areas where gases are released. Experts have predicted that if not tackled properly, the mudflow could continue for 30 years.

The cause of the mudflow eruption was a point of massive contention, and still is today. Despite the initial eruption occurring just 200 meters from where mineral exploration company Lapindo Brantas was conducting a drilling exercise, the company maintains that a massive earthquake that occurred just two days earlier around Yogyakarta was the catalyst. In October 2008, a panel of renowned international geologists concluded that the earthquake, which struck nearly 300 kilometers away, could not have triggered the eruption. Instead, they said oil and gas drilling by Lapindo Brantas, Inc was in fact responsible.

The Indonesian government was slow to respond to the disaster, despite being obligated legally, morally and politically to provide assistance and relief to victims. Presidential Regulation No. 14/2007 and the amended version 48/2008 outlined the legal basis for the sharing of responsibility between Lapindo Brantas, Inc and the government. The laws stated that Lapindo Brantas was obliged to curb the mudflow and buy the homes and land of victims living in certain affected areas, while the government was supposed to assist all other victims through the Sidoarjo Mudflow Management Agency (BPLS).

While Lapindo Brantas claims to have spent US\$600 million handling both the social and

geological issues stemming from the mudflow, victims have accused the company of neglecting thousands of victims and stalling compensation payments. In May 2009 the Supreme Court ruled against victims who filed a lawsuit against the company over their response to the disaster.

President Susilo Bambang Yudhoyono (SBY) has been accused of protecting the family of Coordinating Minister for Social Welfare, Aburizal Bakrie, who own Lapindo Brantas. Despite denying the allegations, SBY faces a conflict of interest as the Bakrie family financed a large portion of his 2004 presidential campaign. SBY has the authority to order the Attorney General's Office (AGO) to investigate and prosecute the case thoroughly, but no such order has so far been given.

The National Commission on Human Rights alleges that the lack of government attention toward the plight of Sidoarjo's mudflow victims could constitute a human rights violation. Under Law No. 26/2000 regarding the Human Rights Court, the widespread, systematic eviction of people from their homes is a gross human rights violation.

Furthermore, the commission identified at least 15 economic, social and cultural rights that were violated during the displacement process, including the right to settlement, food, health, education, security and the right to work.

Investigation into the murder of Munir Said Thalib – In September 2004, one of Indonesia's most prominent human rights activists was assassinated while traveling to Holland to study a Master's degree in international law and human rights. Munir Said Thalib (Munir), founder of the Commission for Disappearances and Victims of Violence (Kontras) and Executive Director of human rights watchdog IMPARSIAL, was poisoned with arsenic on

More than three years on, efforts to curb the release of mud have failed. New geysers and leaks appear every month across Sidoarjo, and mud continues to pour into the district at a daily rate of 2,500 meters-cubed. Thousands still live in makeshift refugee shelters and flash fires, almost impossible to extinguish, frequently occur at areas where gases are released.

board a state-owned Garuda air flight from Jakarta to Amsterdam and was pronounced dead on arrival. His public campaigns accused the military of rights violations in Papua, Aceh and East Timor, and linked them to illegal drug and logging businesses. Naturally, he developed some very powerful enemies and was no stranger to death threats and intimidation.

An autopsy showed that Munir had ingested more than three times the lethal dose of arsenic, causing him acute diarrhea and vomiting before death. Officials with the National Intelligence Agency (BIN) were initially accused of involvement in the case, and the Supreme Court eventually granted an appeal from prosecutors to detain Polycarpus Budihari Priyanto, a former pilot and suspected BIN informant. President SBY, who inherited this case after taking office in October 2004, promised to bring Munir's murderers to justice and said the case would be a "test for whether Indonesia has changed".

Former president of Garuda, Indra Setiawan, and his deputy Rohainil Aini faced trial for providing the fake documents that allowed Polycarpus to board the flight, poison Munir and then depart at Singapore before returning to Jakarta. While Polycarpus was sentenced to 20 years prison (which was then overturned, then reinstated) and Indra was sentenced to 16 months, Rohainil was acquitted of all charges.

Evidence uncovered during the investigations into Polycarpus' involvement in the assassination led police to another key suspect, former BIN deputy chairman Muchdi Purwopranjono. The Military Honorary Council stripped Muchdi from his post as commander of the Special Forces (Kopassus) in 1998 and barred him from future promotion for his involvement in the abduction of human rights activists and anti-government protesters during the fall of Suharto. Many remain missing to this day, presumed dead.

More than 40 calls between Polycarpus and Muchdi were made prior to the murder,

which Muchdi denied were made by him (instead alleging anybody could have used his phone). Testimonies made by several former BIN agents also linked Muchdi to the murder, though all those statements were later retracted after the agents claimed they were coerced into making them.

Muchdi was cleared of all charges by a South Jakarta District Court in December 2008. The Supreme Court reject an appeal filed by prosecutors against the decision in July 2009, on the basis that they failed to convince the judges or present any new, concrete evidence to suggest the acquittal was unjust. Rights activists have criticized the Supreme Court judges for not taking into account all the evidence presented during the trial linking Muchdi to the murder, claiming they are using legal obstacles to prevent the truth from being uncovered.

As the case has still not adequately been resolved, SBY should apply pressure to the Attorney General's Office (AGO) in order to prompt a thorough investigation into the murder finally uncover the truth.

Justice for the victims of the May 1998 Riots – Following the Asia Economic Crisis, collapse of the Indonesian rupiah and skyrocketing unemployment and food shortages, protests began en masse in capital cities across Indonesia, mainly Jakarta, against then President Suharto. On May 12, 1998, four student demonstrators were shot dead by police outside Trisakti University in the capital, triggering the start of widespread rioting targeting police and military vehicles and personnel.

The rioters soon turned on ethnic Chinese, who as a community with strong ties to business became scapegoats blamed for many of the problems devastating the country. Thousands of shops and homes owned by Chinese Indonesians in North Jakarta were looted and burned, and their occupants beaten savagely or in some cases murdered by vigilante groups. Later independent reports showed that dozens of Chinese-Indonesian women and girls were raped (the Chinese media pitched the figure

at around 160) and 3-5 percent of the community had fled Indonesia. Some estimates put the number of Chinese-Indonesians killed during the riots at 1500.

While the government took a while to respond to the riots (or in some cases, even acknowledge that atrocities took place), a fact-finding team was established to investigate claims of arson, rape and murder against the Chinese-Indonesian community. The team released its report in October 1998 which found that the riots largely targeted the Chinese-Indonesian community, atrocities took place (including 66 confirmed rapes and other instances of violence against women) and the number of victims would be difficult, near impossible even, to determine. It also found that elements of the military had been involved in the riots and may have been provoked by a higher authority to instigate chaos.

A report from the Asia Human Rights Commission concluded that the riots were orchestrated almost entirely by the military.

Based on the results of the government investigation, the state ratified the Convention on the Elimination of Racial Discrimination and the Convention against Torture, as well as establishing an agency and law specifically addressing victims of crime and witness protection.

Even though these actions are commendable, they constitute just two of the eight recommendations made by the fact-finding team eleven years ago into the riots. The most important recommendations, that the state provide reparations for victims and bring those responsible for the crimes to justice, have been ignored entirely.

Other crucial recommendations, included the establishment of a victims' database and further investigation into the tragedy, were also not acted upon, and alleged perpetrators named in the report were never brought before a court. In a twist labeled by human rights activists as "political amnesia", several individuals (namely Prabowo Subianto and Wiranto)

accused of orchestrating the riots re-emerged as presidential candidates in the July election. Activists called upon Indonesians to reject impunity by not voting for these candidates, whom they claimed represented the government's lack of action and recognition of the horrific impact the riots had on thousands of people.

Civil society groups and rights watchdogs have urged President Susilo Bambang Yudhoyono, just re-elected to another five years in office, to promote justice and come good on the government's promise of

enacting all the recommendations made by investigators more than a decade ago. They are also pushing for greater recognition of the riots by including the tragedy in the national education curriculum so "public amnesia" does not occur in younger generations.

In a twist labeled by human rights activists as "political amnesia", several individuals (namely Prabowo Subianto and Wiranto) accused of orchestrating the riots re-emerged as presidential candidates in the July election. Activists called upon Indonesians to reject impunity by not voting for these candidates, whom they claimed represented the government's lack of action and recognition of the horrific impact the riots had on thousands of people.

CONCERNING LEGAL ISSUES REQUIRING ADDRESS BY INCUMBENT GOVERNMENT

Defamation cases - There have been several notable defamation cases in recent years. In 2006, Fifi Tanang received a six-month prison sentence for writing a letter of complaint that was published in several newspapers. In June 2009, Kho Seng-Seng, the owner of a kiosk in the ITC Mangga Dua mall in Jakarta, was found guilty of defaming the developer of the mall and ordered to pay IDR 1 billion (US\$100,000) in compensation. Kho wrote a complaint letter, which was published in several national newspapers, after the developer sold him property that actually belonged to the regional authorities. Also in June 2009, Prita Mulyasari was arrested for complaining about her treatment at the Omni International Hospital via email. Prita's case was dismissed by the court after it attracted widespread media attention and became the target of widespread public outrage.

These cases demonstrate how the defamation clause of the Indonesia Criminal Code leaves the door wide open for the punishment of what should be considered free speech. This clause, which is all too often used by large corporations to sue media publications and bloggers, ultimately cripples the freedom of press.

Serious action needs to be taken regarding this issue. The defamation clause should be eliminated from the Indonesia Penal Code because it is vague and open to abusive interpretation. Action against this regulation will help prevent the future punishment of those who simply speak their minds.

Freedom of Religion – Indonesia is home to more Muslims than any other nation, but it is however not officially an Islamic nation. Instead the *Pancasila* state ideology, which was adopted during the Sukarno era, shapes Indonesia's approach to religious diversity. As a democratic and secular country, human rights have fundamental importance in Indonesia. However, religious and ethnic minorities are the target of discrimination frequent attacks.

Pancasila states that Indonesia is founded on the belief in God and guarantees all Indonesian's the right to associate with any one of the six religions officially sanctioned by the constitution: Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. Of course, no one is forced to believe in a certain religion. While the State's responsibility to ensure freedom of religion is thus preserved, it is not meeting its obligation to regulate these freedoms and ensure the beliefs of all citizens are respected and that human rights are protected.

While the Government generally respects freedom of religion, restrictions continue to be imposed on some religious activities and on unrecognized religions. The government has turned a blind eye to discrimination against religious groups by private actors, and often failed to punish those responsible.

Atheists or persons of non-recognized faiths frequently experience discrimination, often when seeking civil registration of marriages and births or the issuance of identity cards. In recent years there has been discrimination against several minor religious groups, which have been labeled 'lost ideologies', and their practices banned.

The government has continued to explicitly and implicitly restrict the religious freedom of groups that practice forms of Islam considered as being outside the mainstream. During the writing of this report, the government arrested and prosecuted individuals for heresy, blasphemy and insulting Islam.

In May 2007, the Lebak District, West Java, Department of Religion reportedly encouraged a member of the "Islam Sejati" sect to return to the fold of orthodox Islam. A few days later, on May 15, 2007, the Banten, West Java, branch of the MUI issued a fatwa declaring the group deviant because its members prayed only three times a day and did not face Mecca when doing so.

In 2008, The Minister for Religious Affairs, the Attorney General, and the Minister of The Interior of The Republic of Indonesia released a Joint Ministerial Decree warning the followers, members, and/or leaders of the Indonesian Ahmadiyah Jama'at (JAI), and to the general public, that the practice of Ahmadiyah Islam was prohibited in Indonesia. This is a serious and unprecedented violation of human rights in Indonesia.

While the Government generally respects freedom of religion, restrictions continue to be imposed on some religious activities and on unrecognized religions. The government has turned a blind eye to discrimination against religious groups by private actors, and often fails to punish those responsible.

The next ruling government should take serious action regarding these forms of religious discrimination/persecution. Laws should not be used to restrict the freedom of religion. The government must seriously respect the rights of its citizens to worship freely.

The MUI seems to have been granted the power to decide which religion is true and which is not. Although the government funds and appoints members of the MUI, it is not a government body and its fatwas are not legally binding. The organization has created social discrimination and therefore it should be eliminated, or at the very least have its authority restricted.

Death penalty – Indonesia continues to practice capital punishment, as stipulated in the criminal code. In Indonesia, the death penalty is carried out by firing squad. When the time comes, after any final wishes have been granted, the prisoner is taken to a field to stand in front of 12 gunmen. A single shot is fired from each rifle, carefully aimed at the chest. If that does not kill the prisoner, the commanding officer fires a point-blank shot to the head.

Indonesia may not be one of the highest enforcers of capital punishment, but Yudhoyono remains a staunch supporter of the death penalty. Since taking office he has rarely granted clemency. He went ahead with the execution of three Christian militants in 2004, five people found guilty of drug trafficking and murder in July 2008, and the three Bali bombers in 2008. There was no candidate in the recent presidential election who stated in public that they opposed the death penalty.

Three central arguments are given in opposition of capital punishment. First is that the right to life cannot be abrogated, at any cost, by anyone, and that the state is responsible for ensuring this. Second, Article 28I (1) of the 1945 Constitution guarantees the right to life of each to every Indonesian citizen, in line with the ICCPR and law No. 12/2005.

Retaining the death penalty in Indonesia therefore contradicts these laws and is proof of the inconsistency in Indonesia's system of constitutional laws. A convict proven guilty of a serious crime should not be put to death, but instead be imprisoned for the longest term possible.

RANHAM 2004-2009: FAILURE TO TRANSFORM PLANS INTO ACTION

The 1998 reforms led the people of Indonesia into a new era of democracy. Following the fall of the New Order regime there was a significant improvement in the protection of human rights. In the fourth amendment of the 1945 Constitution in 2002, 10 new articles guaranteeing human rights were introduced. Efforts to improve human rights conditions overall however began back in 1998 with the introduction of Presidential Decree No. 129 year 1998 regarding a National Plan of Action on Human Rights (RANHAM 1998-2003). This outlined the steps to be taken throughout the next five years to ensure the improvement of human rights nationwide.

In late 2003, RANHAM was revised and RANHAM 2004-2009 was legalized. Broader than its predecessor, which solely concentrated on the ratification of international human rights conventions, RANHAM 2004-2009 had six main pillars – the establishment and consolidation of RANHAM as an institution; preparation for the ratification of international human rights conventions; preparation for the merging of laws; human rights dissemination and education programs; implementation of human rights norms and standards; and monitoring, evaluation, and reporting on human rights issues.

Broken Promises – Even though the 2004-2009 running period for the revised RANHAM is about to finish, many of its key objectives remain unfulfilled. Of the 12 international human rights conventions scheduled for ratification during the 2004-2009 period, only two (ICESCR and ICCPR) were signed. Instead of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as planned under the RANHAM, the government only signed the convention in 2004.

The lack of government commitment to RANHAM 2004-2009 is evident by the fact that just two of the 12 conventions scheduled for ratification were actually

signed. The future appears bleak as well, with the government offering no significant indication it plans on ratifying the remaining conventions any time soon. Interestingly, the government spends a large amount of time publicly questioning whether Indonesia needs the conventions or not, as opposed to using this energy to actually ratify the measures agreed upon under RANHAM. These debates are no longer necessary as the government has already promised both legally and politically, to ratify the conventions.

Another important aspect of RANHAM 2004-2009 was to oversee the agenda for revising the Human Rights Law, Human Rights Court Law and Indonesian Penal Code. Revision of the Penal Code began in 2004 but has still not been resolved. Besides the endless debate surrounding the revision by lawmakers at the House of Representatives, it's also regrettable that some articles violating human rights in the current Indonesia Penal Code are still present in the latest draft of the revision.

Provoking public resistance or opposition against the government through actions, writing or speech, is still a criminal offense under Article 160 of the Penal Code, and is still enshrined in the revision under Article 288. This article has been criticized by legal watchdogs in Indonesia as it often used by the state to criminalize activities undertaken by human rights activists, and is seen as an obstruction to freedom of expression. One argument put forward by human rights activists is that the spirit of this article is no different to the total authority the Dutch colonial government enjoyed over the Indonesia people during the colonization era. The article is no longer relevant or needed in a state that claims to be democratic and respect the human rights of its citizens.

Despite being scheduled for revision under RANHAM 2004-2009, the Human Rights Law and Human Rights Court Law have not been discussed at all either in government or parliament. As both urgent revisions were not listed on the 2005-2009 National Legislation Program (Prolegnas), the

parliament and government could easily shirk from their promise to examine these two laws. In a further step backwards, instead of prioritizing discussions about these promised revisions, the government passed several regulations which outright contradict human rights principles, such as the Pornography Law and Information and Electronic Transaction Law.

The Human Rights Law and Human Rights Court Law are in urgent need of revision because it is through them that the authority and power of the National Human Rights Commission (Komnas HAM) is regulated. Komnas HAM is currently limited to just providing recommendations and conducting inquiries into gross violations of human rights, but cannot assist in prosecuting human rights violators in Indonesia. In the cases of the Trisakti, Semanggi I and Semanggi II (TSS) shootings, for example, a Komnas HAM investigation concluded that the actions of the perpetrators constituted crimes against humanity. This outcome however was not followed up by the Attorney General's Office (AGO) as required. Instead, the AGO argued it would wait for parliament to confirm the case was a gross human rights violation before conducting an investigation. This action demonstrates the institutional weakness of Komnas HAM, and the ongoing neglect of victims' families who wait for justice. These issues would not arise if Komnas HAM had the power not only to conduct inquiries but also investigations and prosecution, similar to the authority enjoyed by the Corruption Eradication Commission (KPK).

Towards RANHAM 2010 – In its 2007 report, the RANHAM Committee concluded that *"... the implementation of human rights protocols through the implementation of RANHAM 2004-2009 has occurred at either a central or local level. This can be seen from the establishment of the RANHAM Executive Committee at the provincial and district level..."* This conclusion indicates that RANHAM focused on formal outcomes rather than substantial achievements as a measure of its success. The report by the RANHAM committee outlines what

conventions were ratified, how many human rights seminars and workshop they conducted and the number of local committees established. It did not elaborate on whether these outcomes improved the social understanding of human rights issues, or if the strategies led to a decrease in the number of people being tortured in Indonesia. While the report claims to have translated the ICESCR and ICCPR into Indonesian, there is no mention made of whether they plan to distribute it at a social level so people actually are aware the conventions exist.

In its preparations for RANHAM 2010-2015 – which have already begun – the government must learn from the mistakes of RANHAM 2004-2009. First, the government must prioritize the ratification of international human rights conventions and revision of laws championing human rights. Including this in the national legislation program is a good start, but just the minimum requirement.

Second, the ratification of these conventions will be meaningless without government enacted laws to support them. In turn, without proper implementation those laws will also lead nowhere, so efforts beyond simply passing regulations must occur. Human rights issues will not be solved simply by ratifying conventions or enacting laws: they complement each other.

Third, it's important for the government (and RANHAM committees) to devise outcomes not solely based on formal achievements – such as conducting seminars and workshops – but on the level of public understanding of human rights. When drafting RANHAM 2010, the government should remember the philosophical reason behind the establishment of RANHAM itself, which is “...to guarantee improvement on respecting, promoting, fulfilling, and protecting human rights in Indonesia...”, and not fall into the trap of over-promoting tangible outcomes.

The government has failed to bridge the gap between action and plans in their implementation of RANHAM 2004-2009 and

subsequently broken their commitment to the protection of human rights in Indonesia. As RANHAM was born from a Presidential Decree, there are no specified sanctions against the government should it fail to adequately act on laws laid out in the program. The government must be pressed to act on these recommendations for a more effective human rights program in the future.

CRUCIAL DRAFT LAWS AWAITING PASSAGE INTO LAW

Draft of Penal Code and Criminal Procedural Code – Indonesia has struggled to revise its Penal Code and Civil Code for years despite the fact that the vast majority of articles remain virtually unchanged since the Dutch made the laws of *Wetboek van Strafrecht* effective in September 1886.

In the past decade, Indonesian criminal law has seen the emergence of dynamic new developments in legal fields through the establishment of laws on money laundering, child protection, human trafficking, domestic violence, terrorism, the protection of witnesses and victims and notably a revised law on corruption.

The proposed reform to the Penal Code has been submitted to the House of Representatives but has been deliberated for several years to no avail. Problematically, none of the aforementioned advances made in law in Indonesia can be enhanced until the revised Penal Code has replaced the existing articles in the old system. For this reason, the House of Representatives must prioritize passing this draft into law and complete the much-needed transformation of a nearly 125-year-old legal system.

Draft of the revised Human Rights Law – The passage of this draft into law is absolutely crucial to improving Indonesia's current human rights situation. The final draft of this law grants the National Commission on Human Rights (Komnas HAM) the authority to investigate and prosecute suspected perpetrators of human rights abuses. The commission's current

jurisdiction is limited to making preliminary inquiries into cases and passing on recommendations to the Attorney General's Office (AGO) for follow up. Considering the AGO has either acted too slowly or failed to follow up on major human rights violations, such as the Trisakti and Semanggi shootings more than 10 years ago, it is pertinent the commission is awarded this authority.

The Constitutional Court recently ruled that any case involving crimes against humanity can be investigated without establishing a human rights ad-hoc court. This decision clarifies that the AGO has no reason to stall on investigating any cases involving rights violations. Any failure to do so would essentially be supporting impunity.

Draft of the Law on Human Rights Court – The Republic of Indonesia has made a commitment to ensuring that those responsible for gross human rights violations are brought to justice, as indicated by Law number 26 year 2000 regarding the Human Rights Court.

In the wake of the human rights crisis in East Timor in September 1999, a Presidential regulation in lieu of law was introduced by former President Habibie which authorized the establishment of a Tribunal. This was considered inadequate in the absence of an actual law, and future regulations submitted for deliberation were rejected for a more comprehensive draft bill in the year 2000.

Much of the debate on this draft has focused around the issue of whether it should be retrospective. The authority of the Court to try past cases of gross human rights violations has particular resonance in Indonesia as many thousands of unresolved cases of extrajudicial executions, "disappearances", torture, rape, arbitrary arrest and murder exist as a result of the impunity enjoyed by former New Order figures.

Under the current draft, the Human Rights Court would not have the authority to try past cases. In order for Indonesia to move forward and expand human rights to

encompass all people, it must face up to its past and bring those guilty of gross violations to justice.

--

The Constitutional Court recently ruled that any case involving crimes against humanity can be investigated without establishing a human rights ad-hoc court. This decision clarifies that the AGO has no reason to stall on investigating any cases involving rights violations. Any failure to do so would essentially be supporting impunity.

ADDITIONAL FEATURE

Indonesian Children Crying Out For Justice

INTRODUCTION

On July 23, children across Indonesia celebrated National Children's Day at their schools and in their communities through shows, sporting events and ceremonies. Among the festivities however, one could not help thinking about those children who could not enjoy the day or the prospect of a bright future ahead. There are approximately 6000 children behind bars in Indonesia, and countless thousands more living on the streets. Many are unable to attend school due to costs and must work in order to support their parents and younger siblings. For them, this annual day presents little reason to celebrate.

Formally, several legal measures have been taken by government in order to protect, respect, and fulfill the rights of children. Indonesia has been a state party in the United Nations Convention on the Rights of Children since 1990. Domestically, Indonesia has also enacted the Child Protection Law No. 23 year 2002 and the Children's Court Law No. 3 year 1997.

Regardless, frequent reports of abuse and injustice against children indicate that the existence of these laws is not nearly enough. LBH Masyarakat has been closely following four cases that detail the failings of the Indonesian government, court systems and law enforcement to protect the nations most vulnerable.

WHEN GAMES ARE NO LONGER FUN: THE CASE OF 10 SHOE-SHINERS

In June's edition of CAVEAT, LBH Masyarakat reported on a case involving 10 children who were arrested at Soekarno-Hatta International Airport in Jakarta for

allegedly gambling and offering shoe-shining services in the airport facility without a permit. Aged between 11 and 19 years, they were subsequently charged with violating Article 303 of the Indonesian Criminal Code regarding gambling and were detained at Tangerang Children's Prison to await trial.

The case quickly generated huge amounts of public interest. Many sympathized with the boys because they came from poor backgrounds and worked at the airport to support their families. Their appearance before the court wearing masks to hide their identities and crying while struggling to read statements prompted widespread public protest. When it became clear that the charge of 'gambling' related to an innocent game of coin toss, and that many of the boys would be forced to repeat a year of school after missing their final exams due to detainment, angry calls were made for the Tangerang District Court to drop the charges and for police to reprimanded for their irresponsibility with the arrest.

The boys initially faced a possible sentence of five years in prison, but on July 27 the court decided not to hand down a sentence and sent them home with their parents. While this was a much better outcome than jail, the judges still concluded that the boys had committed a wrongdoing and were essentially criminal – a stigma likely to remain with them for the rest of their lives.

The lack of compassion and humanity demonstrated throughout this case by the court and law enforcement is nothing short of staggering. LBH Masyarakat maintains that a charge of gambling, while ludicrous in reality, is also not defensible in court. As the boys were playing the game to merely to pass time and entertain themselves, the

motivation was for fun, not profit. This distinction is the key difference between gambling and simply playing for enjoyment.

It was positive to see the boys received the sentence they deserved – freedom to be children – and did not end in jail, but the mere fact children can somehow wind up before a judge in Indonesia pleading for fair treatment is deeply disturbing. Although the judges ruled that the boys are sent back to their parents, the judges found their guilty and thus are labeled with the status of convicted. This status will only burden and haunt their future because they have been decided guilty as criminal since their early age. The Indonesian government must recognize that children's rights are not being upheld satisfactorily and take action to prevent appalling cases like this from occurring again in the future.

UNDERAGE GIRL SEXUALLY ABUSED: ARE POLICE SERIOUS ABOUT PROTECTING CHILDREN'S RIGHTS?

Mira* is a 15-year-old schoolgirl who recently completed junior high. In July 2008, four friends invited her to a bar in Lokasari, Jakarta. There, one of them introduced her to Steven*, a single man over forty who informed them that he was looking for a girlfriend.

Mira met up with Steven several times, although never without the company of another person. One day she introduced him to her friend Anna*. Steven convinced both of them to return with him to a hotel, where he asked Anna to have sex with him. She cried and refused, and he allowed her to return home. He then turned on Mira, promising her that he would be responsible for any consequences of a relationship. As such she was coerced into having sex with him.

Two months later, Mira discovered that she was pregnant to Steven. In March 2009, Mira and her family filed a complaint against him to the Jakarta Regional Police Station (Polda Metro Jaya). Mira's testimony and those of several witnesses were heard,

but there was no proper inquiry into the case.

Disappointed with the police's lack of response, Mira's family traced Steven, eventually discovering that he owned a restaurant in Kota, Jakarta. On June 20 they brought him back to Polda Metro Jaya. After a night under arrest, the police released him on the grounds that there was not enough evidence to detain him further. He was, however, obliged to report regularly to the station with details on his location and activities. Yet when Mira's family questioned the police in Polda Metro Jaya about these reports, they were unable to produce them or provide a satisfying answer.

To date there have still been no significant measures taken by police to investigate this case. Mira's family has tried to help police by arranging witnesses and testimonies, but have received little response. (*Names have been changed)

WHEN MONEY COMES BETWEEN A CHILD AND THE RIGHT TO EDUCATION

The General Comment of International Covenant on Economic, Social, and Cultural Rights (ICESCR) mandates each State Party to ensure that education be physically and economically accessible to all individuals. Despite Indonesia ratifying ICESCR in 2005, inexpensive education is still extremely rare. Many children are forced to end their education due financial constraints, while those who finish do so only after overcoming many obstacles. One common example of this is from schools that refuse to give graduation certificates to students who haven't completed their fee payments.

MGL is a former student at a private Islamic Elementary School (Madrasah Ibtidaiyah or MI) located in Kalideres, Jakarta. He comes from a disadvantaged background, with neither parent in permanent employment. In 2008, MGL graduated from elementary school and planned to continue his studies at a junior high school offering free

The lack of compassion and humanity demonstrated throughout this case by the court and law enforcement is nothing short of staggering

education. However, the principle of MI refused to give MGL a graduation certificate on the grounds that his parents had not yet paid the school fees.

Obligating students to pay school fees is obviously not a crime. It is important to criticize a system, however, in which a graduation certificate can be used as a security asset. Indonesian private law stipulates that creditors are allowed to seize all of a debtor's goods as security assets. The purpose of this law is to give security to creditors in case debtors fail to fulfill their financial obligations. However, only goods that have economic value can be used as security assets, something that a graduation certificate clearly does not possess.

Furthermore, it is a serious issue when a child's economic background affects their ability to receive an education. It is the responsibility of the government to provide a system of education that is accessible to every citizen.

Thankfully, some of these issues are now being addressed. The Law No.20 Year 2003 on The National System of Education has set 9 years as a minimum standard of basic education that every child should receive. The government has also raised the budget of education to 20% of the Draft of State's expense and income (RAPBN). The recently proposed "2009 Free School" program, subsidized by the BOS (Operational Subsidy of School) budget, also appears to be a positive solution. The program guarantees every child from an impoverished family to be allowed to attend school without charge. However, the responsibility still lies on the government to ensure people are informed of the new programs, and maintain transparency in their implementation.

Thanks to the involvement of paralegals at LBH Masyarakat, who informed the school that they had violated MGL's right to education and the grounds on which he had a complaint, MGL received his certificate and is now continuing at the junior high school. However, he is only one success among a thousand children to whom this right is denied.

SCHOOL MISMANAGEMENT PUTS RIGHTS IN JEOPARDY

SH is a 6-year-old girl about to start elementary school. Her parents planned to enroll her in a school located next to their home. In this school, the registration of new students is based on the age of children, with only the 40 eldest students accepted each year. Unfortunately, SH was too young. The school staff, however, told her parents that as SH was 41st on the list she would be the first accepted if any of the other students were to pull out.

A few days later one of the other students resigned, and SH's parents attempted to proceed with the registration. However, the school refused to put her on the list, citing various terms and conditions of which many were clearly fabricated.

This case was handled by a LBH Masyarakat paralegal in Jembatan Besi, Jakarta who finally worked out that SH hadn't been 41st on the list, but instead 43rd. Unfortunately, this fact was only uncovered after the period of student registration had finished.

Thankfully, in this case there was a public school that was able to accept SH as one of its students. However, the mismanagement revealed in this case, and the lack of transparency it displays within the system itself, reveals that many children may be having their right to education compromised.

--

OPINION

Indonesia's Outdated Laws Need Revision

By: Answer C. Styannes *

Jakarta, Indonesia — Indonesia's legal system is still influenced by that of the Dutch, who colonized the country for more than three centuries. The civil code, commercial law and penal code are all legacies of the Dutch colonial government. Drafted 100 years ago, many provisions enshrined in the laws are no longer relevant in present-day society.

The Indonesian penal code is the most problematic, as some of its articles were drafted to accommodate colonial interests rather than protect society. These include several articles that deal with insulting the president, which the Constitutional Court has declared unconstitutional. But some problematic articles are still intact and a threat to democracy in Indonesia. Article 160 is one of them.

Article 160 says, "Any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years."

This article has become a favorite of both the police and prosecutors in criminalizing human rights activities in Indonesia, especially in conflict areas such as Papua and Aceh. In 2008, eight human rights activists from the Aceh Legal Aid Institute were found guilty and convicted – on the basis of Article 160 – of committing an act of violence against the government. The activists had gone to villages in Aceh and distributed pamphlets about alleged land expropriations involving the PT Bumi Flora Company and the local government.

Similar cases were also slapped on Buktar Tabuni and Iwanggin Sabar Olif, human rights defenders in Papua.

Based on the notion that Article 160 not only threatens democracy but also violates freedom of expression guaranteed under Indonesia's 1945 Constitution, several calls for a judicial review have been made, without success.

On a complaint filed by Rizal Ramli, founder of the Indonesia Awakening Committee and a political activist critical of the neo-liberal practices of President Susilo Bambang Yudhoyono's administration, the Constitutional Court insisted that Article 160 did not violate the freedom of expression guaranteed in the Constitution. Such declarations were also made previously in 2007, and the provisions under the article were found not unconstitutional.

The court argued that the Constitution itself allowed limitations on human rights for the purpose of guaranteeing the recognition and respect of rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

Besides, judges say that incitement is an offence under any legal system, despite the fact that it was drafted under the Dutch colonial rule. They refused the complainant's arguments that Article 160 was a strategy by the Dutch colonial government to preserve their power against the Indonesian people. They said incitement was recognized under any legal system as an offence and so was a punishable crime.

This shut the door on any debate about incitement as an offence.

However, what has been missing in the discourse on Article 160 versus the freedom of expression is the phrase “a violent action against the public authority” in the article. Historically, the article was drafted so the Dutch could repress society and preserve their power over the Indonesian people. Therefore, it is no longer relevant in the democratic Indonesian state.

A judicial review of Article 160 is needed specifically for clauses like the above, which are redundant now. Even if the clause is erased, those who incite violence against public authority can still be arrested and convicted. But several clauses in the article are prone to wrong interpretation by authorities, allowing them to arrest anyone who opposes them.

There are two ways to eliminate the clause of incitement against public authority. A judicial review in the Constitutional Court is perhaps the quickest. However, the complainant would have to specifically refer to specific clauses, instead of complaining about the article as a whole. According to law, the Constitutional Court can only deliver its verdict on the specific complaint filed.

The other way is to use the process of revising the penal code. In the draft of the revised text, Article 160 is unchanged and so has to be read in its “material meaning” – meaning that, although all the elements contained in the article apply to the alleged perpetrator, the person cannot be punished if the crime has not taken place.

Article 160 versus freedom of opinion has been overly discussed, yet the important part has not been touched – the phrase of “incitement to commit violence against public authority.” Without focusing on the existence of such phrases, anyone who incites against public authority will always be held accountable.

Moreover, the government will continue to use the article to criminalize human rights defenders, specifically in conflict and post-conflict areas. The criminalization of acts by human rights defenders is an attack against human rights.

--

(Answer C. Styannes is a research associate at the Community Legal Aid Institute in Jakarta, Indonesia. She is currently studying in the Faculty of Law at the University of Indonesia, majoring in constitutional law. Her work focuses on issues of constitutional law, judicial and legislative reforms, labor laws, and civil and political rights).

--

This article was originally published on 29 July 2009 at http://www.upiasia.com/Human_Rights/2009/07/29/indonesias_outdated_laws_need_revision/4695/

About LBH Masyarakat

Born from the idea that all members of society have the potential to actively participate in forging a just and democratic nation, a group of human rights lawyers, scholars and democrats established a non-profit civil society organization named the Community Legal Aid Institute (LBH Masyarakat)

By providing a wide range of opportunities, LBH Masyarakat is able to join forces with those concerned about upholding justice and human rights to collectively participate and contribute to the overall improvement of human rights in Indonesia.

LBH Masyarakat is an open-membership organisation seeking to recruit those wanting to play a key role in contributing to the empowerment of society. The members of LBH Masyarakat believe in the values of democracy and ethical human rights principals that strive against discrimination, corruption and violence against women, among others.

LBH Masyarakat aims for a future where everyone in society has access to legal assistance through participating in and defending *probono* legal aid, upholding justice and fulfilling human rights. Additionally, LBH Masyarakat strives to empower people to independently run a legal aid movement as well as build social awareness about the rights of an individual within, from and for their society.

LBH Masyarakat runs a number of programs, the main three of which are as follows: (1) Community legal empowerment through legal counselling, legal education, legal clinics, human rights education, awareness building in regard to basic rights, and providing legal information and legal aid for social programs; (2) Public case and public policy advocacy; (3) Conducting research concerning public predicaments, international human rights campaigns and advocacy.

These programs are conducted entirely in cooperation with society itself. LBH Masyarakat strongly believes that by enhancing legal and human rights awareness among social groups, an independent advocacy approach can be adopted by individuals within their local areas.

Lembaga Bantuan Hukum Masyarakat
Tebet Timur Dalam III D, No. 2
Jakarta 12820
INDONESIA
P. +62 21 830 54 50
F. +62 21 829 15 06
E. contact@lbhmasyarakat.org
W. <http://www.lbhmasyarakat.org>