

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

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MAIN REPORT |

Access to Justice: Illusion or Reality?

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ADDITIONAL FEATURE |

Learning from Hunger: Reflecting on Starvation in Yahukimo

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OPINION |

Double Standards of Indonesian Police

Two vice chairmen of Indonesia's Corruption Eradication Commission are under police investigation for alleged abuse of authority. Yet lawyers and activists have widely criticized the investigation of Chandra M. Hamzah and Bibit Samad Riyanto, suggesting the two are being persecuted because the police hope to weaken the commission and undermine its effective anti-corruption efforts.

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CAVEAT:

Let her or him be aware

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THE EDITOR'S CUT

This month's CAVEAT provides insight into the fraught journey of minority groups to access justice, exemplified by the story of a man who was evicted from his home, lost his belongings and has struggled to receive any form of compensation. Access to justice has been recognized as essential to supporting and empowering disadvantaged people and the ability to access justice enables lower-socio economic sectors to address and counter inherent biases in society thereby creating a more democratic system of governance. However, reality speaks differently.

Sudarman lost his hopes and goals in life when his home was destroyed. "My belongings meant nothing to me. It was only Rp 5 millions, but that money was my hard earned cash. I had planned to build a house in Solo but now it's gone there's nothing left. That eviction has crushed my dream," he said. He submitted a civil lawsuit against the Jakarta government in the West Jakarta District Court in August, but there has been no clear resolution as no defendants have appeared before the court. Sudarman's situation is far from unique in this country. His circumstances raise serious questions about accessibility to justice for the disadvantaged in Indonesia. Where does the onus lie to compensate his sufferings and losses?

The additional feature in this CAVEAT tells of the dire starvation in the Yahukimo region in Papua. This article is a collaboration by LBH Masyarakat and the Asian Human Rights Commission. The Indonesian Social Services Christian Foundation (YAKPESMI) claims that 113 people have died from starvation in the region this year. It is vital that the government recognizes the need to not only provide food subsidies and aid, but to also invest in infrastructure in the area, to improve distribution, and implement long-term measures to ensure availability and accessibility to adequate food. This concept of adequacy is outlined in an article of the

International Covenant of Economic, Social and Cultural Rights (ICESCR), of which Indonesia is a signatory.

Last but not least, the opinion piece, "Double Standards of Indonesian Police," written by Answer C. Styannes, explores the ongoing enmity between the Corruption Eradication Commission (KPK) and the National Police. The dispute sparked when the KPK began investigating the national police's chief detective, Susno Duaji, for allegedly using his power to force Bank Century to unlawfully return a large amount of deposited funds to their owner. In return, it is alleged, Duaji received Rp 10 billion (US\$ 1 million). It is argued that the National Police have acted unprofessionally in investigating two deputy commissioners at the KPK. It has been claimed that the deputies are being persecuted because the police hope to weaken the commission and undermined its effective anti-corruption efforts. Professionalism in the police force is vital as it is closely related to human rights enforcement. It is a police obligation to protect human rights. An unprofessional police force can impede people's access to justice, as it is the only institution with the authority to handle almost all criminal cases.

We hope the three features presented in this edition of CAVEAT will provide a clearer and more concise understanding of the rule of law, human rights, and democracy in Indonesia.

Thank you for your ongoing support!

- The Editor

MAIN REPORT

Access to Justice: Illusion or Reality

UNDERSTANDING ACCESS TO JUSTICE

Access to justice has been recognized as essential to supporting and empowering disadvantaged people. The ability to access justice enables lower socio-economic sectors to address and counter inherent biases in society, thereby creating a more democratic system of governance. Access to justice is defined by the UNDP as The right of every person — irrespective of race, religion, gender, disability and class — to utilize the legal systems, both formal and informal, to attain justice in a situation of inequity.

Access to a formal framework of justice is a basic human right and has proven essential in the fight to eradicate poverty, resolve conflict and reconcile the injustices affecting those living at the margins of society.

Without a means to a fair and just legal structure, society becomes further fractured, often to the detriment of minority groups, particularly along the lines of race, religion, gender, disability and class.

It should be recognized that both formal and informal institutions have key roles to play in the dispensation of justice.

A GLOBAL PERSPECTIVE

The right to access justice systems is consistent with the ethos of the Millennium Declaration of the United Nations Development Program (UNDP) and the fulfilment of its Millennium Development Goals, of which Indonesia is a signatory.

Worldwide, it is recognized that difficulty accessing justice is inexorably linked to poverty as disadvantaged people often

suffer without an advocate in the formal sector.

It is therefore vital that minority groups must be able to access justice via a range of means. Across the formal and informal sectors, this can include police, the courts, social workers, community leaders, religious leaders and representatives from NGOs.

Key to this right is the importance of legal awareness; as with most efforts made to combat poverty, the crux is education. Minority groups cannot access justice if they are unaware of their rights. It is the responsibility of a democratic parliament to inform their constituents of their rights and entitlements in a transparent and easily accessible manner.

An approach that targets the needs of the poor is far more effective than a broader education campaign. Recognizing the needs and pitfalls of minority groups enables a government to combat the lack of information among the uneducated.

CLOSER TO HOME

President Susilo Bambang Yudhoyono has cited his crusade against corruption as key to the country's development. While we applaud the president's campaign, a more focused approach to the nation's poor is needed, especially in regards to access to justice.

Targeting the needs of the poor is paramount to the dispensation of legal assistance. Issues such as housing, matters of personal finance and taxation, health

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care and the resulting medical bills, and voluntary and involuntary migration are widespread among minority groups and often result in crippling expenses.

Unfortunately, the majority of these cases fail to grasp the public's attention. Recent high profile cases include those of Prita Mulyasari, imprisoned for a month under the Information and Technology Law for allegedly defaming a private hospital in an email to friends; the battle for compensation by the residents of Sidoarjo after their homes were destroyed by a mudflow; and that of Siti Hajar, who was abused for three years and suffered severe burns at the hands of her Malaysian employee.

While public outrage, fueled by the proliferation of social media networking, has raised the profiles of these cases, a lack of legislation specifically designed to protect the poor indicates that disadvantaged groups will continue to suffer in Indonesia unless the House of Representatives focuses its attentions on expanding and facilitating a better path to justice.

LONG JOURNEY TO PURSUE JUSTICE

Sudarman is seeking justice. In 2003, he became homeless when his house was destroyed by Tramtib Pemda DKI Jakarta (*Ketentraman dan Ketertiban Pemerintah Daerah*) and he lost all of his belongings. Sudarman acknowledges that he was living in the area illegally and that he didn't own the house or land. However, during the demolition, for which there was no prior warning, he lost belongings valued at Rp 5 million (\$500) – his life's work. "Is there any law in this universe that allows the destruction of another's belongings? If the answer is no, I deserve to exercise my rights," he says.

For the past six years, this belief has kept Sudarman on the path to access justice so he can receive compensation for his losses. In 1970, the father of five migrated from Solo to Jakarta to seek a better life. He owned a water cart and would sell water to residences in Jembatan Besi, West

Jakarta, and would help his neighbors with manual labor. He lived away from his family, sending Rp 1 million (\$100) per month back to Solo for school fees. The problems started in 1994, when PT Cakra Wira Bumi Mandala bought the land in Jembatan Besi, with plans to build a mall and apartment buildings. Because of his lack of ownership, Sudarman says he was willing to move when the time came. "But I was still allowed to stay there, so there I was." The company's plans for development did not run smoothly, and the building commencement was postponed numerous times. During that period, new residents arrived and built illegal homes on the land.

"Is there any law in this universe that allows the destruction of another's belongings? If the answer is no, I deserve to exercise my rights,"

In 2003, an eviction notice was circulated among the residents. "More than once, I was asked to guard the area with the new residents. But I rejected the offer. I never agreed with their decision to stay with the houses and land. We were just boarding and did not have any right to be there." On Aug. 1, 2003, Sudarman returned to Solo to celebrate Independence Day with his family. Upon his return to Jakarta a month later, he discovered that his home had been destroyed and his personal belongings were gone. He had never been informed of the official eviction date and he claims that PT Cakra Wira Bumi Mandala never sent representatives to inspect the area. Sudarman not only lost his house and belongings, but also his means of employment, as his water cart was destroyed in the process. However, he says that this paled in comparison to the distress caused by the demolition. "My belongings that were broken and lost mean nothing to me. They were only worth about Rp 5 million but that money was my hard-earned cash. I had planned to build a house in Solo but now it's gone there's nothing left. That eviction crushed my dreams," he says. Sudarman's children have been forced to drop out of school and his wife now works as a maid. He cannot afford to return to Solo.

In a bid to seek retribution, he met with representatives from the Jakarta City Administration, National Human Rights Commission (Komnas HAM) and an established legal aid institute to present his case. However, despite his efforts, Darman's case failed to progress and he alleged the institutions treated him poorly. Darman's situation is far from unique in this country. His circumstances raise serious questions about accessibility to justice for the disadvantaged in Indonesia. Where does the onus lie to compensate Darman for his suffering and losses?

Every Indonesian has a right to access a wholly fair and structured justice system. A lack of such a system undermines this country's democratic governance and leaves its citizens feeling disenfranchised and discontented. Sudarman is now suing the company through the West Jakarta District Court.

A WAY FORWARD

Sudarman's situation exemplifies the vicious circle of poverty and disempowerment that affects minority groups. His lack of formal education and severe disabilities prevent him from entering the formal work sector, and has even hindered his attempts to earn a living in the informal sector. A resulting shortage of funds and the daily struggle to survive have prevented him from accessing various paths to justice, as he has been, up until this point, unable to raise awareness of his case, or access the appropriate paths of redress.

A myriad of agencies and information has left the plaintiff confused as to where to turn for legal assistance. A structured government system, overseeing both formal and informal representatives of the justice system, could address this problem and give minority groups a better chance at accessing and achieving justice.

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Figure 1| Sudarman, while showing his lawsuit document

A structured government system, overseeing both formal and informal representatives of the justice system, could address this problem and give minority groups a better chance at accessing and achieving justice.

ADDITIONAL FEATURE

Learning from Hunger: Reflecting on Starvation in Yahukimo

This article is developed by LBH Masyarakat in partnership with the Asian Human Rights Commission

INTRODUCTION

The Indonesian Social Services Christian Foundation (YAKPESMI) last month shocked the country by releasing a report that claimed 113 people had died from starvation in Yahukimo, Papua, between January and August this year. It was reported that bad weather had resulted in a scarcity of food as crops were destroyed and that heavy rain had led to a spike in diseases such as malaria and diarrhea. YAKPESMI reported that six districts were affected, including Langda, Bomela, Suntamon, Seradala, Talambao and Nipsan. Both central and local governments in the region have denied that the victims died from starvation.

Despite disagreeing with the report's findings, the local government decided to send food and medical aid to the affected areas. Three hundred tons of rice were distributed, starting with Walma district on Sept. 18. Various sources, however, have reported that only 16 tons of rice were distributed to 11 districts while the other 16 — including Langda, Bomela, Suntamon and Siradala districts — haven't received any food aid since Oct. 10. In a meeting with the minister for social welfare, Ones Pahabol, chief of Papua regency, said it was difficult for the local government to distribute food and medical aid due to transportation problems in the isolated and remote areas, which can only be reached by helicopter.

Food shortages are not unusual for the residents of Yahukimo. In 2005, it was reported that 55 people died of starvation, a claim that was again denied by the government. Interestingly, even though

officials refused to acknowledge that the victims died from starvation, government measures at the time indicated that that was indeed the real problem. According to a report published on the Web site of the Ministry of Social Welfare, one million kilos of rice and approximately 284 kilograms of sweet potatoes were distributed to affected areas. The government also claimed that in 2006, 12 food storage facilities were built and seeds for crops were distributed for free. The storage facilities, however, remain unused.

ALERTING HUNGER

The right to adequate food as a fundamental human right is recognized in the 1996 Food Law. The law also states that availability of safe, nutritious and good quality food is requisite, and must be ensured by a system provides protection for the purposes of health and to play a larger role in increasing the prosperity and welfare of the people. Moreover, Section 17 of Article 1 in Chapter 1 states, "Food security is the condition in which the provision of food for households is reflected by the availability of sufficient food both in its quantity and quality."

As a state party of International Covenant of Economic, Social, and Cultural Rights (ICESCR), the Indonesian government has an obligation to take steps with a view to achieving the full realization of the rights in ICESCR, including the right to adequate food as enshrined in Article 11 of ICESCR.

"The state parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through inter needed: a) To improve methods of production, conservation, and distribution of food by making full

use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; b) Taking into account the problems of both food importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need”.

In hindsight, it is regrettable that the government only provided short-term measures during the 2005 food crisis. These measures have failed to prevent starvation in the area.

Moreover, according to the Web site of the Minister of Social Welfare, the government claimed to have improved infrastructure in Yahukimo in 2006. The advent of starvation, however, raises questions as to what degree of quality the projects were conducted. Ironically, the government claims that poor infrastructure has prevented the effective distribution of aid.

Despite the shortage of food every year, the government has failed to build a system to prevent against starvation, a serious violation against the right to adequate food. Despite the fatal situation in Yahukimo in 2005, the government’s neglect and denial has failed to prevent further deaths from starvation this year.

It is important for the government to understand that forming policy on the right to food is not solely about providing food for those suffering from hunger. The concept of adequacy as guaranteed by the ICESR is closely linked to sustainability, which incorporates the notion of long-term availability and accessibility. Thus, it’s not sufficient for the government to only provide food aid: It must take necessary measures to ensure that such problems cannot occur in the future. In order to attain accessibility, it is also necessary for the government to improve infrastructure in

Yahukimo. This should be basic homework for the president and his cabinet.

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OPINION

Double Standards of Indonesian Police

By: Answer C. Styannes *

Jakarta, Indonesia — Two vice chairmen of Indonesia's Corruption Eradication Commission are under police investigation for alleged abuse of authority. Yet lawyers and activists have widely criticized the investigation of Chandra M. Hamzah and Bibit Samad Riyanto, suggesting the two are being persecuted because the police hope to weaken the commission and undermine its effective anti-corruption efforts.

Rivalry between the two law enforcement institutions surfaced in July 2009, when the commission began investigating the national police's chief detective, Commissioner General Susno Duaji, for allegedly using his power to force Bank Century to return a large amount of deposited funds to their owner unlawfully. In return, it is alleged, Duaji received 10 billion rupiah (US\$1.06 million).

The commission's investigation of Duaji is widely believed to have triggered the police investigation into the alleged abuse of power by the two commissioners. This view is strengthened by the fact that the police charge was inconsistent and apparently fabricated – the police first said that the commissioners were involved in bribery but later said it was abuse of power.

This lack of professionalism is not new among Indonesia's police. In this case the police reprisal against the anti-corruption commission was on the national level, but such behavior also prevails at the grassroots level.

For example, a case came to light recently in which an underage girl was raped by a 40-year-old man. Her family filed a complaint with the Jakarta police, but no proper inquiry was conducted. Worse, after her

family found the perpetrator and brought him to the police station, instead of detaining him the police released him, citing lack of evidence.

In cases such as torture and other police abuses, victims are often reluctant to complain to the police because they are asked to provide witnesses and other evidence. As police torture and abuses take place in a closed setting, it is hard to fulfill such requirements.

The only witnesses in a torture case are the police officers themselves. It would be rare for an officer to testify against his colleagues and support the victim's complaint.

The police are guilty of negligence in some cases, and abuse of power in others, as is evident from the different handling of the cases involving the commissioners and the young rape victim. While the police acted swiftly to investigate the commissioners, they neglected their duty concerning the young girl.

These are common problems reflecting the lack of professionalism within Indonesia's police force. The police often fail in their duty. When they are supposed to respond quickly, they are often overly cautious. And when conditions require that they react with care, rash measures are taken.

Professionalism in the police force is important, as it is closely related to human rights enforcement. It is a police obligation to protect human rights. An unprofessional police force can impede people's access to justice, as it is the only institution with the authority to handle almost all criminal cases.

Furthermore, instead of implementing their slogan “to serve and protect,” Indonesia’s police have caused distrust in people about law enforcement. As a famous cynical saying goes, “Complaining to the police about your lost chicken will only cause you to lose your goat.” This describes the state of policing in Indonesia.

Distrust toward the police can lead to social unrest if people start taking the law into their own hands, as was seen recently in Pelalawan, Pekanbaru when angry residents attacked a red light district, smashing property and setting fire to buildings.

If the police could so hastily launch an investigation into the two commissioners who threatened them, they should be able to quickly launch their own internal reforms, as misconduct within the force in the long term is a much bigger threat to the cause of law enforcement they are pledged to protect.

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(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.)

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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.

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