

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

VOLUME 07/I, DECEMBER 2009

MAIN REPORT |

2009: The Year That Failed Law and Human Rights

A review of this past year would not be complete without acknowledging the effect of the terrorist attack on Jakarta. Early morning on July 17, the city was rocked as two explosions hit the JW Marriott and Ritz-Carlton hotels in Mega Kuningan, five minutes apart. As fear and panic reverberated around the city — among reports of a third explosion in North Jakarta, later proven unrelated — emergency services rushed to the scenes to assess the damage.

However, the subsequent investigation and hunt for those responsible again saw Indonesia's human rights standards plummet. A "shoot first, ask later" approach was prevalent and saw at least four terror suspects gunned down, robbed of a chance to present their side or to attend a fair trial. For their families, a true understanding of the situation can never be attained and they will live in doubt about the circumstances that saw their family members killed.

SPECIAL EDITION:

REVIEW OF INDONESIA'S LAW
AND HUMAN RIGHTS IN 2009

OPINION |

Indonesia's Legal System Biased and Unfair

In the context of protecting human rights, laws are intended to uphold the rights that are inherent to all human beings. The laws allow everyone to claim their rights and oblige the state to prosecute those who deny them.

Indonesia's dysfunctional legal system cannot protect its people's human rights. If past abuses are left unresolved, future human rights violations are likely to take place and remain unresolved as well.

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CAVEAT:

Let her or him be aware

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Branch : Tebet Timur, Jakarta, Indonesia

No. Acc. : 1 2 4 - 0 0 0 - 5 0 3 - 6 6 2 0

Swift Code : B E I I I D J A

THE EDITOR'S CUT

In this last edition of CAVEAT for 2009, we present a special report reviewing Indonesia's rule of law and human rights situation throughout the year. We have chosen to highlight some of the more key issues, ranging from civil and political rights to economic, social and cultural rights. These areas are fundamental issues that Indonesia should address in 2010 in order to improve its situation and that of its people. This year, Indonesia experienced an uncompromising state of affairs on human rights and bore witness to its own failing rule of law. If these conditions further deteriorate, and the government fails to prevent such incidents, Indonesia risks creating a state of anarchy, where the rule of law has collapsed and the enforcement of human rights is absent.

The country's failed legal reform has now been an issue for more than 10 years. Indonesia's law apparatus, from the National Police to the Attorney General's Office and the Supreme Court, have escaped the work of strategic and effective reforms. In 2009, the National Police passed a decree regarding the implementation of human rights; yet torture and other violence continues. The reputation of the Attorney General Office's has failed to fully recover from its downfall in 2008 in which one of its high-ranking officials was imprisoned for corruption. Other senior AGO officials are now accused of attempting to destroy the Corruption Eradication Commission (KPK). Meanwhile, the Supreme Court has not shown transparency in serving justice. Ultimately, all three institutions have failed to exhibit integrity and transparency. Ricky Gunawan's opinion piece, "Indonesia's Legal System Biased and Unfair," corroborates this proposition.

Gunawan's opinion piece provides striking cases of a failed rule of law. He compares three cases in which ordinary people face legal procedures and one case in which a powerful man is allegedly deceiving the law. He argues that, "Indonesia needs to reform

and strengthen its legal system. Otherwise, the country will end up in pandemonium where laws are only paper and human rights turn into human wrongs."

In this edition, we would like to express our gratitude to our loyal readers out there, from local and international NGOs, various UN bodies, donor agencies and other concerned individuals, for their tireless support of the development of CAVEAT. In our first half year, there were a number of challenges that we were able to overcome. We succeeded in turning CAVEAT into a regular monthly newsletter, despite doubts in the early stages of development. Some people suggested that it would be impossible for us, as a newly formed NGO, to publish a monthly newsletter given the limited financial and human resources. We also chose to publish CAVEAT in English, adding another obstacle to its monthly publication. From our experience, we believe that hard work plus good faith equals great results. In 2010, we see many opportunities for us to further develop CAVEAT, to make it more comprehensive and to provide more in-depth analysis. But for now, let us unfasten our seatbelts, enjoy season's greetings and welcome in the New Year together.

Thank you for your ongoing support!

The Editor

MAIN REPORT

2009: The Year That Failed Law and Human Rights

THE YEAR IN REVIEW

Over the past 12 months, Indonesia has experienced massive political, environmental and social upheaval.

Amid the natural disasters, elections and terrorist attacks, the country's government has, at times, led with a steady hand — yet it has also seen Indonesians despair at the state of our nation.

March saw one of Indonesia's first tragedies of the year as the Situ Gintung dam collapsed, killing around 100 and leaving approximately 1600 people homeless. While aid agencies moved swiftly to support the survivors of the disaster, Indonesians were once again incensed at the reasons behind the collapse as it appeared that various government departments had once again misused their funds — at the risk of citizens' lives.

Reports from Walhi, the national environmental watchdog, indicated that officials were aware of problems with the 16-meter dam wall, possibly upwards of over a year ago. However, despite six officials being named as possible suspects, the National Police cited a lack of evidence as reason for not pursuing a trial.

The need for survivors of the Situ Gintung disaster to receive justice and adequate compensation is never more urgent than now, as those living in temporary shelters will suffer greatly during this rainy season.

April brought a logistical migraine down on the country's watchdogs and electoral

bodies as Indonesians moved to vote in the legislative elections for 132 seats in the Regional Representative Council (DPD) and 560 seats of the People's Representative Council (DPR). President Susilo Bambang's Democratic Party trounced its rivals, taking the largest share of the votes.

However, complaints flowed thick and fast as reports claimed that the inaccurate voters' list stripped thousands of their right to vote, instead providing the right to vote to children, the deceased, and, in some cases, offering two votes to one individual.

The electoral bodies — Bawaslu, Panwaslu and the General Elections Commission (KPU) — were called in to resolve the political quagmire, as Komnas HAM launched a challenge in the Constitutional Court to deem the elections illegal due to the percentage of votes claimed as invalid, and the alleged inability of thousands of voters to exercise their rights.

However, despite national protests and a litany of anecdotal and physical evidence, the challenge was dropped as the court deemed its investigation unlikely to change the elections' outcome — little was done to compensate those left without a vote in the running of their country; as so often

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happens, those living on the margins of our society, without access to an education or the sort of assistance needed to overcome Indonesia's tangle of red tape and illogical reasoning.

In July, the nation went to the polls once more, this time to vote for the leader of our country. Once the political backstabbing subsided, Yudhoyono and his economically-inspired running mate, Boediono, a former Governor of Bank Indonesia, swept the polls in a landslide victory over Jusuf Kalla and Megawati Sukarnoputri. Even the choice of running mates for the two other presidential candidates incited anger among voters — two former generals, both with dubious records on human rights. Those men with such records could run as political candidates in 2009 beggars belief.

The margin between policy and action seems to be wider than ever. Yudhoyono's proposal to rid the country of corruption inspired hope in millions; only for this same hope to be dashed as he stood on the sidelines, watching the saga of the KPK and the National Police play out in public. It is situations such as these that threaten the country's rule of law, as its people lose faith in the ability of the government and the judiciary to enforce restrictions and regulations.

Yudhoyono was quick to name the fight against corruption as the very foundation of his campaign; indeed, there were high expectations from the president and his second

term in office to tackle the inherent nature of graft that has infiltrated the highest echelons of Indonesia's government.

Throughout the political sparring, the country's chief body in the fight against graft, the Corruption Eradication Commission (KPK), descended into an untenable state as its chairman, Antasari Azhar, was arrested and charged with conspiracy to murder and was removed from his position.

It was alleged that Antasari had ordered the murder of a company director in relation to a love triangle with his third wife. Antasari has pled innocent, as the case continues — the frequent allegation is that the National Police, in a move of revenge after one of

their own was wiretapped, are attempting to dismantle the highly successful commission and ruin the chairman's reputation in the process.

That Yudhoyono has enjoyed huge favor under the success of this commission has escaped nobody's attention. Nor has the fact that he has taken a relatively soft approach to addressing the scandal, despite huge public backlash.

CRITIQUE

As Indonesia has been presented with each challenge this year, its people have turned to the democratically elected government for guidance. There has been opportunity, over the years, to hone the official response to natural disasters, tragedy and tackling those who choose to live with impunity. Whether those in power have taken heed from these lessons is yet to be wholly determined.

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The struggle between the KPK, the National Police and the Attorney General's Office should leave no citizen in doubt that they are at risk of being treated unfairly under a law that is not equal. Throughout all levels of society, connections and the right amount of funds can and will see almost any charge dropped, a lack of evidence usually being cited.

Where to turn, then, if the country's own elected government fails to enforce the law?

The elections in April and July saw at least 18 international nongovernmental agencies

monitoring procedures to ensure that it was conducted democratically and without corruption. While this may have assisted in keeping the elections relatively free from fraudulence or misconduct, it hardly seems fitting that one of the largest democracies in the world be monitored by foreign bodies. However, for Indonesia, it seems that this will remain a necessary precaution for a while to come.

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International and local NGOs also continued to voice their criticism of police behavior in Papua this year, as friction increased between officials and separatist movements. Caught in the cross-fire, the region experienced several fatalities, both Indonesian and foreign. Violent knee-jerk reactions to citizens displaying the flag threatened to boil over into all-out riots, as police once more violated the basic human rights of citizens and their right to freedom of speech.

Of those who suffered most inexplicably under the new Information and Technology Law was mother of two, Prita Mulyasari. Her imprisonment and subsequent trial for allegedly defaming a private hospital in an e-mail sent to friends had the public in uproar and brought the world's attention to Indonesia — disappointingly, once again for the wrong reasons than those we should wish to project.

After people took to the streets in mass demonstrations — an increasingly frequent pattern for demanding change — Prita has embarked on the judicial merry-go-round, passed from one court to another as she is tried under a law that persecutes citizens and their right to freedom of speech. As this goes to print, there will most likely be another development in her case.

At what point will the government stand up for the individual, instead of catering to the more influential, more affluent sectors of society? In Indonesia, the individual's rights are often forgone for the benefit of another multinational company; another relative of

a member of government; another way to take a shortcut.

LOOKING FORWARD

Despite the bureaucracy's shortcomings, Indonesians have proven time and again that their interests lie in the rights of those living on the margins of society. Whether they take to the streets, their social networking site of choice, or the nation's media, there is blatant disdain for the handling of many of this year's most prominent challenges.

Most importantly is the education of people's rights. The ability to identify a situation of exploitation is vital to understanding why so many of the country's people live in poverty and is inherent to creating a truly fair and equal society. Throughout the year, we have highlighted not only the cases of individuals and groups that have been let down by Indonesia's law, but also the efforts of countless volunteers, NGOs and aid organizations to help these people lift their lives from below the poverty line.

The empowerment and education of an individual also has the benefit of enabling them to help themselves, in effect creating a stronger and more productive community around them. Local efforts instigate global movements, and Indonesia — as one of the largest democracies in the world — can play a pioneering role in helping its citizens help themselves.

However, this cannot occur to the detriment of human rights. Above all else, fundamental human rights — to which Indonesia claims to strive for, as a

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signatory of the United Nation's Millennium Declaration Goals — must be prioritized above all else. Key among these human rights is the right to a fair trial. In this sense, a fair trial must also include the eradication of impunity, so that the whole of society is subject — and entitled — to a fair trial and representation.

President Susilo Bambang Yudhoyono has the ability to instigate radical change in this country. Whether he will, or continue to acquiesce to others with power or influence remains to be seen. But Indonesians can keep abreast of the issues, be aware of their rights and utilize their right to freedom of speech whenever experiencing or witnessing exploitation or abuse.

After international and local watchdogs named Indonesia and its institutions some of the most corrupt in the world this year, there is certainly room for improvement. Let us hope that by this time next year, the government and judiciary will have taken responsible steps toward holding those who are guilty, accountable, and those who are innocent, clear of the law and its trappings. Indonesians deserve to feel safe and free from the malignant elements who draw attention away from our attributes, instead focusing on a culture of greed and inequality.

POSTSCRIPT

A review of this past year would not be complete without acknowledging the effect of the terrorist attack on Jakarta. Early morning on July 17, the city was rocked as two explosions hit the JW Marriott and Ritz-Carlton hotels in Mega Kuningan, five minutes apart. As fear and panic reverberated around the city — among reports of a third explosion in North Jakarta, later proven unrelated — emergency services rushed to the scenes to assess the damage.

Nine were killed, including the two suicide bombers who had checked into the hotels as guests, and approximately 50 were injured, mainly staff from the hotels.

The country's grief swiftly transformed into anger and Indonesia's collective accusation swiftly found its way to Malaysian fugitive Noordin M. Top, the suspected mastermind behind the 2003 JW Marriott hotel bombing in Jakarta, the 2004 Australian Embassy bombing in Jakarta, the 2005 Bali bombings and possibly the 2002 Bali bombings.

However, the subsequent investigation and hunt for those responsible again saw Indonesia's human rights standards plummet. A "shoot first, ask later" approach was prevalent and saw at least four terror suspects gunned down, robbed of a chance to present their side or to attend a fair trial. For their families, a true understanding of the situation can never be attained and they will live in doubt about the circumstances that saw their family members killed.

Despite the bureaucracy's shortcomings, Indonesians have proven time and again that their interests lie in the rights of those living on the margins of society. Whether they take to the streets, their social networking site of choice, or the nation's media, there is blatant disdain for the handling of many of this year's most prominent challenges.

This issue was drawn further into the public spectrum with the killing of Kelly Kwalik, a leader of the separatist Free Papua Movement (OPM), during a police raid on his hideout in Timika, Papua. Regardless of the extenuating circumstances, this situation is far too common in Indonesia. The subsequent riots in the region indicate that the police could have detained Kelly and avoided further violence. As Kwalik's family exercise their right to refuse the police of a DNA sample to confirm Kelly's death, it seems that this will be a long and drawn-out process; one that could have been easily avoided if police procedure focused more on the rights of the human being, rather than their apparent need to make headlines.

The National Police, and indeed, all special forces, must implement a broader range of training in their programs, including a far

better understanding of the intelligence required to hold a suspect and extract information — particularly for Indonesia, this sort of information could be crucial to the country's continued safety.

Hearteningly, Indonesia's condemnation of these acts of violence exhibited the true nature and strength of this country. The variety of ways in which the nation pulled together as one indicates that Indonesia has the capacity to forge its way to becoming a truly developed country with a safe, equal and democratic society.

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OPINION

Indonesia's Legal System Biased and Unfair

By: Ricky Gunawan *

Jakarta, Indonesia — Three shameful cases brought before Indonesian courts recently reveal that the country's legal system is in very poor shape. The law is applied forcefully against the poor and vulnerable, while the rich and powerful evade it with impunity.

Minah, an illiterate 55-year-old grandmother who lives in a small Indonesian village near Banyumas in Central Java, was taken to court last month for stealing three cocoa fruits worth 1,500 rupiah (US\$0.15) from a plantation. She was confused that, after having returned the fruit with apologies to the plantation, the owner still reported her to the local police station.

She had to travel a long distance on foot and by bus to face questioning and trial. Minah, who stood trial without a lawyer, said she took the cocoa fruits in September to grow plants from the seeds. The local district court gave her a 45-day suspended sentence and three months' probation. It means that if Minah commits a similar offence within three months from the date of conviction, she will have to serve her 45-day sentence.

A similar case took place in Kediri, East Java, where local police arrested and detained two farmers, Basar Suyanto and Kholil, for stealing a watermelon from a neighboring field. The two remorseful farmers made their first court appearance, like Minah, unaccompanied by lawyers. They remained in detention more than two months before a court-appointed lawyer obtained their release. Their case remains unsettled.

Aguswandi Tanjung, a 57-year-old tenant in an apartment in Jakarta, was arrested on Sept. 8 for stealing electricity. He was

detained for charging his mobile phone in a corridor inside the apartment block after the building management cut off the electricity to his apartment.

Compare the three cases above with that of Indonesian businessman Anggodo Widjojo, who allegedly conspired to frame two commissioners of the Indonesian Corruption Eradication Commission. Based on wiretapped conversations heard in a Constitutional Court hearing a few months back, the evidence is strong that he tried to interfere in cases with several high-ranking law enforcement officers.

He also has said on national television that he gave nearly 6 billion rupiah (US\$636,000) to a case broker to deal with the problem of the anti-corruption body. Yet the police have been unable to pin charges on him and until today Anggodo remains untouchable.

These are just a few cases that have come to public attention; certainly there are many similar examples of injustice. These abysmal stories show that in Indonesia the law is powerful against the poor, yet impotent against those with power and money.

In the context of protecting human rights, laws are intended to uphold the rights that are inherent to all human beings. The laws allow everyone to claim their rights and oblige the state to prosecute those who deny them.

Indonesia's dysfunctional legal system cannot protect its people's human rights. If past abuses are left unresolved, future human rights violations are likely to take place and remain unresolved as well.

Indonesia needs to reform and strengthen its legal system. Otherwise, the country will end up in pandemonium where laws are only paper and human rights turn into human wrongs.

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(Ricky Gunawan holds a law degree from the University of Indonesia. He is program director of the Community Legal Aid Institute, or LBH Masyarakat, based in Jakarta. The institute provides pro bono legal aid and human rights education for disadvantaged and marginalized people.)

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This article was originally published on 9 December 2009 at:

http://upiasia.com/Human_Rights/2009/12/09/indonesias_legal_system_biased_and_unfair/9625/

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)

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.

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.

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