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## Chapter V

# HUMAN RIGHTS PRACTICE IN THE POST – SOEHARTO

ERA : 1998-2006\*

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### I. INTRODUCTION

Indonesia under the Soeharto administration has been considered a country with a poor human rights practice and record.<sup>1</sup> Although Indonesia adheres to democratic forms, the government had been authoritarian. When Soeharto resigned in May 1998,<sup>2</sup> it was believed that the end of authoritarian government would significantly improve human rights conditions in Indonesia.

The objective of this article is to make an assessment of human rights practices in Indonesia in the post-Soeharto administration. At the outset this article will argue that structural and legal reform in a developing country does not necessarily have an instant effect in improvement of human rights practices at the society level.

The article will first look into structural reform following a change of government. It is argued that a fundamental change in government, even from authoritarian to democratic, and a commitment from individuals occupying high ranking positions will not contribute to meaningful progress in human rights practices. In so doing the article will look into the commitment to uphold human rights by individuals occupying the post of President of the Republic of Indonesia after Soeharto.

The topic following will assess how far change in the legal framework has influenced the improvement of human rights conditions. In this topic, it will be argued that although the government has passed new legislation and continued to

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ratify various international instruments, however the legal values have failed to be implemented at the society level. For this purpose, the assessment will discuss the conditions where the legal framework will work ineffectively.

Based on the above structural and legal reforms in human rights, the article will then look into concrete implementation of these reforms. First, how structural and legal reform is applied to bring those accused of flagrant human rights in the East Timor and Tanjung Priok incidents.

Another topic that will be discussed is the structural and legal reform in the field of human rights has been negatively impacted by the US led war against terror. Legislation has been passed legitimizing the abuse of human rights. Here it is argued that the war against terror has retarded the promotion of human rights in Indonesia.

Before concluding, the article will make an assessment on the institutions working in the field of human rights. It is argued that the positive structural and legal reform in the field of human rights have allowed these institutions to develop a lack of focus in their human rights work.

## **II. ASSESSMENT OF THE GOVERNMENT'S COMMITMENT**

### **A. Human Rights under Four Presidents**

In the Indonesian political context, the government's commitment to human rights depends on the individual commitments of those who occupy the position of President. This article will now describe the individual commitment of three Presidents following the Soeharto regime.

Soon after Soeharto resigned from the office of President, Bacharuddin Jusuf Habibie took office, as he was the then Vice-President. In October 1999, Habibie was succeeded by Abdurrahman Wahid. Wahid was installed as President by the People's Consultative Assembly (MPR) in which half of the members were elected through the first democratic general election since 1955.

In July 2001, Wahid was forced by the MPR to give up the office of President after tension between himself and the House of Representative (DPR) following an embezzlement scandal and allegations of incompetence. The office of President was then assumed by Wahid's constitutional successor, the then Vice President, Megawati Soekarnoputri. Megawati served as President until 2004 serving out the remainder of Wahid's term.

In October 2004 as a result of the first ever direct election, Susilo Bambang Yudhoyono was elected as President. Yudhoyono will serve as President until 2009.

Habibie, Wahid, Megawati, and Yudhoyono have had different commitments to human rights. The different commitments are based on political necessity, personal views, and pressure coming from inside and outside of the political and social establishments.

Habibie had placed human rights high on the agenda for his administration. Habibie wanted to distinguish his administration from that of the Soeharto regime. Politically this was necessary to gain public acceptance for and of his administration.

The agenda was highlighted in the introduction of human rights legislation and ratification of international instruments. In a little over a year, Habibie's administration had succeeded in reforming the legal framework that dealt with human rights. The administration had passed two Laws that dealt directly with human rights.<sup>3</sup> Furthermore, Laws that restricted or in effect violated human rights were abolished.<sup>4</sup> In addition, the administration had issued a Presidential Decree outlining a plan of action to improve human rights practices.<sup>5</sup> In addition, a number of international treaties dealing with human rights were ratified.<sup>6</sup> Apart from that, Habibie had released political prisoners and rehabilitated those who were accused of having involvement with the communist coup of 1965 and who had been held without trial.

Under the Habibie administration, the Defense Minister, in August 1998, had announced the termination of Indonesia's troubled province of Aceh status as an Area of Military Operations (*Daerah Operasi Militer*).

For Wahid, human rights were also put high on the agenda because of his personal belief that human rights should be respected. Wahid's intentions were sincere in upholding human rights. Despite this sincerity and hopes that human rights practices would improve it was evident that the bureaucracy and top-level government officials were unable to implement the vision that the President had spoken of. Changing the mindset at the bureaucratic level was proving to be even more difficult than had been envisaged and consequently human rights practices remain unchanged.

Nevertheless, it was under the Wahid administration that the first ever Department that had exclusive responsibility for human rights issues was established.

Wahid also stressed that Indonesian Chinese should be allowed to keep their Chinese names and to practice Confucianism.<sup>7</sup> He had promised that the

government would respect Confucianism as a religion. In addition, under his administration the Chinese Lunar New Year for the first time is declared as an optional State holiday.

In dealing with the Aceh issue, Wahid had called for a peaceful solution through dialogue between the government and the separatist movement, Aceh Independence Movement (*Gerakan Aceh Merdeka*). Wahid even went as far as his predecessor Habibie had done for East Timor and proposed a referendum for Aceh. Wahid also called for a parliamentary investigation into the alleged human rights abuses that had occurred in Aceh.

Wahid's commitment to human rights was reinforced when he suspended his Minister for Security and Political Affairs, General Wiranto, to allow further investigation into the latter's alleged role in the East Timor bloodshed following the popular consultation (*jajak pendapat*) of 1999. Wahid did this after the minister was named by the National Commission on Human Rights (*Komisi Nasional Hak Asasi Manusia / 'Komnas HAM'*) as one of those who needed to be investigated further by the Office of the Attorney General.

During his term of office, Wahid continued to release political prisoners accused of subversion, defaming the government, and rebellion under the Soeharto regime. At one point he proposed that the Peoples' Consultative Assembly (MPR) Decree banning communism and Marxism be lifted. In addition, under his administration, basic freedoms such as the freedom of the press and free association continued to flourish.

In contrast to the Habibie and Wahid administrations, the Megawati administration never placed the maintenance and improvement of human rights conditions high on the Government agenda. It would seem that human rights is just one of many issues to be addressed under the Megawati administration and as such it has been relegated as an issue to a level commensurate with the importance it is given. Under Megawati, the government has been occupied with secessionist movements and the war on terror. Many people and organizations have openly criticized Megawati for lacking a strong commitment to human rights.<sup>8</sup> There are many instances where human rights have been put aside when the Government had to face the threat of terrorism. To this end the Government has often been criticized for not affording proper protection to its nationals who have been detained by other countries as terror suspects.

In spite of these criticisms of Megawati's commitment to human rights, the reality is that it has been easy for the administration to disregard these criticisms.

Simply, there has been no significant domestic and international pressure for the administration to respect human rights. The administration has allowed the cultivation of the belief that an over-emphasis on human rights will result in increased suffering and that this emphasis is being imposed on Indonesia by foreign States not familiar with the conditions prevailing in Indonesia.

This was not a difficult concept to cultivate as the public felt an acute awareness of the ramifications of foreign imposed human rights values under the Habibie and Wahid administrations. The Megawati administration suggested that the respect of human rights as required by foreign States have not contributed to the betterment of their lives but rather, and on the contrary, it has contributed to their increased suffering. The public's dissatisfaction with the implementation of these human rights values has been directed towards human rights activists. There have been incidents where human rights activists and their offices have been attacked by 'certain people' and organizations.<sup>9</sup>

International pressure has been absent against the government since the war on terror was declared by the United States and President George W. Bush. Any pressures that may have been exerted did not result in any discernible policy shift to occur. The reality was that the Government had much less control in the post-Soeharto period as regional autonomy took hold. This meant that limited implementation may have occurred and only at the lowest level of the government.

President Yudhoyono continued commitments of previous presidents without any attempt to distinguish his programs from the others. There are several reasons for this. First, there was a recognition that human rights demands had ceased to be an important issue, even though implementation was poor and remains poor even to today. Second, the public have come to realize that respect of human rights may not be dependent solely on the President. Third, the Yudhoyono administration was elected primarily on a national economic revival platform.

In the two years of the Yudhoyono administration, the administration has succeeded in passing the amended Citizenship Law of 1958 in July 2006. The Law abolished discrimination based on ethnicity and gender. The ethnic discrimination was primarily against the Indonesian Chinese who were previously require to prove their Indonesian citizenship through the acquisition of the *Surat Keterangan Berkewarganegaraan Republik Indonesia* (SKBRI) which is simply a letter clarifying Indonesian citizenship. The letter was notoriously difficult to obtain, yet it was required of all dual citizenship Chinese Indonesians in the 1950s. Those Indonesians of Chinese heritage who did not hold a SKBRI encountered considerable difficulties

in all aspects of their daily lives including registering marriages, births, and deaths, among many other matters. The Law also purports to eliminate gender discrimination by permitting Indonesian mothers to pass on their nationality to their children in a mixed marriage. Previously the Law stated that children of a foreign father inherited the citizenship of their father irrespective of their mother's citizenship.

In 2005 the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were ratified. Yudhoyono is also considered to have been successful in ending the Aceh insurgency by signing a Memorandum of Understanding dubbed the Helsinki Agreement in August 2005. This agreement in essence brought peace to the troubled region by calling an end to hostilities between the Government of Indonesia and the independence movement. In 2006 the administration established a joint Indonesia and Timor Leste Truth and Friendship Commission to uncover human rights abuses in East Timor during the popular consultation of 1999. In May of the same year Indonesia was elected as a member of the United Nations Human Rights Council (UNHRC), which replaced the old UN Human Rights Commission.

Nevertheless, human rights activists have voiced concern over President Yudhoyono's commitment to human rights and there are several indicators for this concern.

The most often cited is the very slow investigation process into the death of human rights activist, Munir. Munir is believed to have been murdered by arsenic poisoning on a flight from Jakarta to The Netherlands. The investigation process identified only one suspect who was sentenced for his part in the murder conspiracy. After the identification of this one suspect no further co-conspirators or suspects have been identified or prosecuted. The original sentence for the murder was overturned by the Supreme Court and the defendant was re-sentenced for falsifying duty-shift papers. The legitimate complaint being promoted by human rights activists is that despite there being general agreement that Munir's death was suspicious and most likely he was murdered there has been no-one directly held accountable for his murder.

The second concern is that the list of 42 nominees to fill in the 21 member vacancies on the Truth and Reconciliation Commission (*Komisi Kebenaran dan Rekonsiliasi*) has never been sent to the Parliament for selection and subsequent confirmation. Even more concerning for human rights activists is that in December 2006 the Constitutional Court declared the Law establishing the commission to be

unconstitutional and annulled the law. The delay and subsequent annulment of the law has led to claims and allegations that Yudhoyono is protecting alleged human rights abusers and particularly those in the military.

The third concern and although not directly involving the President it does involve his administration is the belief that the Attorney General is seen to be dragging his heels in the pursuit of the alleged perpetrators in the killing of four students of Trisakti University in the May riots of 1998 and most often referred to as the Trisakti tragedy. The Attorney General has insisted that the Parliament must first decide whether the tragedy is to be considered a gross violation of human rights before he is willing to commence an investigation.

## **B. Sectoral Human Rights in the Post-Soeharto Administrations**

Human rights is a general term that covers many issues; ranging from a right to life through to a right to association and many other human rights in between. The sheer magnitude of the scope of human rights that exist makes for a challenging task to look at these rights from all possible aspects. Therefore, this paper will discuss just four of these aspects as a means of highlighting the significant and lack of significant progress at the society level. Two of these aspects that highlight significant progress are the freedom of speech and the freedom of the press. However, although there has been significant progress, this progress has also opened the door of opportunity for abuse to occur as well. The other two aspects that highlight a particular lack of progress from the Soeharto regime, and this is irrespective of the structural and legal changes, are the rights of workers and bringing those accused of flagrant and grave violations of human rights to justice.

Freedom of speech has improved significantly in the period since the resignation of former President Soeharto. This process of freeing the press in actual fact started in the weeks before Soeharto resigned in May 1998. This period saw sustained and widespread rallies often led by university students. These rallies were public and garnered broad support from the community at large, including the mass media, making it increasingly difficult for the police and military to clamp down.

The freedom of speech meant that the public can voice almost any opinion without fear of prosecution. However, this was not an absolute freedom and any absolute freedom of speech is still not likely to be a reality in any literal sense. It is worth noting that the Constitutional Court recently struck down several provisions from the Indonesian Criminal Code (*Kitab Undang-undang Hukum Pidana / KUHP*) that made insulting the President or Vice-President a crime. Freedom of speech in

Indonesia is limited in many of the same ways as it is in other democracies with exceptions for slander, libel, and defamation, among others. Nevertheless, this freedom of speech meant that Indonesians for the first time were able to openly criticize Government policy and official actions without fear of being prosecuted or punished in some other repressive way.

Unfortunately, with these freedoms comes responsibilities and a worrying trend of large public demonstrations and protests is that they end in violence and quite often with the destruction of both public facilities and private property. As one can imagine wide-scale and large public demonstrations often result in traffic chaos as they spill over from defined routes of protest to toll roads. However, in comparison this is a minor inconvenience when one considers that where protesters and demonstrators face-off against the police and military the end result is often rioting that ends in loss of life.<sup>10</sup>

How to organize an orderly demonstration is not a problem or issue unique to Indonesia, but in an attempt to do so Indonesia has passed a law that requires all organizers of demonstrations or protests to obtain a permit prior to any demonstration taking place.<sup>11</sup> Despite this initiative to regulate the demonstration process the first two years of the law has seen it to be an ineffective means of preventing either demonstrations from taking place or those demonstrations that have acquired the necessary permit from ending in violence or other wanton destruction of property. It has been alleged that even where demonstrations had acquired the necessary permit the police lacked either the will or the desire or both to enforce the law based on the premise that any action they take may mean that they have violated an individual's right to freedom of speech or association. A more cynical take on the lack of police action is that the police are merely trying to prove a point with regard to the important role that police have in the community and in controlling demonstrating crowds. In any event it is a moot point, the issue hinges on whether the police are fulfilling their mandate in respect of controlling demonstrations.

The criticism of the police has meant that in more recent times, however, the police have been more assertive in clamping down on illegal or poorly controlled demonstrations that do not comply with the Law. Individuals have been arrested, charged with the holding of unlicensed demonstrations, disturbing public order, smearing or stamping on pictures of the President and Vice-President, and for holding demonstrations on substantive issues that breach the provisions of the law. As was noted earlier the provisions relating to the President and Vice-President

have since been annulled. However, the provisions were still in force during the Megawati administration and were used to great effect by her administration to suppress public dissent, particularly personal criticisms of her, her administration, and the overall performance of Government. Clearly, the intent of freedom of speech is not to stifle legitimate public debate on Presidential performance and once again the recent Constitutional Court decision highlights a greater understanding of this principle in Indonesia's continually developing democracy.

An interesting, and not an altogether pleasing development, is the rent-a-demonstration organizers, who for the right fee can assist in providing a protesting crowd for any issue that is required. The idea of the freedom of speech being subverted and commercialized in this way is worrisome as it is an easy means of manipulating public opinion and has often been used by powerful forces for this purpose. The demonstrations are artificial and people are there for either food or money or both and not because of a belief in a principle that needs recognition or protection.

The freedom of speech has also led to increased commercial opportunities. The highly regulated mass media during the Soeharto regime meant only limited numbers of newspapers, magazines, tabloids, and radio and television stations were ever able to obtain the requisite licenses. Comparing the Indonesia of 2006 with the Indonesia of 1996 suggests that the Indonesian mass media can report on almost anything without any government censorship. 'Almost' is the key word here as the recent furor over the publication of the Indonesian version of Playboy magazine is sure to test the boundaries of what is and is not publishable in Indonesia

As was noted with the freedom of speech, where there is a freedom there is also a responsibility to use this freedom in the proper way. The press has been accused of abusing this new found freedom by sensationalizing gossip and rumors by printing and publishing them as legitimate news without undertaking any accepted verification mechanisms to substantiate the gossip or rumor. This lack of responsibility has seen an explosion in tabloids that sensationalize sex, pornography, drugs, and other morally contentious or suspect activity. Some of the long-time criticisms remain that the media has not always been impartial in reporting and has often been manipulated by interest groups to promote particular points of view or beliefs. This is hardly unique to Indonesia as it is a criticism that has been leveled in many countries and against many media tycoons, one of which, Rupert Murdoch has been actively sourcing media interests in Indonesia.

However, a sign of a maturing media sector and regulatory framework that these abuses have led to increasing levels of accountability. Recently editors of mass media publications have been brought before courts to account for their actions. The first of these cases saw the editors facing criminal charges. The *Rakyat Merdeka* case is an example of this.<sup>12</sup> The second series of cases saw editors facing a civil lawsuit for defamation. The case involved one of Indonesia's premier news magazines, Tempo, and an Indonesian businessman with significant ties to the military, Tommy Winata<sup>13</sup> and the other prominent case was Texmaco against Kompas, which is Indonesia's leading broadsheet morning newspaper. Despite the concerns from the human rights community that these cases represent a significant threat to the freedom of the press, it also highlights the dilemma confronting all democracies, striking a balance between freedom of the press and responsibility for the 'news' published.

The following two aspects of human rights have largely remained unchanged in society; the protection of the fundamental rights of labor and the bringing of those alleged to have committed flagrant and grave breaches of human rights in the near and distant past.

Although a number of pieces of legislation have been passed and international conventions have been ratified to ensure the protection of labor, there has been a clear lack of implementation resulting in no significant improvements being made. It is fair to say that the situation remains essentially the same as it was under the Soeharto regime. Indonesia has often been criticized for its lack of compliance with the eight ILO conventions that it has ratified to date.<sup>14</sup>

Indonesia on response to these criticisms often states that it is unable to comply as it must because it is still recovering from the financial meltdown that afflicted much of Southeast Asia and was also one of the underlying causes that led to the downfall of former President Soeharto. The same excuse is used by Indonesian companies, particularly claims of financial pressures and constraints that impact on their ability to comply. An additional claim being used is that to implement the obligations under the ILO Conventions is cost prohibitive for companies. It is suggested that the compliance required is also driving foreign investors to invest elsewhere where labor conditions are more employer friendly rather than employee friendly. It is beyond the scope of this paper to test the statistical analysis of these claims.

In an attempt to counter this investment flight there is allegedly a tacit understanding that the Government will not diligently enforce these obligations.

Yet, whether this tacit understanding is covert or overt is irrelevant as most labor organizations and unions have exhibited a willingness to see enforcement of the minimum obligations applicable under the prevailing laws. This was highlighted in May 2006 when the Government indicated that it was preparing to amend the Labor Law (Law No. 13 of 2003) as labor was able to organize mass demonstrations and protests in opposition to the proposed changes.

Another example of the lack of accord between the Government's obligations under the various conventions it has signed and the implementation relates to child labor. Despite the Government's stated seriousness in confronting this problem but the reality is that it has so far failed to succeed in eliminating the practice. The signing and ratifying of ILO Conventions No. 138 on the Minimum Age for Admission to Employment and No. 105 on the Abolition of Forced Labor appear to be much easier than implementing the provisions required, particularly to give effect to the protections these conventions afford.

The criticisms of the protections of Indonesian labor are not restricted to the domestic front but also apply on the international plane as well. The Government has been criticized for not doing enough to protect Indonesia's migrant, legal or illegal, workers who have been abused in other countries. Various labor organizations and non-governmental organizations have demanded that the Government ratify the International Convention on the Protection of the Rights of Migrant Workers. Nonetheless, the demand may prove to be in vain as the Convention will not automatically protect Indonesian migrant workers as many of the receiving countries of Indonesian migrant workers are not parties to the Convention.

Another issue to garner widespread support is the trafficking of persons into and out of Indonesia for the purpose of prostitution. In February 2006 the Parliament initiated a draft Law to ban and criminalize human trafficking. Currently, the draft law is being discussed with the government.

The final aspect that has not been adequately addressed is the bringing of those accused of past flagrant and grave breaches of human rights to justice. Although there have been some high profile trials for the East Timor and Tanjung Priok cases, the prosecutors have failed to bring any high-ranking officials to justice for their alleged roles in these breaches. One regional area where there remain a number of unanswered questions relating to flagrant and grave breaches is Aceh. During the period where Aceh was declared an Area of Military Operations there were persistent allegations of human rights violations. With the signing of the

Helsinki Agreement which in essence brought peace to the troubled region this is an issue that is now very much on the backburner.

This lack of accountability in terms of testing these allegations also extends to the May riots of 1998, except for a few low-ranking police personnel. This is irrespective of the Komnas HAM findings that during the anti-government rallies by students in 1998 and 1999 at the campus of the Trisakti University and Semanggi interchange there were gross human rights violations committed. The Office of the Attorney General who is the competent authority to follow-up and where warranted, prosecute these violations has opted not to do so.

### **III. ASSESSMENT OF THE LEGAL REGULATORY FRAMEWORK**

With the collapse of the authoritarian Soeharto Regime it has been claimed that the enactment of legislation has become easier. This may or may not be true however the DPR continues to struggle to meet its own legislation targets almost 10 years after the fall of the Soeharto Regime. It is true that the amount of legislation introduced to the DPR has increased significantly and the ease at which this legislation can be amended, repealed or annulled has become easier. A consequence of this focus is that law reform in Indonesia has narrowed to only mean legislation reform.

The Constitution, for example, has been amended four times. There have been numerous pieces of legislation introduced and enacted as either laws or as regulations. Habibie was particularly proud of his administrations accomplishment of enacting more than sixty laws.

This legislation reform has also reached the field of human rights. The following section of this paper will discuss these legislation developments.

#### **A. Domestic Legislation**

In 2000 the Indonesian Constitution was amended by the MPR<sup>15</sup>. The original construction of the Constitution recognized few human rights however the second series of amendments now recognizes various basic human rights. The provisions that deal directly with human rights are contained under Chapter X A. The Chapter contains 9 paragraphs. The first-eight paragraphs, Article 28(a) – (i) are a statement of the basic human rights guaranteed to all Indonesian citizens. The last paragraph contains a minimum obligation.

The basic human rights are: the right to life<sup>16</sup>; the right to establish a family and for a child to have the right to live, grow, and develop<sup>17</sup>; the right to prosper and improve<sup>18</sup>; the right to be recognized and protected before the law and the right to work, equal opportunities in government and the right to citizenship<sup>19</sup>; the right to choose religion and the right of association and expression<sup>20</sup>; the right to communicate and obtain information<sup>21</sup>; the right to protection and the right to be free from inhuman treatment<sup>22</sup>; the right to live in physical and spiritual prosperity; the right to receive facilities, the right to social security, and the right to own personal property<sup>23</sup>; the right to life and right to be free from discriminative treatment<sup>24</sup>.

Article 28 also provides a minimum obligation at Article 28(j); the obligation to respect the human rights of others and an obligation to accept restrictions in the exercise of rights and freedoms.<sup>25</sup>

There has also been a MPR Decree issued that requires all high level State agencies and the whole of the government apparatus to respect, uphold, and disseminate information regarding human rights to the general public, and to immediately ratify a number of United Nations' instruments on human rights.<sup>26</sup>

The Indonesian Government has enacted 2 specific human rights related laws; the Human Rights Law<sup>27</sup> and the Human Rights Court Law. The Human Rights Law contains 106 Articles and enumerates many human rights. It sets out in considerable detail provisions relating to the right to life and the right not to be abducted and /or killed, the right to establish a family and bear children, the right to self-development, the right to justice, the right to freedom of the individual, the right to security, the right to welfare, the right to participate in the government, women's rights, children's rights, and the right to religious freedom. The Law also solidifies the existence of the Komnas HAM. Under this Law the members of Komnas HAM are appointed by the DPR which is different from previous members who were appointed by the President. The Law also provides general provisions on the Human Rights Court.

The Human Rights Court Law<sup>28</sup> contains 51 Articles. It sets out where the Court is to be established, its power and authorities, and the procedural law for arrest, detention, investigation and prosecution. The Law also deals with the procedure for examination before the court, witness protection, rehabilitation, and ad hoc courts. The ad hoc court is established for the purpose of examining and deciding gross violations of human rights before the Human Rights Court comes into effect.<sup>29</sup> The ad hoc court will examine cases recommended by the DPR and

stipulated in a President Decree.<sup>30</sup> To date, there are two cases that have been examined by the ad hoc court using these provisions, namely: the East Timor and Tanjung Priok cases.

These two Laws are considered to be an important reflection of Indonesia's determination and commitment to improving its human rights practice record and to address past human rights abuses.

Aside from enacting these 2 pieces of legislation, legislation reform also includes the repeal of laws considered to be in breach of basic human rights. Paramount among these pieces of repealed legislation is the often misused, abused, and controversial 1963 Law on Subversion.<sup>31</sup>

Indonesia took note of the South African Truth and Reconciliation model to address wide-scale past human rights violations and enacted the Truth and Reconciliation Commission Law (*Komisi Konsultasi dan Rekonsultasi* or abbreviated as 'KKR'). The establishment of the Commission was proposed during the administration of former President Abdurrahman Wahid and became Law in 2004 under the Megawati administration.<sup>32</sup> However, in December 2006 the Constitutional Court annulled the Law as it was declared unconstitutional.

The 2 laws noted above are not the only human rights protections available to Indonesian citizens. Many Indonesian laws and regulations provide human rights protections, among others, the Labor Law,<sup>33</sup> the Trade Union Law,<sup>34</sup> the Press Law,<sup>35</sup> the Child Protection Law,<sup>36</sup> and the Citizenship Law<sup>37</sup> each afford specific protections. Other laws which make reference to basic human rights include the Advocates Law,<sup>38</sup> the National Education Law,<sup>39</sup> the Police Law,<sup>40</sup> and the Broadcasting Law.<sup>41</sup>

## **B. The Ratification of International Instruments**

Prior to 1998 Indonesia had ratified a number of international instruments that dealt with human rights, such as the Convention on the Elimination of All Forms of Racial Discrimination against Women (CEDAW) and the Convention on the Rights of Child.<sup>42</sup> During the period from 1998 to 2006 several more international instruments were ratified.

In 1998 Indonesia ratified the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment.<sup>43</sup> In 1999 Indonesia also ratified the Convention on the Elimination of All Forms of Racial Discrimination.<sup>44</sup>

During 1999 and 2000 Indonesia ratified four International Labor Organization conventions, namely: ILO Convention No. 105 on the Abolition of

Forced Labor,<sup>45</sup> ILO Convention No. 138 on the Minimum Age for Admission to Employment,<sup>46</sup> ILO Convention No.111 on the Discrimination in Respect of Employment and Occupation,<sup>47</sup> and ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.<sup>48</sup>

In October 2005, Indonesia ratified the International Covenant on Economic, Social and Cultural Rights<sup>49</sup> and at about the same time the International Covenant on Civil and Political Rights was also ratified.<sup>50</sup>

Although Indonesia has yet to ratify the Rome Statute of the International Criminal Court, nevertheless some of the provisions under the Statute have already been adopted, and literally translated, to the Human Rights Court Law. The provisions adopted, among other are, two of the international crimes and command responsibility.

### **C. Failure to Ensure Legislation Values Come into Practice**

Considering the significant amount of legislation passed and the number of international treaties and conventions signed and ratified in the period through to 2006 the question though is whether this progress in legislation is reflected in proportional advances in human rights practices in Indonesia? Unfortunately, the simple answer to this question is, no. There still exists a wide gap between what is provided for under the Law and the reality. Any suggestion that breaches of human rights have ceased is clearly a misrepresentation of the current situation. There are a number of sources for this failure.

First, and perhaps the most significant of these failures, is that the legislation was not purpose specific; it was not made for the purposes of upholding human rights. The legislation is passed with the intention of satisfying the pressure being applied from international, domestic NGOs, and even the Indonesian political elites who had an interest in maintaining their hold on power. Interestingly, improving human rights practices and conditions in Indonesia has not been the prime motivation for passing this legislation.

Second, the infrastructure necessary to support the successful implementation of the legislation was not considered at all during the drafting process. The legal apparatus, for example, does not have sufficient understanding of the concepts of human rights or their implementation.

Third, a lack of strong law enforcement at the implementation stage. Law enforcers have been lenient in implementing the provisions designed to prevent or prosecute human rights violations. This has had the result of ensuring low levels of

compliance as there is simply no incentive to comply. Even where law enforcers want to enforce the provisions the drafting is so poor that the provisions are not clear enough to be implemented anyway as these provisions are often the result of compromise. One example of this are several of the provisions in the Human Rights Court Law which are literal interpretations of the Rome Statute of the International Criminal Court. The compromise in this case is that these provisions do not have any roots in Indonesian law and were included merely to satisfy international interest that Indonesia had internationally recognized provisions within its law to deal with human rights violations.

Finally, the fourth reason is a problem that relates to legislation in Indonesia generally. Any new legislation in Indonesia requires a change in the mindset of not only the community at large but specifically those tasked with enforcing the new provisions. In addition, legislation is difficult to implement because of the nature of Indonesia as a broad archipelagic nation where wide gaps in ability exist between the various provinces and a general lack of awareness from the general public that new legislation is even in place.

In terms of the international instruments ratified during the administration of President Habibie, particularly the ILO conventions which were a great source of pride for the former President, the reality was that these ratifications were not immediately reflected in Indonesian law, at least not in a way that they might be enforced..

A quick overview of several of the conventions already ratified highlights this even more acutely. Despite the ratification of the Torture Convention, allegations that torture still occurs are frequently raised. Further, the implementation of regional autonomy permits provinces to have greater control over their legislation and in this regard the Province of Nanggroe Aceh Darussalam (Aceh) has implemented legislation that permits individuals to be caned. This is clearly in contravention to Indonesia's obligations to prevent cruel, inhuman, and degrading treatment. There is still legislation that discriminates against Indonesian of Chinese heritage even though Indonesia has ratified the Convention on the Elimination of All Forms of Racial Discrimination.

This highlights that even where there is a commitment to transform these new obligations into national law the problems of implementation remain.

If nothing else Indonesia's experience shows that the simple ratification of international treaties and instruments does not translate into immediate improvements in the policies developed to implement a new human rights practices

regime. This in turn means that any significant improvements in the community as a whole are neither immediate nor guaranteed.

As has been noted earlier the biggest difficulty encountered is that international treaties rarely take into consideration the specific conditions of any one country, the contracting states. This usually means that even where these provisions are transformed into a national regulatory framework the legal and community infrastructure to successfully implement the provisions does not exist.

Second, international treaties are used by powerful states to impose their values on other States. The values may not be readily accepted by the society of the states that are to incorporate these provisions into their national law.

Third, the government may be under formal obligations to report successful implementation however what is generally reported might not accord with the realities of the field.

The basic conclusion for the Indonesian experience is that the ratification of international human rights treaties and instruments plus the development and enactment of national legislation has yet to have a significant influence in terms of improvement in human rights practices and conditions in Indonesia. Nevertheless, it must also be noted that progress in the development of Indonesia's legal framework is critical to allow society to benchmark their basic human rights.

#### **IV. ASSESSMENT OF THE DOMESTIC TRIALS FOR INTERNATIONAL CRIMES**

The demand for justice with respect to what transpired in East Timor during 1999 is more international than national but nevertheless resulted in the establishment of the first ever Ad Hoc Human Rights Court in Indonesia.<sup>51</sup> The Court was clearly a compromise between the demands of the international community for those responsible to be brought to an international tribunal if Indonesia was either unwilling or unable to do so and the Indonesian Government's desire to prosecute those responsible in Indonesia.

The Government was successful in convincing the international community that for the purposes of achieving justice it is best for the trials to take place in Indonesia. The Foreign Minister at the time, Alwi Shihab, was quoted in the Jakarta Post saying that, "It would be counterproductive (to have an international tribunal) because it would trigger a xenophobic response and allow violators to wrap themselves in the flag in an excessive spirit of nationalism."<sup>52</sup>

It must be noted that when the Ad Hoc Human Rights Court was being established that this was seen domestically as an opportunity to bring those allegedly responsible in the Tanjung Priok incident to justice as well. The DPR who has the authority to decide which past human rights abuses should be examined and decided by the Ad Hoc Human Rights Court decided that apart from the East Timor allegations that the Tanjung Priok allegations were also to be examined. The inclusion of Tanjung Priok allegations was considered an important step in highlighting that the establishment of the ad hoc Human Rights Court was not merely the result of Indonesia surrendering to international demand.

The Ad Hoc Human Rights Court is attached to the Central Jakarta District Court. The judges appointed to the Court include both career and non-career or *ad hoc* judges. The *ad hoc* judges were mostly appointed from academic backgrounds.

#### **A. The East Timor Trials**

In Indonesia, the establishment of Ad Hoc Human Rights Court is the result of recommendations from Komnas HAM on the incidents alleged to have taken place. On 22 September 1999 Komnas HAM created a Commission for Human Rights Violations in East Timor (*Komisi Penyelidik Pelanggaran HAM di Timor Timur* abbreviated as 'KPP HAM'). KPP HAM is composed of both government officials and non-governmental human rights activists. On 31 January 2000 it produced a comprehensive report naming Indonesian and East Timorese officials and military leaders responsible for flagrant and gross violations of human rights.<sup>53</sup>

The Office of the Attorney General had followed-up the report by Komnas HAM by naming those in the report on indictments setting in motion the prosecution process. The Attorney General submitted 12 cases involving 18 defendants to the Ad Hoc Human Rights Court. The indictments named many high-ranking officials from the military, police, and civilian ranks of the East Timor Government at the time of the allegations are said to have occurred. These indictments included the Commander in Chief of the Army responsible for East Timor, the Chief of East Timor Police, and the Governor, among others.

Despite the high-ranking military, police, and civilian officials in the indictments, the indictments were also notable for the names not included. The Office of the Attorney General made a conscious decision not to name other high-ranking officials in the Habibie Government of the time in spite of the fact that they were specifically mentioned in the KPP HAM report. The Attorney General justified

this decision based on the limited time and places of the allegations to be prosecuted and the existence of the Presidential Decree which established the Court.

The decision of the Attorney General was not received well by the international community whose response clearly suggested that they believed that the former Chief of the Armed Forces, General Wiranto, must also stand trial. Domestically, the decision was criticized by human rights institutions, such as the Indonesian Legal Aid and Human Rights Association (PBHI).

In the 12 cases that proceeded to the prosecution phase, the defendants were all charged with crimes against humanity under Article 7(b) and Article 9 of the Human Rights Court Law<sup>54</sup>. The defendants were not charged as direct perpetrators or masterminds of the breaches but rather they have been charged based on superior responsibility under Article 42 of the Human Rights Court Law<sup>55</sup>.

The twelve verdicts handed down by the Human Rights Court resulted in acquittals for 12 defendants and convictions recorded for 6 others. The 6 individuals convicted included Soedjarwo, the former Dili military commander who was sentenced to 5 years in jail and Adam Damiri, the former Military Command Chief overseeing the then Province of East Timor. Adam Damiri was found guilty by the Court irrespective of the fact that the prosecutor demanded an acquittal. Two East Timorese citizens were convicted; Abilio Soares, the former Governor was sentenced to 3 years, and Eurico Guterres, the former leader of the Red and White militia was sentenced to 10 years and 6 months imprisonment, respectively. All those convicted were not required to commence their terms of imprisonment until their respective appeals were heard and decided. The appeal process saw all but 1 of the convictions overturned. The only one not successful to date is Guterres. Guterres is currently serving his sentence, but has requested a case review (*peninjauan kembali*) by the Supreme Court.

Human rights activists have been quick to slam the prosecutions and the verdicts of the Court as a sham and a whitewash<sup>56</sup>. The Institute for Policy Research and Advocacy (ELSAM), one of the many Indonesian human rights institutions actively monitoring the proceedings, was unequivocal in stating that the trials were a complete failure. For ELSAM the process was defective from the outset and therefore it came as no surprise that the process failed to bring the perpetrators of crimes against humanity to justice.

## **B. The Tanjung Priok Trials**

The Tanjung Priok trials were the second series of trials to take place for grave breaches of human rights violations in Indonesia. The Tanjung Priok trials stem from allegations made against government and military personnel for killings and detentions of protestors that occurred in 1984. The trial is based on the Komnas HAM findings of 11 October 2000. The findings recommended that 23 people face prosecution. Out of these 23, former Armed Forces Chief Gen (ret) L.B. Moerdani and former Jakarta Military Commander Gen (ret.) Try Sutrisno, who also served as Indonesia's Vice President, were named. However, when the final indictment was issued by the Office of the Attorney General these two names had not been included.

The Tandjung Priok trial was in fact four separate trials involving 17 defendants.

## **C. Unsatisfactory Results – The Causes**

The trials that have taken place so far under the human rights court regime have ended with outcomes that many people have found to be unsatisfactory. The East Timor trials and the Tanjung Priok trials have resulted in acquittals for most of the senior officers involved in each of these cases.

There are many reasons being given for the unsatisfactory outcomes. Paramount among these reasons is that the trials, although warranted, resulted primarily from international pressure and to also defuse mounting domestic pressure to hold those responsible to account. Also undermining the legitimacy of the trials is that many of those named after the completion of the investigation by the East Timor and Tanjung Priok KPP-HAM were inexplicably absent from the indictments.

Another reason for the unsatisfactory results is that most prosecutors and judges are not familiar with international human rights law and international crimes. This fundamental lack of knowledge has often been characterized as incompetence and indicative of a lack of will on the part of the government to seriously prosecute these cases. Despite specialized courses and training in international law there has still been questions concerning the professionalism, independence, and impartiality of the prosecutors.

Nevertheless, it is worth noting that impartiality is a two-way street as many judges were under pressure to find defendants guilty irrespective of the quality or amount of evidence adduced at trial. The concern that judges had for what the international and national reaction would be meant that judges defendants

guilty in spite of the evidence being insufficient to support the indictment.<sup>57</sup> This has allowed convictions and sentences to be recorded that are outside the parameters provided for in the relevant laws.<sup>58</sup>

The shortcomings in the legal system are evident with respect to protections afforded to witnesses that would otherwise be considered key witnesses for the prosecution. The lack of these basic protections means that witnesses are reluctant to come forward and even more reluctant to testify. The lack of witnesses meant that prosecutors only had minimum amounts of documentary evidence to work with.

The biggest dilemma for prosecutors and judges is that the nature of the crimes alleged are not the ordinary crimes that many prosecutors have dealt with in the past. Secondly, the defendant in these cases would most likely not have been prosecuted had East Timor remained a part of Indonesia and in any event an even bigger dilemma remained, as many of these defendants were considered to be heroes in the defense of Indonesia's national unity.

The lack of indictments, prosecutions, and convictions of former high ranking officials is indicative of the status given to those individuals within Indonesian culture. It would appear that status or former status as a high ranking official affords these individuals an unwarranted degree of immunity from prosecution.

Another concern is that the number of judges to deal with all the matters before the court system is insufficient, particularly when one factors in the complete lack of infrastructure and resource support. Judges are rarely afforded staff such as clerks or research assistants. In terms of infrastructure judges do not have sufficient library, computer, and Internet access to do the research themselves.<sup>59</sup> Furthermore, judges are not given sufficient time when rendering decisions as Indonesian laws generally place time restrictions on the amount of time afforded to a judge to render their decision.

Another source of failure is the constant questioning of whether the trials are seriously in pursuit of justice or merely some attempt at revenge, as it seems clear that some people were put on trial after the fall of the former President Soeharto to satisfy a need for revenge rather than the pursuit of justice for the alleged crimes that these individuals committed.

## V. ASSESSMENT OF THE WAR ON TERROR AND THE PROMOTION OF HUMAN RIGHTS

The war on terror as declared by the US President, George W. Bush, after the 9/11 incident has had a direct impact on the promotion and defense of human rights in Indonesia.

In Indonesia, the war on terror has been seen by many as not a war on terror but rather a war on human rights.<sup>60</sup> This is in spite of the fact that Indonesian has been a victim of several terrorist actions including the first Bali bombings and the Marriot bombing. The Indonesian public believes that combating terrorism and terrorist acts must not violate the law, must respect human rights, and cannot discriminate against people based on their race or religion.

From an Indonesian perspective the inconsistencies in the US and Australian policies of preaching human rights to Indonesia, yet systematically allowing for these same human rights to be violated in the war on terror undermines any moral high ground that either country may have held previously. This has led to criticism of the Indonesian government for bowing too much to the pressure of the US and its allies in the war on terror, particularly at the expense of the human rights of Indonesian citizens.

There are, at least, five reasons why the war on terror has had a negative impact on human rights conditions in Indonesia:

First, Indonesian citizens accused of being terrorists or sympathizers aiding and abetting terrorists have not been treated according to prevailing human rights norms. Yet, these actions were not just against Indonesians at home but in the aftermath of the first Bali bombings Australian authorities took specific action against Indonesian Muslims residing in Australia. To single out one particular group is clearly a breach of an acknowledged human right purporting to protect individuals from discrimination based on religion or ethnicity.

Furthermore, sometimes there is no other information other than an alleged terrorist or suspect is in custody. For example in the cases of Al-Faruq and Hambali there is no information on their whereabouts other than they are in US custody. Also in relation to these cases it is unknown whether either of these detainees is represented or accompanied by legal counsel during questioning. This has led to demands from the general public that Hambali be extradited to Indonesia but also criticisms that Indonesia has not been able to secure access to Hambali even though he is an Indonesian citizen. The government has tried to defend itself by suggesting

that because the charge is one of an extra-ordinary crime it has decided not to exercise any protection obligations owed to its citizens abroad. Furthermore, the government has even gone so far as to say that Hambali's nationality is not clear and as such there is no obligation to protect him.

The Indonesian public has asked, and now demands, that the Philippines government undertakes an enquiry into the unnatural death of an Indonesian citizen, Al-Ghozi, whilst in military custody in the Philippines. It is generally believed that Al-Ghozi was executed by the Philippines military prior to a visit by US President, George W. Bush, to the Philippines and South East Asia. Nevertheless, and not surprisingly in light of the allegation, the Philippines government has so far been unwilling to do so.

Second, international pressure is mounting on the Indonesian government to arrest several Muslim leaders, such as Abu Bakar Ba'asyir, who is considered by the US and Australia to be the leader of Jemaah Islamiyah. The police and prosecutors appeared to comply with this demand in spite of a solid legal foundation or evidence to do so. Despite, this pressure the Court found Abu Bakar Ba'asyir guilty of immigration violations and a suspicious conspiracy. However, in 2006 the Supreme Court in its case review cleared Ba'asyir from all conspiracy charges and in effect absolved him of any involvement in the Bali Bombing of 2002.

The contradiction between the demands for Indonesia to prosecute suspected terrorists and terrorist sympathizers is stark with respect to the treatment of Ba'asyir and the lack of any demands on the Philippines government to investigate and prosecute any violations of human rights norms in the unnatural death of Al-Ghozi.

Third, the manner in which the US is processing and not prosecuting terrorists, such as those suspects held at Guantanamo Bay, has resulted in the US losing the moral high ground as the pre-eminent defender of human rights not only throughout the world but particularly in Indonesia.

Fourth, the Law on the Eradication of Terrorism has been criticized for not giving due consideration to human rights issues.<sup>61</sup> The Law is seen as the revival of the former Anti-Subversion Law that had been revoked for among other reasons its inconsistency with accepted human rights practices. The Law provides wide-reaching powers to the police to detain and arrest suspected terrorists through the use of pre-emptive action and intelligence in violation of accepted human rights norms wherever the suspicion relates to terrorism or terrorist activity.

Fifth, a number of persons have reportedly disappeared or have been forcibly taken into custody by the police due to their alleged terrorist links. The police have apprehended these alumni of the Afghanistan conflict without following accepted due processes of law. The police consistently rejected allegations that they have in fact kidnapped Muslim activists under the guise of the provisions of the Anti-Terrorism Law.

The war on terror has relaxed external pressure on the Indonesian government with respect to human rights. Foreign governments were ready to give Indonesia a pass on human rights abuses so long as the government cooperated in the war on terror. The US, for example, who had been overt in their concern for human rights in Indonesia have ceased all overt pressure in favor of securing Indonesia's support in the war on terror.

The Indonesian public has been surprised by the lack of scrutiny on Indonesia's human rights record from international NGOs, particularly for human rights abuses occurring in the war on terror. This is further exacerbated by the fact that these same international NGOs who remain silent on the treatment of Indonesian citizens arrested abroad on allegations of terrorism. To many Indonesians this evidences a double standard when criticizing Indonesia's human rights practices and record.

The negative impact on human rights as a consequence of the war on terror has resulted in the Indonesian public questioning whether human rights are only an avenue to pressure Indonesia into changes or an intrinsic value worthy of universal protection. This has led to claims that human rights are a means to an end and that end is a new colonialism.<sup>62</sup>

The war on terror has encouraged human rights abuses, this time with the blessing of countries that have traditionally been referred to as 'defenders of human rights'. This has metamorphosed into an expectation from the international community that countries like Indonesia will permit the abuse of human rights in the pursuit of terrorists or those suspected of aiding and abetting terrorism. This is seen in the resumption of training activities between the Australian Defense Forces and the feared Indonesian Special Forces (Kopassus). These ties were broken off in 1999 when Kopassus was accused of being behind and orchestrating the mass violence perpetrated in East Timor. However, Australia's Defense Minister in arguing for these ties to be restored noted that Kopassus provides Indonesia's main counter-terrorism capability and it is critical that they have all the latest technology and equipment for this war on terror.

## VI. THE WORK OF HUMAN RIGHTS INSTITUTIONS

The human rights institutions of Indonesia can be divided simply as either government or private.

Under the Soeharto administration there is only one government institution to promote and deal with human rights issues, the Komnas HAM. The Komnas HAM was established in 1993 to undertake study, research, counseling, monitoring, and mediation related to human rights. The Komnas HAM became the focal point of government institutions for dealing with human rights. During this period, the government generally followed the recommendations of Komnas HAM.

In relation to private institutions, a leading human rights institution is the Legal Aid Foundation (LBH). LBH was founded by Adnan Buyung Nasution in the 1970s. The LBH is widely acknowledged for its criticisms of human rights abuses by the government and the military.

In post-Soeharto administrations, government institutions dealing with human rights issues have been numerous. The institutions include the defunct Department for Human Rights which has been restructured and now is part of the Department of Law and Human Rights. Within in the Department of Law and Human Rights there are two agencies dealing with human rights issues.<sup>63</sup> In addition there are a number of Departments that have specific sections to deal with human rights issues. And finally the Komnas HAM will continue to exist.

Despite the much more democratic governance and greatly enhanced legal regulatory framework in Indonesia the numerous human rights institutions noted earlier have failed to significantly improve the human rights practices in Indonesia. This has given rise to another problem; namely, the lack of coordination between the various institutions. The primary reason for this lack of coordination is the ego of each of the individual institutions endeavoring to out do the other in the field of human rights.

Komnas HAM is no longer as highly regarded as it was in the Soeharto era. Recently, the Chairman of Komnas HAM, Abdul Hakim Garuda Nusantara, questioned the government's and the DPR's commitment to maintain the commission that has, since its inception, been tasked with upholding human rights. According to the Chairman since Komnas HAM relies on the Office of the Attorney General for prosecutions, then it is difficult to see the prosecutions of those accused

of abusing human rights if the Attorney General ignores Komnas HAM recommendations.<sup>64</sup>

Furthermore, there have been documented problems inside of the Komnas HAM itself relating to both funding and conflicts between the various members themselves.

Another issue that has not been extensively studied and documented is the overlap between the various private institutions operating in the field. For example, apart from the Legal Aid Foundation, there is the Commission for Disappearances Persons and Victims of Violence (Kontras), Impartial, Study Institute for Public Advocacy (ELSAM), and Indonesian Legal Aid Society (PBHI), as well as the various Centers for Human Rights attached to universities.

Furthermore, there are NGOs, particularly in the field of human rights that have been established through sponsorship from the government. High-ranking officials are known to encourage their acquaintances to establish NGOs. These NGOs are sometimes used as a means of competing against an already established NGO to offer an alternative human rights perspective of the same problem. Government sponsored human rights NGOs tend to have a short lifespan as they tend to dissolve once the officials have left office.

Projects to improve human rights practices have been pursued by institutions, but unfortunately some are for commercial purposes. The commercialization of NGOs has prompted legitimate questions concerning whether these NGOs have become mere vehicles to secure funding or whether they are really motivated by the altruistic ideals of defending and promoting human rights. It is a question that must be answered to address the political, commercial or other purposes that NGOs pursue.

A fundamental problem with private institutions is funding. Human rights NGOs rely heavily on foreign donors. Once the donors cease their contributions, these NGOs will struggle. In this sense, NGOs are seen as prolonging the interest of foreign interests. Once there is no interest from foreign donors, NGOs will encounter increasing difficulties to survive as their domestic donors and sponsors are limited. This feeds into the paranoia held in some circles that NGOs are funded by foreign donors only for the purpose of promoting and extending foreign interests in sovereign Indonesia.

The most obvious example of this is the difficulties encountered by the LBH when foreign donors began to reduce their funding commitments; the question

became whether these donors were intent on upholding human rights or fighting against and attempting to subvert an authoritarian regime in Indonesia?

The next problem is that private human rights institutions no longer possess the charisma that they used to possess under the Soeharto administration. As the government becomes more democratic and provides increased importance to human rights issues, human rights NGOs have lost their importance. Many NGOs suddenly appeared to lose their critical nature once Wahid became President. The most plausible reason for this is that prior to becoming President, Wahid maintained many close ties with the NGO community.

The final problem here is that many of the NGOs have overlapping fields of expertise and specialty without maintaining sound networking practices.

## **VII. CLOSING REMARKS**

During the period of 1998 to 2006, human rights practices remained unchanged in Indonesia irrespective of the better commitment made by the four Presidents in the much improved legislation dealing with human rights and in becoming parties to various international agreements and a growing number of institutions. In short, structural and legal change has not contributed much to an improved human rights condition in Indonesia. Violations of human rights continue to take place, not only by the government but also by the people, the mass media, and many others.

The first obstacle to improvement in the respect for human rights cannot solely be the responsibility of the President. Under a more democratic government the President alone will not be able to make conditions better. There are many more actors that can be instrumental in bringing about a much improved respect for human rights.

Second, domestic legislation and ratification of international instruments have not contributed to any measurable improvement in human rights conditions in Indonesia. This is because in a transitional democracy like Indonesia what is stated in the laws may not automatically be reflected in society at large.

Third, the prosecution of past abuses of grave human rights violations has been unsatisfactory for a number of reasons. It would not only be misleading but also unrealistic to expect international and domestic pressure to enforce justice for victims in Indonesia.

Fourth, the US led war on terror has further deteriorated Indonesia's public confidence for respect of human rights.

Lastly, there has been a lack of focus in the promotion of human rights due to the overwhelming number of institutions working in the field of human rights in Indonesia.

## NOTES

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<sup>1</sup> There are many reports which indicate the poor condition of human rights practices in Indonesia, such as the Amnesty International report (<http://web.amnesty.org/>), Human Rights Watch (<http://hrw.org/>), and the US Department of State Report on Human Rights Practices (<http://www.state.gov/>).

<sup>2</sup> Soeharto resigned from office on May 21 under pressure from student activists supported by broader Indonesian community.

<sup>3</sup> Human Rights Law and Establishment of the Ad Hoc Human Rights Tribunal Law.

<sup>4</sup> The Anti-Subversion Law was lifted as were regulations that restrict freedom of press and freedom of speech.

<sup>5</sup> Presidential Decree 129 of 1998 on the National Action Plan for Human Rights. The plan of action has four main pillars: (i) preparation for ratification of international human rights instruments; (ii) dissemination of information and education on human rights; (iii) implementation of priority issues on human rights; and (iv) implementation of the international human rights instruments that have been ratified by Indonesia. The plan of action ran until 2003, but was not followed by either the Wahid or Megawati administration.

<sup>6</sup> This will be discussed extensively later.

<sup>7</sup> During the Soeharto administration, Indonesian Chinese were not allowed to use their Chinese names, Chinese script, or to promote their culture.

<sup>8</sup> One of the criticisms is that Megawati was worried that bringing military and police personnel to the Human Rights Tribunal would result in these people undermining her mandate to govern and weakening the the country. Interesting Megawati is on the record stating that sentencing corrupters to death would be in breach of the human rights of corrupters. This was seen as tacit support from the Megawati administration and activists argue that this has resulted in increased levels of corruption throughout the country.

<sup>9</sup> "Human rights activists targeted in terror attacks," Jakarta Post, March 14, 2002; "Unidentified men shoot human rights lawyer's car," Jakarta Post, Nov. 13, 2001.

<sup>10</sup> These usually involve demonstration held by students who demanded former President Soeharto face trial or demand that Megawati resign as President. Casualties cannot be avoided.

<sup>11</sup> Law Number 9 of 1998 on the Freedom of Expression in Public.

<sup>12</sup> Rakyat Merdeka is a daily newspaper. In one case one former editor of the newspaper is found guilty for insulting the chairman of the Golkar political party who was also serving as speaker of the DPR, Akbar Tanjung. The case was brought after the paper published a caricature depicting Akbar Tanjung shirtless and dripping with sweat trying to appeal his corruption conviction. In another case, an editor is prosecuted for insulting Megawati as Indonesia's President. This is after the newspaper ran a series of headlines

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concerning controversial government policies related to fuel and basic commodity price increases. One headline said the President's mouth smells like diesel.

<sup>13</sup> Tempo is a leading weekly magazine. The case involves an article run by Tempo which alleged Tomy Winata stood to profit from a fire that had razed a textile market in Jakarta. In this case Tomy Winata filed charges of libel seeking substantial damages against the co-founder of Tempo. The article also caused Tomy Winata's supporters to come to the Tempo office and violently attack the reporter who wrote the story. In this case the attackers were found guilty for their actions but were handed only a light sentence.

<sup>14</sup> One of the criticisms came from the International Confederation of Free Trade Unions (ICFTU) in its report for the WTO General Council Review of Trade Policies of Indonesia, *see*: <http://www.icftu.org/www/pdf/indonesiacs2003.pdf>

<sup>15</sup> The original Constitution only contains six provisions that explicitly provide for human rights issues.

<sup>16</sup> Every person shall have the right to live and to defend his/her life and existence.

<sup>17</sup> (1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.

(2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

<sup>18</sup> (1) Every person shall have the right to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race. (2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

<sup>19</sup> (1) Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.

(2) Every person shall have the right to work and to receive fair and proper recompense and treatment in employment. (3) Every citizen shall have the right to obtain equal opportunities in government.

(4) Every person shall have the right to citizenship status.

<sup>20</sup> (1) Every person shall be free to embrace and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.

(2) Every person shall have the right to the freedom to hold beliefs (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.

(3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.

<sup>21</sup> Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.

<sup>22</sup> (1) Every person shall have the right to protection of self, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.

(2) Every person shall have the right to be free from torture or inhuman and degrading treatment, and shall have the right to obtain political asylum from another country.

<sup>23</sup> (1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.

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(2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.

(3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.

(4) Every person shall have the right to own personal property, and such right may not be arbitrarily interfered with by any party.

<sup>24</sup> (1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.

(2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

(3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.

(4) The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government

(5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

<sup>25</sup> (1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.

(2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the 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.

<sup>26</sup> MPR Decree No. XVII/MPR/1998 on Human Rights

<sup>27</sup> Law 39 of 1999

<sup>28</sup> Law 26 of 2000

<sup>29</sup> *Id.*, art. 43 (1).

<sup>30</sup> *Id.*, art. 43 (2).

<sup>31</sup> Law 11 of 1963 and it was revoked by Law 26 of 1999.

<sup>32</sup> Law 27 of 2004

<sup>33</sup> Law 13 of 2003

<sup>34</sup> Law 21 of 2000

<sup>35</sup> Law 40 of 1999

<sup>36</sup> Law 23 of 2002

<sup>37</sup> Law 12 of 2006

<sup>38</sup> Law 18 of 2003

<sup>39</sup> Law 20 of 2003

<sup>40</sup> Law 2 of 2002

<sup>41</sup> Law 32 of 2002

<sup>42</sup> It was ratified in 1984 and 1990 respectively.

<sup>43</sup> Law 5 of 1998

<sup>44</sup> Law 29 of 1999

<sup>45</sup> Law 19 of 1999

<sup>46</sup> Law 20 of 1999

<sup>47</sup> Law 21 of 1999

<sup>48</sup> Law 1 of 2000

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<sup>49</sup> Law 11 of 2005

<sup>50</sup> Law 12 of 2005

<sup>51</sup> It should be noted that the Human Rights Tribunal and the ad hoc Human Rights Tribunal is slightly different. Although the two tribunals are established based on the Human Rights Tribunal Law, however, the ad hoc Human Rights Tribunal was established to examine and decide past cases of flagrant human rights abuses.

<sup>52</sup> "U.S. gives Indonesia more aid, time on human rights," Jakarta Post Jan. 22, 2000.

<sup>53</sup> The Executive Summary of the report in Indonesian, *is accessible at*

<http://www.elsam.or.id/publikasi/padhoc/EXECUTIVE%20SUMMARY%20KPP%20HAM%20Tim-tim%20oleh%20Komnas%20HAM.pdf>

<sup>54</sup> Article 7 of the Human Rights Tribunal Law provides for two types of gross violations of human rights (international crimes), namely: genocide and crimes against humanity. Article 9 provides the elements of crimes against humanity.

<sup>55</sup> Article 42 of the Human Rights Tribunal is a direct interpretation of Article 28 of the Rome Statute.

<sup>56</sup> "Justice Denied for East Timor Indonesia's Sham Prosecutions, the Need to Strengthen the Trial Process in East Timor, and the Imperative of U.N. Action," Human Rights Watch *available at*

<http://www.hrw.org/background/asia/timor/etimor1202bg.htm> (last visited Oct. 14, 2003)

<sup>57</sup> If previously judges are afraid of the powerful elite, now they are afraid of the public because they are the ones' who hold power.

<sup>58</sup> In Abilio Soares case the sentence handed-down was for 3 years even though the Law provides that the minimum sentence is to be 10 years.

<sup>59</sup> *See*: Progress Report VII Ad Hoc Tribunal for East Timor by ELSAM (Indonesian), Oct. 7, 2002 *available at*

<http://www.elsam.or.id/publikasi/padhoc/progress%20report%20VII.PDF>

<sup>60</sup> It was reported that Indonesia's second largest Muslim organization has expressed concern with the security forces' fight against terrorism, including the Bali attack investigation, saying the process was confusing and ignored human rights. *See*: "Religious leaders want police to respect human rights," Jakarta Post, Nov. 13, 2002.

<sup>61</sup> Law 16 of 2003

<sup>62</sup> Former Chairman of Golkar Party, Pinantun Hutasoit, said that the human rights promotion has become an instrument for new colonialism. *See* "Pinantun: HAM Dijadikan Alat Neo Kolonialis," Republika Online, October 13, 2003 *available at* <http://www.republika.co.id/berita/online/2003/10/13/142911.shtm> (last visited October 14, 2003).

<sup>63</sup> One agency is referred to as the Directorate General for Protection of Human Rights which succeeded the former Department of Human Rights after its dissolution. The other is the Human Rights Research and Development Agency.

<sup>64</sup> "Hakim pledges to fight for human rights," Jakarta Post, Sep. 14, 2002.