Human Rights, Enforcement and Law Reform in Post-Soeharto Indonesia

Oleh Michael Tardif

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ABSTRAK
Perlindungan dan Reformasi Hukum Hak Asasi Manusia Setelah Memerintah Soeharto

Oleh Ifichael Y Tardif

Permasalahan

Pada bulan Mei tahun 1998, mantan Presiden Soeharto terpaksa turun sebagai Presiden Indonesia oleh gerakan rakyat untuk refomasi. Salah satu tuntutan gerakan itu ialah pemerintah Indonesia menghormati dan menegakkan hak asasi manusia yang sudah diakui di dunia.

Tujuan penelitian saya ialah "Bagaimana permerintahan di Indonesia setelah Soeharto, termasuk administrasi mantan Presiden Habibie dan Presiden Abdurrahman Wahid berjalan sesuai dengan harapan semula dari gerakan reformasi?"

Terutama sekali saya mau tahu;

> Apakah reformasi hukum hak asasi manusia telah dimulai dan kalau telah dimulai, reformasi hukum itu dimulai dengan kegiatan-kegiatan apa?
>
> Apakah demokratisasi diperkuat oleh reformasi hak asasi manusia?
>
> Apakah reformasi hukum hak asasi manusia telah disertai oleh usaha untuk menghormati dan menegakkan hak asasi manusia oleh pemerintah Indonesia?
>
> Apakah masih ada rintangan untuk menjalankan reformasi hukum hak asasi manusia? Kalau ada apakah rintangan itu?

Metodologi penelitian saya

Penelitian saya dilakukan kebanyakan di Jakarta. Saya memilili lokasi Jakarta karena kebanyakan LSK, pengacara, hakim dan tokoh politik yang mempunyai perhatian terhadap hal hal hak asasi manusia terletak di sana. Di sana juga merupakan pusat politik nasional Indonesia dan kebanyakan perdebatan tentang hak asasi manusia diperdebatkan di Jakarta. Jadi saya pikir akan lebili mudah mencari sumber sumber penelitian di sana.

LSM dan organisasi kebijakanaan yang menolong saya mengumpulkan data termasuk LBH, KOMNAS HAM, KONTRAS, National Democratic Institute dan Institut Studi Arus Infomasi atau ISAI. Kebanyakan dokumentasi tersebut saya kumpulkan dari organisasi tersebut.

Metode yang dipergunakan dalam laporan penelitian saya untuk menganalisa data saya yang tersebut adalah metode deskriptif dan kualitatif

Hak asasi manusia, sejarah dan definisi

Mulai dengan abad terakhir ialah sesuatu sistem didasarkan dalam Perserikatan Bangsa Bangsa (PBB) untuk menegakkan, melindungi dan memperkembangkan hak asasi manusia.

Sistem itu didasarkan beberapa Perjanjian Internasional termasuk:

1. Universal declaration of human rights
2. Covenant on Civil and Political Rights
3. Covenant on Economic, Social and Cultural Rights

Di dalam sistem itu tidak ada hanya satu pengertian tentang hak asasi manusia. Hak asasi manusia dirupakan tiga generasi pengertian, yaitu:

1. Hak hak Pribadi, Sipil dan Politik
2. Hak hak Ekonomi Sosial dan Budayaan
3. Hak hak Kolektif

Semua hak hak manusia generasi dua dan generasi tiga didasarkan hak hak Pribadi, Sipil dan Politik, yaitu hak hak manusia generasi satu. Generasi hak hak manusia satu mengaturkan hubungan diantara warganegara dan pemerintah juga antara warganegara dan warganegara lain.

Pusat perhatian dari penelitian saya ialah hak hak manusia ini atau hak hak Pribadi, Sipil dan Politik atau hak hak manusia generasi satu.

Warisan sejarah sistem politik dan hukum Indonesia terhadap hak asasi manusia

Kalau kita mau mengerti keadaan hak hak manusia dan hukum hak hak manusia di Indonesia saat ini kita harus juga mengerti warisan sejarah sistem politik dan hukum yang diwarisi dari Orde Lama dan Orde Baru.

Waktu mantan Presiden Soeharto turun, setelah lebih dari tiga puluh tahun sebagai Presiden Indonesia, Indonesia mewarisi sistim pengadilan yang tidak kuat atau berani untuk menantang yang dilakukan oleh permerintah Indonesia. Pada waktu itu, sistem pengadilan di Indonesia sangat dikuasai oleh pernerintah.

Karena itu kalau pelanggaran hak hak manusia dilakukan oleh pernerintah, itu sangat sulit untuk mendapatkan keadilan dari sistem pengadilan.

Perbaikan yang sudah dilakukan terhadap hak asasi manusi

Menurut saya ada dua macam atau jenis pembaikan yang telah mulai dilaksanakan oleh administrasi Habibie dan administrasi pemerintah Presiden Wahid, yaitu;

1. Reformasi strukural dan budaya administrasi negara Indonesia, dan;
2. Reformasi hukum

Reformasi struktural dan budaya

Menurut saya ada beberapa pembaikan struktural yang telah dilakukan oleh pemerintah Habibie dan Wahid.

1. Pemisahan sistem pengadilan dan pemerintah.
2. Pendirian pengadilan hak hak manusia.
3. Pemisahan Polisi Nasional dari ABRI.
4. Penghapuskan BAKORSTANAS.
5. Reformasi Jaksa Agung dan pendirian Mented Hukum dan HAM.
6. Perkuatan KOMNAS HAM.

Reformasi hukum

Pemerintah juga mengeluarkan peraturan yang baru mengenai HAM termasuk;

1. Bab HAM dalamUndang Undang Dasar 1945.
2. Perjanjian Internasional HAM.
3. Pemisahan hukum represif

Penutup

Penutup saya dari penelitian saya telah dilakukan termasuk:

1 . Ada upaya upaya yang benar terhadap hukum dan reformasi struktur dan kebudayan bernegara.

2. Tapi, masih ada pelawanan terhadap reformasi ini, khususnya terhadap tuntutan pelanggaran hak hak manusia yang terjadi selama Orde Baru. Pelawanan ini telah memrendahkan reformasi hukum hak hak manusia.

3. Masalah masih ada khususnya dengan implementasi reformasi dalam ABRI, polisi dan sistem pengadilan.

4. Sayangnya catatan HAM menjadi lebih terpuruk, padahal upaya upaya yang benar telah dilakukan. Namun keadaan ini terhambat oleh keadaan politik di Indonesia yang menjadi lebih komplex. Saat ini itu bukan hanya pemerintah yang bisa melanggar HAM, tapi ada yang lain yang sering melanggar HAM untuk alasan etnik, agama dan politik.

Human Rights Enforcement and Law Reform in Post Soeharto Indonesia

Oleh Michael Tardif

Chapter 1 - Research Methodology

1.0 Background

The New Order regime of former President Soeharto built its popular legitimacy on its capacity to deliver political stability and economic development.'[1] The loss of popular legitimacy leading to Soeharto's resignation in 1998 reflected popular dissatisfaction with the Soeharto lead development model.

At the forefront of the Reformasi movement, which swept Soeharto from power, were activists calling the New Order regime to account for its human rights abuses, which for years had been committed in the name of development. The political crisis faced by Soeharto in 1998 reflected, amongst other factors, the New Order regime's narrowly defined definition of development, which had ignored human rights in addition to other social factors, as development parameters.[2]

Popular demands for greater respect for human rights also coincided with demands for greater democracy and popular participation, which under Soeharto had been suffocated by years of authoritarian rule backed by military violence. In addition, domestic calls for greater democratic rights coincided with the needs of international capital for greater economic liberalisation of the Indonesian economy. In the international arena pressure for economic and political liberalisation was also often thinly veiled in the discourse of human rights, (for example with respect to workers rights to organise freely).

The coincidence of these respective pressures made it impossible for the Soeharto regime to insulate itself from change and in consequence the regime was forced to make a number of concessions aimed towards satisfaction of popular demands for reform. With respect to human rights one of the regimes most significant steps was the establishment of the National Commission on Human Rights *(Komisi Nasional Hak Asasi Manusia, Komnas HAM)* in 1993.

Despite initial criticism of the Konmas HAM, (it was established by presidential decree and its members constituted by Presidential appointment), the new body proved itself independent and critical of the regime.[3] Rather than alleviating demands for change, minimal reform only added further to the momentum for change.

Following the eventual resignation of President Soeharto in 1998, Indonesia now continues to face an unprecedented opportunity for democratic change and legislative reform aimed at guaranteeing basic human rights in the context of ongoing efforts towards development.

However, this process is by no means guaranteed. The resignation of Soeharto was not accompanied by the dismantling of the New Order State. Many elements of the New Order regime remain powerful actors in the Indonesian political sphere with significant reasons to resist reform and democratisation and despite initial attempts at reform much of the New Order State remains intact. The emergence of the demand for *Reformasi total,* amongst more radical elements of the Reformasi movement reflects the limited nature reforms so far achieved.

In this context, efforts to secure and institutionalise respect for human rights remains an ongoing struggle that is now taking place both within and outside the Indonesian State. The successes and failures of in the course of this struggle, especially in respect to human rights law reform and law enforcement, is a significant indicator of the overall struggle for democratic change in Indonesia.

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[1] Michael van Langenberg, *"7he New Order State: Language, Ideology andHegemony"*, in Budiman, Arief, (ed.), Reformasi., Crisis and change in Indonesia, Monash University, Clayton, 1999, page 124 -125.
[2] Masduki, Teten (et.al.), Human Rights as Development Parameter, ESLANt Jakarta, 1996, at page 81-88.
[3] Pinto, Julio Tomas, Peranan Konmas HAM Dalarn Penegakan HAM di Indonesia, Universitas Muhammadiyah, Malang, 1998, page 5

The guarantee of basic civil and political rights and their respect in the actual operations of the State is fundamental to functioning democratic governance.[4] Guarantees of social, economic and cultural rights and the consideration of collective rights in State practice reflect an even deeper commitment and mature functioning democracy.

1.1 Problem

Since the resignation of Soeharto the administrations of former President B.J. Habibie and current President Abdurrahman Wahid have both engaged in significant legislative reforms, including in the area of human rights.

Under the administration of President Abdurrahman Wahid, many of those who had previously taken their demands for *Reformasi* to the streets, now find themselves responsible for reform programs being supported by the government. Many human rights lawyers for example, who found themselves in direct confrontation with previous regimes are now engaged in official processes aimed at investigating past abuses and prosecuting those responsible, in addition to programs aimed at the prevention of future abuses.

Despite such steps forward, powerful interests entrenched under years of New Order rule remain resistant to democratic change and the prosecution of past human rights violations. In this respect many aspects of the struggle for reform has moved from the streets, into the institutions of the State apparatus, (including amongst others, the DPR and NTR, the courts and the executive).

An important coincidence exists between respect for human rights (especially civil and political rights) and democratic State practice. In this respect it is hoped that an assessment of human rights law reform and enforcement in the post Soeharto era, will also be reflective of the extent and depth of democratisation process that has been possible, given the current balance of forces and vested interests that are aligned within and acting upon the structures of the Indonesian State.

In this context it is suggested that the following areas are of particular interest.

- What legislative and legal mechanisms were used to restrict the enjoyment of human rights, with particular attention to civil and political rights under the Soeharto New Order regime?
- To what extent have legislative reforms in the post Soeharto era successfully guaranteed legal recognition and protection of human rights, in particular civil and political rights?
- To what extent has the Indonesian State acted to guarantee those nights?

1.2 Research Aims

In exploring the above-mentioned questions it is hoped that further clarity will be reached with respect to the relationship between human rights law reform and enforcement and the ongoing process of democratisation in Indonesia. In this context it is hoped that a provisional assessment may be concluded with respect to the following issues.

- Has human rights law reform strengthened formal democratisation of the Indonesian State?
- Has human rights law reform been accompanied by State commitment towards human rights law enforcement? If not what forces within the State continue resisting human rights reform?
- What obstacles are evident to further human rights law reform and enforcement?

[4] T Mulya Lubis and Mas Achmad Santosa, *"Economic regulation, good governance and the environment: an agendafor law reform in Indonesia"*, in Budiman, Arief, (ed.), Reformasi, Crisis and change in Indonesia, Monash University, Clayton, 1999, page 344 - 346

1.3 Research Methodology

Social research is not an arbitrary act, but an exercise undertaken by the researcher with the aim of accurately and objectively reflecting, considering and commenting upon actually occurring social phenomena. In this respect research methodology reflects upon the quality of research. A discussion of the research methodology undertaken in gathering the information included below follows.

1.30 Research location

The research undertaken and included below confronted the problem that the chosen topic did not occupy an easily definable location, or more precisely did not occupy a discrete location, beyond the obvious temporal indication of the "post Soeharto period" and the general spatial limitations indicated by "Indonesia".

In a strict sense human rights law reform is to be found in the legislation that emanates from various Indonesian legislative and executive bodies. However attempting to define the location of research in this sense is too constrictive in the sense that it does not reflect the very real social and human struggles that go to shape the socio political environment within which such legislative processes exist. Such a definition also does not permit further exploration of the enforcement of such legislative mechanisms which is equally if not more important.

Taking these difficulties into consideration it is enough to say that the research carried out towards this paper was carried out principally in Jakarta for the reason that the majority of social institutions and participants with respect to the issues herein considered are centred in Jakarta. Further still as the national political system is focused on Jakarta many of the struggles with respect to human rights law reform have been centred in Jakarta. On the other hand, many of the problems associated with human rights law enforcement are located in the outer regions of the Indonesian archipelago, Aceh, West Papua and so on.

Having made the above observations with respect to the difficulties in defining a discrete area of research location it is more informative to consider directly the populations sampled in the methods of data collection subsequently utilised.

1.31 Research population and samples

A broad cross section of opinions and experiences was sought of those acting in the legal field with a stated or implied interest in issues related to human rights law reform. The numbers of professionals and institutions involved in the legal profession with an interest in human rights issues is extremely large. With this in mind a sample of different professional opinions and experiences was sought from all sides of the legal system including judges, lawyers, and human rights activists. In addition the opinions of professional observers outside acting outside the structures of the legal system was also sought including journalists, non-government organizations and academics. More detailed information with respect to these population samples follows.

Courts

A considerable period of time was devoted to observation of cases, mainly criminal, at the *Pengadilan Jakarta Pusat* (Central Jakarta Local Court). The material and observations made here proved invaluable in developing a practical understanding of the workings of the Indonesian court system, with particular attention to criminal trials. It also proved an invaluable experience with respect to developing a practical understanding of the human rights issues that continue to occur with respect to the operations of the Indonesian court system. In particular observations of the court process offered the benefit of interaction with judges, prosecutors, defence lawyers and defendants.

Judges

The co-operative attitude of judges at *Pengadilan Jakarta Pusat* was also of great assis tance, both in terms of understanding the formalities of court procedure and gaining access to the opinions and experiences of the judiciary with respect to the strengths and weaknesses of the court system with respect to the protection of human rights.

Particular thanks must be extended to Hakim Asep lwan Iriawan, for his insights, his oversights, explanations and candid observations.

Prosecutors and Defence Lawyers

Numerous opportunities to discuss human rights issues, especially as they related to criminal law matters with defence lawyers working also proved invaluable in developing a more rounded understanding of the depth of human rights concerns that continue to plague the operation of the Indonesian judicial system.

A number of defence lawyers, often working on a pro bono basis for organizations such as *Indonesian Legal Aid and Human Rights Association* (PBHI), were able to offer particular insights into the relationship between human rights abuses and the workings of the judicial system.

Defendants

In the ma or' of cases defendants were easily accessible at the end of hearings for short periods of time. Court wardens generally did not restrict access to defendants. The majority of defendants were eager to impart their experiences, and frequently complained of procedural bias and in a number of cases physical abuse while in custody.

Legal Activists and Law Reform groups

In addition to direct observation of the judicial process at the *Pengadilan Jakarta Pusat*, the opinions and experiences and documentation of human rights organizations proved invaluable for the collection of background information and placing current struggles for human rights law reform in the broader socio political context of Indonesia.

Information gathered at the *Lembaga Bantuan Hukum* (LBH), *Komisi Nasional Hak Asasi Manusia* (K0MNAS HAM), and *Komite untuk Orang Hilang dan Tindak Kekerasan* (KONTRAS) was particularly informative.

Policy groups

With respect to historical, theoretical and policy both the *National Democratic Institute* (NDI) and the *International Crisis Centre* (ICC), were of significant assistance in the location of secondary materials. The library located at the Australian Embassy in Jakarta also proved a valuable English language resource.

Journalists

1 am also indebted to the assistance of freelance criminal and human rights journalist Erwan Politan, and the co-operation of *Institut Studi Arus Informasi, (ISAI)* for their assistance in the collection of background information.

1.32 Data collection

The research conducted in preparation of the following paper was principally qualitative in character and involved the following methods of data collection.

Observation

As note above direct observation of the procedural process of criminal cases at *Pengadilan Jakarta Pusat* constituted a considerably informative body of research towards the writing of the following paper. Observation of the activities of human rights lawyers and activists also represented contributed significantly to my understanding of the issues discussed below.

Interviews

A number of formal interviews were conducted in the gathering of data necessary for the issues contained herein. Informant interviewing process also proved particularly important. Frequently numerous sensitive issues were better handled in a more informal setting. In particular it was found that members of the judiciary were frequently more comfortable discussing issues, such as judicial corruption, in an informal environment rather than in the formal setting of an interview.

In this sense a number of strategies were adopted all of which may be included under the general category of interview, but which varied in approach, depending on the circumstances, individuals and particular information being sought.

Primary and secondary documentation

Secondary resources compiled by academics, journalists, activist and lawyers contained a range of secondary and primary information dealing with human rights and law reform enforcement in Indonesia that also proved invaluable.

1.4 Data Analysis

The analysis herein is principally of a descriptive and qualitative nature.

Chapter 2 - History and development of Human Rights

The development and acceptance of human rights values as international laws is a relatively new phenomenon. Although debate continues with respect to their implementation and prioritisation, a number of human rights principles and values have now been accepted at international law as universally applicable, and as such to be defended for by all national governments. International human rights law stands out in respect to its development with respect to other areas of international law, especially in terms of the rapid acceptance of many human rights principles as internationally universal and accepted legal standards.

The sources of law that affirm the universally applicable nature of these values is varied and includes established State practice and international instruments such as the *Universal Declaration of Human Rights.*

2.0 Early movements towards human rights

The concept of human rights has existed under several names in European thought for many centuries, at least since the time of King John of England. Following the failure of the King to observe a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the *Magna Carta,* or Great Charter, which enumerates a number of what later came to be thought of as human rights. Among them were the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and be free from excessive taxes. The *Magna Carta* established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct.

Political and religious traditions in other parts of the world also proclaimed ideas that contributed to the development of modem day notions of human rights, calling on rulers to rule justly and compassionately, and delineating limits on their power over the lives, property, and activities of their citizens.

In the eighteenth and nineteenth centuries in Europe several philosophers proposed the concept of "natural rights," rights belonging to a person by nature being a human being, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. This concept was vigorously debated and rejected by some philosophers as baseless. Others saw it as a formulation of the underlying principal on which all ideas of citizens' rights and political and religious liberty were based.

In the late 1700s two revolutions occurred which drew heavily on this concept. In 1776 most of the British colonies in North America proclaimed their independence from the British Empire in a document, the "U. S. *Declaration of Independence".* In 1789 the people of France overthrew their monarchy and established the first French Republic. Out of the revolution came the *"Declaration of the Rights of Man.* " Both these documents contained passionate appeals with respect to the rights of subjects relative to their rulers.

The term "natural rights" eventually however fell into disfavour, but the concept of "universal rights" took root. Philosophers such as Thomas Paine, John Stuart Mill, and Henry David Thoreau expanded the concept. Thoreau is one of the first philosophers to use the term, "human rights", and does so in his treatise, "*Civil Disobedience".* This work has been extremely influential on individuals as different as Leo Tolstoy, Mahatma Gandhi, and Martin Luther King. Gandhi and King, in particular, developed their ideas on non-violent resistance to unethical government actions based on this work.

Other early proponents of human rights were English philosopher John Stuart Mill, in his *"Essay on Liberty',* and American political theorist Thomas Paine in his essay, *"The Rights of Man".*

Europe in the middle and late nineteenth century was dominated by a number of political issues resulting from the rapid economic development of European economies. From the perspective of the twentieth century many of these issues would later come to be considered human rights issues. They included slavery, serfdom, brutal working conditions industrialized economies, starvation wages, and child labour.

Numerous political movements arose around these issues and popularised them in the minds of millions of people. In the United States, a bloody war over slavery divided the country, which ironically had been founded only eighty years earlier on the premise that, "all men are created equal." At the same time after bitter struggles the Russia aristocracy was forced to introduce formal freedom for Russian serfs.

Such social movements aimed at improving the human condition continued into the twentieth century and added new causes to their list of human rights issues. Labour unions brought about laws granting workers the right to strike, establishing minimum work conditions, forbidding or regulating child labour and establishing a forty-hour workweek in the United States and many European countries. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. Movements by long-oppressed racial and religious minorities succeeded improving conditions for their constituents in many parts of the world, among them the U. S. Civil Rights movement.

2.1 International Institutionalisation of Human Rights Law

The recognition of human rights principles as universally accepted and more importantly as enforceable legal values was advanced most notably following the establishment of the United Nations and its associated international treaty system following the end of the Second World War.

The establishment of the United Nations and the overwhelming participation of nations in the United Nations system provided the world with a systematic and institutionalised framework for the development, establishment and promotion of human rights values for the first time.

The most important developments in this process included the international system of human rights treaties, which have, despite reservations by many signatories, nonetheless received overwhelming international support by national governments. Within this treaty system the most important instruments, but not the only international human rights instruments, include the following:

- *Universal Declaration of Human Rights*
- *Covenant on Civil and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights*
- *Covenant on Economic, Social, and Cultural Rights*
- *Convention Against Torture*
- *Convention Against Genocide*
- *The Geneva Conventions*
- *Convention on the Rights of the Child*
- *Convention on Elimination of Discrimination Against Women*
- *Charter of the United Nations*

As noted the process of developing universally accepted human rights values, especially those operating with the force of international law remains an ongoing process.

In the international arena the first generation of human rights standards to gain international recognition were those concerned with civil and political rights. Civil and political rights are concerned principally with the fundamental rights of states re other states and of the individual with respect to the state and other individuals. They are broadly described as fundamental rights.[5]

The second generation of human rights to gain international recognition focused on social, economic and cultural rights. Social, economic and cultural rights are concerned with social justice and the rights of communities. They emerged in large part as a result of the post colonial experience and the concerns of peripheral, third world economies in their attempts to guarantee development and the basic needs of their communities in the context of the world economic system.[6]

The third generation of human rights principles is concerned with collective rights such as the right to economic development, the right to enjoy the environment, the right to maintain ones culture and the right to peace and security.[7]

The contemporary struggle for political and democratic changes in Indonesia has focused attention on many civil and political rights, which continue to lack legal protection, and frequently continue to experience abused by both State and non-state institutions. Debate has also emerged around a range of issues, which can be described as social, economic and cultural rights. With this in mind a brief outline of the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights,* both of which are designed to implement the *Universal Declaration of Human Rights.*

2.2 Covenant on Civil and Political Rights

This *Covenant on Civil and Political Rights* details the basic civil and political rights of individuals and nations. Among the rights of nations are:

- the right to self determination
- the right to own, trade, and dispose of their property freely, and not be deprived of their means of subsistence

Among the rights of individuals are:

- the right to be recognized as a person before the law
- the right to equality before the law
- the right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity
- the right to presumption of innocence until proven guilty
- the right to appeal a conviction
- freedom of opinion and expression
- the right to privacy and protection of that privacy by law
- freedom of thought, conscience, and religion
- the right to liberty and freedom of movement
- freedom of assembly and association
- the right to life

[5] Masduki, Teten (et.al.), Human Rights as Development Parameter, ESLAM, Jakarta, 1996, page 4
[6] Ibid., page 4
[6] Ibid., page 4
[7] Ibid., page 4

The *Covenant* forbids torture and inhuman or degrading treatment, slavery or involuntary servitude, arbitrary arrest and detention, and debtor's prisons. It forbids propaganda advocating either war or hatred based on race, religion, national origin, or language.

It provides for the right of people to choose freely whom they will marry and to found a family, and requires that the duties and obligations of marriage and family be shared equally between partners. It guarantees the rights of children and prohibits discrimination based on race, sex, colour, national origin, or language.

It also restricts the death penalty to the most serious of crimes, guarantees condemned people the right to appeal for commutation to a lesser penalty, and forbids the death penalty entirely for people less than 18 years of age.

The *Covenant* permits governments to temporarily suspend some of these rights in cases of civil emergency only, and lists those rights that cannot be suspended for any reason. It also establishes the UN Human Rights Commission.

After almost two decades of negotiations and rewriting, the text of the *Covenant on Civil and Political Rights* was agreed upon in 1966. In 1976, after being ratified by the required 35 states, it became international law. Indonesia remains one of the few states that have yet to sign and ratify the *Covenant on Civil and Political Rights.*[8] However, the current National Action Plan for Human Rights includes review and preparation for signing of international human rights treaties. It is hoped that the *Covenant on Civil and Political Rights,* may be include for signing as part of the governments National Action Plan.[9]

2.20 Optional Protocol to the Covenant on Civil and Political Rights

The protocol adds legal force to the *Covenant on Civil and Political Rights* by allowing the Human Rights Commission to investigate and judge complaints of human rights violations from individuals from signatory countries.

Indonesia remains to sign and ratify the *Optional Protocol.*[10]

2.3 Covenant on Economic, Social, and Cultural Rights

This Covenant on Economic, Social and Cultural Rights describes the basic economic, social, and cultural rights of individuals and nations, including the right to:

- self-determination
- wages sufficient to support a minimum standard of living
- equal pay for equal work
- equal opportunity for advancement
- freedom to form trade unions
- right to strike
- paid or otherwise compensated maternity leave
- free primary education, and accessible education at all levels
- copyright, patent, and trademark protection for intellectual property

In addition, this *Covenant* forbids exploitation of children, and requires all nations to cooperate to end world hunger. Every nation that has ratifies the covenant is required to submit annual reports on its progress in providing for these rights to the Secretary General, who is to transmit them to the United Nations Economic and Social Council. The text of this *Covenant* was finalized in 1966 along with that of the *Covenant on Civil and Political Rights,* but has not been ratified yet.

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[8] Robertson, Geoffrey, Crimes against Hurnaffity: The Struggle for Global Justice, Penguin, 2000, page 48
[9] In The Jakarta Post, *"Human rights guidelines to be published by government ", Saturday, 05* August 2000
[10] Op.cit., Robertson, Geoffrey, at page 48

Chapter 3 - Human Rights in context - the development of the Indonesian legal system

An assessment of human rights law reform in Indonesia needs to be placed in the context of an understanding of the Indonesian legal system. Legal systems develop as social processes and are thus intricately linked to the experiences of the societies within which they exist. As such legal systems are often best understood historically.

In addition to a historical perspective a rounded description of any legal system must also make some attempt to place and explaining the role of the legal system in the given contemporary social relations of the society within which it operates. As an instrument of the State, the role of the legal system in the relationship between the State and civil society is of particular interest.

They following section aims to provide a brief survey of the historical development of the Indonesian legal system and describe its contemporary role in the relationship between Indonesian State and civil society and in doing so posit the position of human rights law in the context of these relations.

3.0 The development of the Indonesian legal system

The history the modem Indonesian State exhibits considerable resistance to absorption of the notion of the *rule of law* or *negara hukum,* both as a founding constitutional principle and as a basis upon which to build a working legal infrastructure. Many basic civil and political rights rest upon *rule of law* concepts, particularly in relation to notions of equality before the law and the right to a fair trial.

Nonetheless the current climate of political reform in Indonesia offers considerable opportunities for reform and the establishment of a legal system based on the *rule of law.* Understanding why the Indonesian legal currently stills falls short of the *rule of law* ideal requires an historical perspective of the development of the legal system as it currently exists.

3.00 Pre-colonial legal systems

A cursory look at Indonesia's legal system may reveal many similarities with the Dutch colonial legal system that was largely inherited following Indonesian independence. It would be wrong however, to simply cast Indonesia as having adopted the Dutch colonial system. The populations inhabiting the Indonesian archipelago have absorbed successive waves of historical influence and these influences are as clearly expressed in Indonesia's legal system as they may be expected to be in other field's social inquiry.

The phenomenon of a unitary State in the Indonesian archipelago is a relatively recent and short-lived historical phenomenon and largely the product of the Indonesian's experience of Dutch colonialism. Prior to the emergence of the Dutch colonial State a diverse range of ethnic, cultural and linguistic groups occupied the Indonesian archipelago. Each of these groups possessed distinct historical experiences and were often organised along distinct and separate economic structures. At times these groups interacted and at other times had no or limited contact with each other.

Throughout the archipelago kingdoms, principalities and trading entrepots rose and fell over extended periods. These principalities ruled in an aristocratic fashion, relying on bureaucracies and the force of arms. Rituals, structures, cultural practice and religious beliefs were often focused of reinforcing the powers at the centre. In addition the rulers of these centres of power administered a system of law aimed at reinforcing their own social interests and maintaining the structure of their social power. As such law in the pre-colonial period focused its attention on matters such as land ownership, inheritance and the family unit and of course social control.

While the more codified legal systems found at the urban centres was significant and influential the majority of the population continued throughout this period to live in a peripheral rural environment. Their contact with the

urban centres of power was often limited and indeed at times their allegiance was sought and fought over by different centres of power whose influence over an area would shift in accordance with their relative strengths and resources.

In this peripheral village environment life observed a less codified legal existence. Law, or social organization was often the preserve of religious and cultural practise; itself linked inseparably with the cycles of life and agriculture. These belief structures typically exhibited strong influences from animist and other pre-indic belief s, with an overlay of Hindu, Buddhist and Islamic influences.

From the 14th century, Islamic law, or *syariah,* occupied an increasingly influential role in the regulation of many aspects of public and private life, especially in urban and trading centres where influences from Arab and Indian traders was greater. The spread of Islamic law beyond the urban centres to rural areas was however a less dramatic and more gradual process.

This complex of ideas, practices and beliefs, which comprised the basis of Indonesia's pre-colonial legal structures, varied from area to area. In some areas like Bali, Hindu Buddhist ideas remained strong while others remained dominated by Islamic tradition and belief. Some of the most isolated parts of the archipelago such as West Papua remained influenced by traditional animist ideas. Together this amalgam of ideas, practices and beliefs remains an important source of law in Indonesia today and is commonly referred to as *adat* or traditional law demonstrable by reference to local customs beliefs and practises. As such *adat* is not a single body of law, but a diverse source of law derived by reference to geographical location and established cultural practises.

3.01 The imposition of colonial law

The influence of the Dutch over the traditional legal and political structures was neither immediate nor uniform. The Dutch arrived in Indonesia like many others, as traders. As such their initial concern in the archipelago was to protect their trading interests.

Until 1609 the *Dutch Law of the Sea* applied to all Europeans living in Dutch controlled settlements. In 1609 this arrangement was replaced by the regulations of the *Vereenigde Oost-Indische Compagine (VOC - United East India Company).* The VOC regulations remained principally concerned with securing Dutch trading interests and did not concern themselves except incidentally with matters of social intervention. As such the laws, customs and rituals, (broadly speaking the *adat),* of hinterland rural communities remained relatively undisturbed.

In addition Dutch methods of administration in the Indonesian archipelago also played their part in preserving the role of traditional sources of law, or *adat.* Rarely were local administrations completely replaced by the Dutch, instead controlling positions were dominated by Dutch officials who set about bring as much of the local administration under their control as required by their colonial interests. This ensured an ongoing and legitimate role for *adat* and other sources of traditional law, in the regulation indigenous concerns.

The transformation of the Dutch administration into a sovereign colonial State was in fact not introduced by the Dutch but by the reformist Napoleonic Governor General, Herman Willem Daendels, who assumed his post after the occupation of the Netherlands by France in 1795. The Daendels administration set about replacing the colonial trading outpost administration of the Dutch with a modern sovereign colonial State.

In consequence of the shifting balance of forces in Europe Daendels was eventually replaced by the British administrator Thomas Stamford Raffles. Raffles however continued the reforms and the process of colonial State expansion and consolidation initiated by his predecessor.

When the archipelago was eventually returned to the Netherlands in 1816 the reforms introduced by Daendels and Raffles although not complete had already transformed the colonial administration. The most important areas of the archipelago were firmly within the control of the colonial administration. Significant wars of

resistance such as in Sumatra lingered for a number of years, however the Dutch defeated the main areas offering resistance to the expansion of the colonial State within only a few years of their return to the archipelago.

While the Dutch vastly expanded their colonial interests and domination over the Indonesian archipelago, they continued to operate a policy of limited intervention in daily indigenous affairs, which were outside their own immediate colonial interests. This policy was reflected the operation of a number of parallel legal systems operating in an essentially apartheid fashion accompanied by a complex set of rules regulating relations between different groups.

The *Regerings Reglement* 1854, a principle document of the colonial State at Article 75 divided the population of the archipelago into Europeans and Inlanders (non-Christian natives). Although Inlanders initially included Chinese, Arabs and Indians as well as indigenous Indonesians in practice, the latter were treated separately a fact that was later made clear in legislation which defined 'foreign Orientals' separately from the indigenous population.

In effect the Dutch colonial administration established three sets of legal rules, each applicable to respective racial groups. Permeating the entire system was the supremacy of Dutch interests. As such the apartheid nature of the system was applied unevenly. For example, in matters of State security and those involving criminal law Dutch colonial law was applied to all. Similarly in commercial matters involving Europeans, Dutch law was the applicable law.

The interaction of these three different legal systems required the development of a sophisticated set of rules concerning the choice of the applicable law in matters where a legal problem concerned a dispute or between members of different racial backgrounds. This separate body of procedural law was known as *hukum antargolongan* and was demonstrative of the complexities of the Dutch colonial legal system.

3.02 Japanese Occupation

The arrival of the Japanese and the departure of the Dutch saw a simplification of the pluralist legal system established by the Dutch. The Japanese abolished the formal inequality between different racial groups as established by the Dutch, however in practise maintained those features of the Dutch system required to protect their own colonial interests in the archipelago. As such much of the Dutch colonial legal system remained intact. The Japanese had neither the opportunity nor the inclination to replace the entire Dutch colonial legal system. Instead the system was moulded to suit those interests particular Japanese colonial needs.

3.03 The Old Order

Although Indonesia declared independence on 17 August 1945, a formal and legal transfer of sovereignty did not take place until December 1949, after several years of bitter guerrilla warfare and a concerted campaign of international diplomacy. Sovereignty initially rested in the Republic of the United States of Indonesia, a Dutch created State, based upon a federal constitution.

Indonesian nationalists viewed the Dutch inspired federal system with suspicion, considering it to be an attempt to divide nation along ethnic and re ional lines. In consequence the *Konstituante* (Constituent Assembly), in 1950, adopted a unitary State structure, to replace the federal system. Many however viewed the Constituent Assembly as only a temporary body, without the authority to determine such foundational issues. Consequently many questions surrounding the fundamental legal basis upon which the Indonesian State should be founded remained subject to considerable debate.

The 1950 constitution was suspended abruptly in 1959 when President Soekarno, unilaterally dissolved the Constituent Assembly and re-introduced the revolutionary constitution of 1945 that had been in force briefly in the nationalist controlled areas immediately following the declaration of independence. In doing so Soekarno abolished the parliamentary system, and effectively concentrated power in the institution of the Presidency.

The period under the Constituent Assembly and parliamentary democracy proved to be a period vigorous democratic participation in State affairs. However it was also characterised by petty bickering and jostling for power between political parties, as the basis of political unity that had existed during the struggle against the Dutch evaporated and respective parties pursued their own political programmes.

The fledgling Indonesian State chose not to replace the Dutch colonial legal system but rather to add to and reform the system as it had been inherited. However ongoing political squabbles meant that the Constituent Assembly rarely reached agreement on major or minor policy issues. In consequence Indonesia's legal system did not undergo much needed reform and the Dutch colonial legal system, as altered by the Japanese remained largely unchanged.

Following the suspension of the 1950 constitution introduced what he referred to as Guided Democracy and operated between 1959 and 1965. During this period power was increasingly centred in the Presidency and ultimately in the enormous personal charisma and influence of Soekamo himself Government Regulation No 2, 10 October 1945, stated that existing Dutch law was only legitimate if it was in agreement with the 1945 Constitution. Legitimacy essentially became a matter of Presidential discretion, and the role of the judiciary was subordinated to Presidential policy consideration.

In consequence notions such as the *independence of the judiciary* and the *rule of law* were never afforded and opportunity to take root in the political and legal culture of the Indonesian State system. In fact both the judiciary and the legal profession came under sustained ideological attack and retreated in terms of their social significance.

Nonetheless, it remains to be noted that the Guided Democracy period witnessed the development of a culture of radical legal reform, but directed as noted, by the policy decisions of the Presidency, rather than a healthy legislature, independent judicial reasoning and the demands of a healthy legal profession. Radical law reform, or *hukum revolusi*, which predominated during the Guided Democracy period and was motivated by nationalist political sentiment, sought to establish an intrinsically Indonesian basis upon which to found future legal development.

3.04 The New Order

Following the events of 1965 leading to the usurpation of power by Soeharto, the legal atmosphere of hukum *revolusi* was brought to an abrupt end. The rhetoric of *hukum revolusi* was replaced by New Order rhetoric about *rule of law*. New Order *rule of law* rhetoric was motivated by the new regimes efforts to establish its legitimacy in terms of the restoration of stability and legality, in contrast to the political and economic instability which characterised the last years of the Old Order.

In fact the New Order continued to operate in the manner of the Guided Democracy period. The legislature, and the judiciary remained subordinated to the executive based around the Presidency. As the New Order consolidated it hold on power, backed by military violence, the centralisation of power around the Presidency became increasingly absolute.

The New Order relied increasingly extensive executive power, free from independent legislative and judicial scrutiny, to grant commercial monopolies to key military functionaries, Chinese business associates and the family and allies of the President, in exchange for ongoing political military support for the regime.

Under such circumstances the legal system was not afforded the opportunity to recover from the Guided Democracy period. In fact the legal system became increasing characterised by uncertainty and politically motivated decisions and judicial corruption.

In addition the New Order's security approach towards ensuring stability, neutralising political dissent and promoting development saw the ongoing expansion of extra-constitutional intelligence and security

organizations. This process was accompanied by systematic human rights abuses and declining respect for the integrity of the individual.

The decline of oil prices in the late 1980's which left Indonesia vulnerable to foreign demands for greater economic liberalisation in exchange for capital investment witnessed limited law reforms, principally in the area of commercial law, and only to the extent that no significant threat emerged to commercial monopolies controlled by the regimes supporters.

3.1 State, civil society relations and the place of human rights under the New Order

By the time of Soeharto's resignation Indonesia had experienced almost forty years (from the introduction of Guided Democracy in 1959 until 1998), of rule concentrated in the executive. While under Soekarno the legislative and judicial branches of government were emaciated, under Soeharto they were enslaved to the needs of the executive.

As such neither the executive nor the legislative arms of government were in a capacity to act as a check on the exercise of executive power. As such the executive was experienced extensive freedoms in its relationship with civil society and acted with impunity, especially when executive power or interests were challenged.

Olle Tornquist described the New Order Indonesian state as a rentier capitalist state in the terms of its relationship to the domestic means of production. Tornquist argues that functionaries within the New Order State extracted rents for access to natural resources, services and key areas of production, which it monopolised with the assistance of military violence. In the Tornquist model confirms the subjugation of the legal system to the executive and goes on to observe that it acts as both an element and a tool for the reproduction of this system.[11]

The legal system served to reinforce the domination of the executive by upholding laws that support its continuation while at the same time legal functionaries, (judges, court clerks etc), themselves extract rents for the provision of their services (guaranteed favourable judgments, favourable court listings and other forms of corruption).

Richard Tanter while agreeing with this characterisation, adds that the domestic rentier character of the state is made possible by the rentier character of the Indonesian state in terms of its relationship to the international economic and political economy. He sites the States monopolisation of oil revenue and its control of aid and foreign loans as examples of the States rentier characteristic at the level of its participation in the international economy. He argues that domestic rentier behaviour has only been made possible by the New Order States international rentier relationships.[12]

This international characteristic becomes important in determining the limits of the States rentier behaviour as the State is confined by the internationally imposed limitations. The international rentier character of the State has given the State a degree of autonomy from domestic class forces. However, as International rents decline, the Indonesian State comes under increasing pressure form domestic forces. In the context of such pressures the legal system itself can also experience diminished autonomy and become and arena of real political challenge.

[11] Tomquist, 011e, *Rent Capitalism, State and Democracy, a theoretical proposition,* in Budiman, Arief, (ed.), Reformasi, Crisis and change in Indonesia, Monash University, Clayton, 1999, page 29 -45

[12] Tanter, Richard, Oil, IGGI *and US Hegemony, the global preconditionsfor Indonesian Rentier Militarization,* in Budiman, Arief, (ed.), Reformasi, Crisis and change in Indonesia, Monash University, Clayton, 1999, page 51 - 79

These observations become important when positing human rights law in the context of State Civil society relations. The domination of the State by the executive and the relative class autonomy of the State for most of the of Soeharto's rule helps to explain the absence of respect for human rights and their frequent abuse by the Soeharto administration. It explains the inability of the judiciary to defend such rights and their complicity in upholding the legitimacy of State violence.[13]

The Tanter model also helps to explain how under circumstances of decreasing international rents and increased pressure of greater economic openness by international capital reduced the class independence of the Indonesian State. In this context those class forces with an interest in political change in Indonesia seized upon human rights as one of a number of demands that were expressed outside and insider the New Order State.

Human Rights emerged as one of the key areas in demand of political change because it reflected the inequalities of the relationship between those who dominated the State through the executive and backed by the military in a manner more sharp than most. In addition there existed a coincidence between demands for democratic change and most basic human rights, for example the right to a fair trial or the right to freedom of association.

3.2 Human rights and the State in post-Soeharto Indonesia

While the post Soeharto period has been characterised by dramatic changes in political culture and many sincere attempts towards legislative and legal reform, many of the New Order's State institutions remain in tact. In addition many influential figures from the new order continue to monopolise entrenched political and economic interests via which they exercise continued political influence.

Efforts to reform the Indonesian legal system, especially with respect to human rights have moved largely from direct confrontation with executive power, to struggles within the legislature, executive and to a more limited extent the judiciary.

The Indonesian State is currently in a period of transition; it is hoped towards a more democratic and open economic system. Without denying the significance of the reforms already introduced, many aspects f the New Order State remain characteristic of the Indonesian State today. The influence of New Order forces over the contemporary Indonesian State, approximately three years after Soeharto's resignation are evident when assessing the successes and failures with respect to human rights law reform and enforcement in the post Soeharto period.

Chapter 4 - Human Rights enforcement and law reform in post-Soeharto Indonesia

4.0 Sources of human rights law under Indonesian law

During the New Order period one of many problems facing human rights activists was the limited legal protection afforded to human rights. Until recently the sources of legal authority in Indonesian law for the protection and maintenance of human rights remained uncertain and were not formulated in a cohesive manner. This resulted partly as an historical legacy and partly as a result of the omissions of the New Order State.

As such human rights activists and lawyers, looking for a legal basis upon which to defend human rights principles were armed only with limited references to individual rights in the 1945 Constitution, some legislative

[13] Perhaps one of the most obvious examples of judicial complicity in State sponsored human rights abuses was the series of political trials that followed the 1996 attack on the Partai *Demokrasi* Indonesia offices in 1996. In these trials the victims of the attack were placed on trial while the perpetrators of the attack were presented as victims. See Jakarta Crackdown, ISAI, AR, FORUM ASIA, Jakarta, 1997

instruments and limited international human rights instruments, insofar as Indonesia was a signatory of those international instruments, had ratified them and produced implementing legislation.

4.00 The Indonesian Constitution

During the drafting of the *Undang Undang Dasar 1945,* (the 1945 Constitution), debate over the inclusion of specific reference to human rights emerged in the context of debates about the nature of the Indonesian State.

Soekarno argued that Indonesia was to be a State based on the concept of *"keluargaan, gotong royong dan tolong royong ".*[14] These ideas of Statesmanship have more recently been referred to as the integralist state, an all-inclusive state based on the notion of family under the guide and care of a paternal figure.

While Muhammad Hatta agreed with the notion of *keluargaan,* he also argued that citizens needed to have their rights vis a viz the State protected in order to prevent the State becoming oppressive. Soekarno countered that the concept of *keluargaan* automatically included such individual guarantees.

Despite no specific reference to human rights in the originally drafted 1945 Constitution a number of references to specific individual rights were, at least formally, guaranteed.

Article 28 *(Pasal 28),* of the 1945 Constitution protects freedom of association and to express ones views. It states that:

"kemerdekaan berserikat dan berkumpul, mengeluarkan pikiran dengan lisan dan tulisan dan sebagainya ditetapkan dengan undang undang." [15]

Meanwhile Article 27, subsection 1, states that:

"semua warga negara bersamaan kedudukannya dt dalam hukum dan pemerintahan dan wajib menjunjung tinggi hukum dan pemerintahan itu dengan tidak terkecuali." [16]

Freedom of religion is, in theory, secured by Article 29, subsection 1, which states that *"negara berdasarkan atas Ketuhanan yang Maha Esa* " [17] ' and subsection 2, which continues, *"negara menjamin kemerdekaan tiap-tiappenduduk untuk memeluk agamanya masing masing dan beribadah menurut agama dan kepercayaannya itu."* [18]

The right to work and the right to basic standards of living are guaranteed by Article 27, subsection 2, which states that *"tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan."* [19]

Finally Article 3 1, subsection 1 states that *"tiap tiap warga negara berhak mendapatkan pendidikan dan pengajaran*",[20] while subsection 2, states that *'~pemerintah mengusahakan dan menyelenggarakan suatu system pendidikan dan pengajaran nasionalyang diatur dengan undang undang"*[21]

Despite the presence of such Constitutional guarantees, in reality the practical subjugation of the judiciary to the executive under the New Order meant that such Constitutional guarantees never operated as an effective source of legal protection against human rights abuse.

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[14] Op.cit, Pinto, Julio Tomas, at page 4
[15] In English, 'Freedom of association and to express views orally and in writing is secured by the constitution'
[16] In English 'All citizens are equal before the law and government and must respect the law and the government
[17] In English "The State is based upon God the all-powerful".
[18] In English "The State guarantees every citizen freedom of religion and the freedom to practise religion in accordance with their religious beliefs".
[19] In English "Every citizen has the right to work and a basic standard of living.
[20] In English "Every citizen has a right to education'
[21] In English "The government will endeavour to organise a national education system in accordance with the Constitution

Following the resignation of Soeharto in 1998, the legal sources of law available to protect human rights and punish those breaching have expanded. Such additional sources of human rights law includes the inclusion of a human rights chapter in the 1945 Constitution and the signing and or ratification of a number of important international human rights treaties. In addition a number of important reforms have been introduced with respect to the protection of human rights and the enforcement of punishment.

4.1 Human Rights related reforms

4.10 The Habibie government's initial reforms

Following the resignation of Soeharto in 1998, the Habibie government appeared to adopt a more conducive stance towards human rights law reform, and protection. Upon assuming office the Habibie administration immediately announced that it would undertake a program of human rights reform, electoral reform including bringing forward NIPR/DPR and Presidential elections, and reform of the State apparatus. To be sure, the Habibie administration remained dominated by Soeharto's allies, but nonetheless prevailing public opinion, expressed in social unrest, required at least a modest reform program.

The Habibie administration set about signing and or ratifying a number of International Conventions (see below), and revoking some of the more excessive legislation of the Soeharto era (examples include law with respect to the Press, public demonstrations, subversive activities etc). While such moves were uneven, and often incorporated attempts to preserve restrictive laws by moving them to other legislative instruments, the overall pattern of reforms favoured a more open and democratic political environment.

In August 1999 the Habibie administration signed a memorandum of understanding with the United Nation High Commissioner for Human Rights (UNHCHR) regarding "cooperation in the development and implementation of comprehensive programs for the promotion and protection of human rights in Indonesia."

Throughout 1998 and 1999 the Habibie government continued to release political prisoners, while the numbers of people arrested and charged for ostensibly political reasons fell dramatically in relation to previous years.

In addition the armed forces launched a number of inquiries into its own human rights violations, most notably into the killings of students at Trisakti University in May 1998, the shooting of students and demonstrators at Atma Jaya University in November 1998 and the kidnapping of NGO and student activists during 1997 and 1998.

Unfortunately such military inquiries resulted in the punishment of no senior officers, ignored important facts, and whitewashed essential issues. However, the fact the military leadership felt it necessary to undertake such inquiries in the first place, when in the past they had not, (Tanjung Priok etc), further confirmed the militaries defensive political position. Rather than quell demands for justice, inadequacy of such inquiries served to further undermine the militaries position, legitimise calls for justice and add momentum to the reform movement.

4.11 Signing of international treaties

Amongst the Habibie government's human rights initiatives was the announcement of a commitment to sign and or ratify a number of international human rights instruments.

In July the Habibie administration signed the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.* While the signing of the convention may not have directly prevented the use of torture against political and criminal prisoners, it did provide a further legal basis upon which to legally defend such rights.

The Habibie govermnent also committed itself to a *Memorandum of Understanding* with the United Nations High Commissioner for Human Rights (UNHCHR). The memorandum committed the government to developing comprehensive programs for the promotion and protection of human rights.

In accordance with the memorandum the DPR passed a decree in November 1998 calling on all government institutions to observe and protect human rights and for the government to continue to review, sign and seek ratification of important international human rights conventions. In addition the Habibie government began the process of publishing a series of educational documents for use by government agencies and educational facilities to increase public awareness of human rights issues. In April 1999 the Habibie administration signed the *International Convention on the Elimination of All Forms of Racial Discrimination.*

The Wahid government has stated a continued commitment to the signing and ratification of international human rights instruments. It is hoped that the establishment of the Ministry for Justice and Human Rights will result in an ongoing and co-ordinated approach to the signing and ratification of further international human rights instruments. The Wahid administration has to date however not signed or ratified additional international instruments.

4.12 The establishment of human rights courts

During 1999 the government of then President B. J. Habibie introduced the *Law on Human Rights and the National Commission on Human Rights.* The same government introduced supporting regulations proposing the establishment of a human rights court. In December 1999 the government of then President Abdurrahman Wahid, put the previous administration's regulations before the legislature but in an unusual move requested that the legislature reject them, promising instead to introduce more functional regulations.

The Wahid administration argued that the Habibie regulations had established human rights courts within the District Court structure that would thus be susceptible to military intervention (especially by the use of military judges in the District Court system). As such the new administration submitted regulations proposing human rights courts be administered by Provincial Courts and supervised by the Supreme Court, with the capacity for ad hoc expert judges to be called upon as required.

The government on 5 June 2000 eventually proposed the new regulations. Importantly, the new regulations did not include a time limit on jurisdiction, thus allowing for retrospective application of the regulations for the trial of those accused of committing human rights abuses prior to the regulations operation. In such cases the regulations proposed the establishment of an ad hoc investigation and the establishment of an ad hoc court.

Despite the passing of regulations the process of implementing the establishment of human rights courts has been slow and beset by additional complications, not least ironically, the proposed inclusion of a Human Rights Chapter in the 1945 Constitution.

4.13 Inclusion of a Human Rights Chapter in the 1945 Constitution

In August 2000 the People's Consultative Assembly (MPR), proposed the inclusion of a Human Rights Chapter in the 1945 Constitution. The proposed Chapter consisted of an additional 10 Articles and received overwhelming support from all DPR factions.

The proposed Chapter initially received support from prominent human rights activists such as Todung Mulya Lubis, who argued that the proposed Chapter offered better protection for human rights than the conditional human rights provided by the 1945 Constitution as it was then drafted.

A more cautious approach was adopted by prominent human rights lawyer and Chairman of the Commission for Missing Persons and Victims of Violence (KONTRAS), Munir, who pointed out that the proposed Chapter allowed for protection from application of retrospective legislation.

The proposed Chapter at Article 28I (1), provides " ... *the right not to be prosecuted based on a law which can be applied retroactively"* is a *"human rights which cannot be diminished under any condition."*

Munir argued that the inclusion of this phrase in the proposed Chapter would provide a Constitutional basis for defeating attempts to hold those accountable for previous human rights abuses and render the retrospective aspect of the government's proposed Human Rights Courts inoperable.

In support of this argument Munir pointed out that the Indonesian Criminal Code (KUHP), which would not need to be applied retrospectively was an in effective instrument for dealing with severe human rights abuses, as it does not specifically provide for protections against crimes against humanity such as slavery, torture and genocide. Any attempt to prosecute these crimes would have to be based on new legislation and thus applied retrospectively.

Others such as Todung Mulya Lubis, and Hendardi of the Indonesian Legal Aid and Human Rights Association (PBHI), argued that the Constitutional provision would not be used to defeat such fundamental human rights abuses. No legal opinion or argument was offered however, as to how such a Constitutional defence could be defeated.

It was also later revealed that the inclusion of the controversial Article was the suggestion of the Indonesian Military (TNI)/Police faction, raising further suspicions about the motivation for its inclusion.

4.14 Establishment of ad hoc human rights courts

In addition to ongoing efforts to establish a permanent human rights court within the existing court structures, a number of important ad hoc courts have been established to try matters pertaining to particular human rights abuses. While generally viewed as a step forward in the efforts to hold those responsible for human rights abuses accountable, such ad hoc courts have also come under criticism.

Most notably the Wahid governments decision to establish an ad hoc court to try cases arising from reports held by the Attorney General's Office (AGO), with respect to East Timor and Tanjung Priok. The proposed court was eventually established by Presidential Decree No. 53, pursuant to Law 26/2000 on 23 April 2001.

Human rights activists were particularly concerned to note that despite reports held by the AGO which clearly highlighted major human rights abuses prior to the 30 August 1999 East Timor referendum, the courts jurisdiction was limited to events after this date. As such at least two incidents remained outside the courts jurisdiction.

Human rights activists remained even further perturbed by the fact that no senior military officers have been named as defendants by the AGO, despite clear evidence of complicity, (including such senior figures as General Wiranto), in such rights abused held by the Attorney Generals office.

4.15 Separation of the judiciary from the executive

The struggle to guarantee human rights by legal means assumes to some extent the existence of a functioning and independent judiciary capable of enforcing laws against individuals, organizations and most importantly against the other organs of government. In the Indonesian context, as noted above, the judiciary has experienced many long years of domination by the executive arm of government. Separation of the judiciary from the executive, nurturing and independent and professional culture and stamping out rampant corruption remain important pre-conditions for the protection of human rights in Indonesia.

This is true in two respects. Firstly, in the narrow sense that many basic civil and political rights relate directly to the individuals right to a fair trial (see below). Secondly, in the broader sense that judicial protection of other human rights remains impossible in the absence of a independent, professional and non-corrupt judiciary.

Formal separation of the Indonesian judiciary from the executive began in August 1999 when legislation passed the DPR under the then Habibie government. Parliament passed and President Habibie signed a law providing for the gradual transfer of administrative and financial control over the judiciary from the Department of Justice to the Supreme Court over a period of 5 years. However, judges currently are civil servants employed by the executive branch, which controls their assignments, pay, and promotion. Low salaries encourage widespread corruption, and judges are subject to considerable pressure from governmental authorities, which often exert influence over the outcome of cases.

4.16 Separation of the police from the military

In February 2001, Minister of Justice and Human Rights, Baharuddin Lopa sent a new police law to the DPR with a view to replacing Police Law No. 28/1977. The new law proposed that the police no longer be responsible to the Minister of Security and Defence and the Commander of the Indonesian Military (usually the same person during the Soeharto era), but directly to the President as with other public servants, in accordance with MPR Stipulations Nos. VI and VII/2000.

The legislation further altered the fundamental role of the police as previously defined. In the past the police were responsible for "security" and "defence". According to the new legislation the police are to assume a security role, not a defence role, which will remain the prerogative of the Indonesian military.[22]

The separation of the Indonesian police from the Indonesian military is the first step in removing the Indonesian military from the security affairs of the State, and thereby the political affairs of the nation. It is hoped that such a change will be accompanied by a less militaristic approach to "security" affairs, and thereby lead to an improvement in the State's human rights record.

Placing the National Police in the front line of security affairs has however highlighted the need for professional reform of the force. KONTRAS reported that during the first 11 months the year 2000, the police were responsible for 872 serious human rights violations nationwide, the bulk of them in Aceh province. Police violations included 26 instances of forced disappearance, 140 extrajudicial killings, 408 cases of torture or inhumane treatment, and 298 arbitrary detentions.

While separating the police from the military and placing the police at the front line of security affairs may bring a civilian face to security affairs, it will not improve human rights violations unless accompanied by a program of demilitarisation of the force's internal culture and practises. The National Police force will fail the human rights test without a thorough program of professional training and support. Failure to provide such support is also tantamount to inviting the military back into national security affairs.

Ongoing tension between the National Police and the military was acutely visible during ethnic violence between Dayaks and Madurese in February 2001 in Sampit, Kalimantan. Police and military units who were both deployed to quell the violence openly clashed with each other and had to be deployed in different separate locations.

This prompted criticism by the military leadership of the National Police and their capacity to deal with Indonesia's security affairs. In March army chief of staff Gen. Endriartono Sutarto noted publicly that the army would assume responsibility for security affairs if the National Police proved incapable of preventing further security deterioration.[23]

[22] *Independence equals Professionalism? ", TEW01* February 27 - March 6, 2001, at page 50
[23] *"TNI may take control of security affairs",* The Jakarta Post 13 March 2001

4.17 The abolition of BAKORSTANAS

The *Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional (BAKORSTANAS),* which replaced the former *Kontando Operasi Pemulihan Keamanan dan Ketertiban (K0PKAMTIB)* was an intelligence and operations organisation established within the Ministry of Defence charged with responsibility for the maintenance of stability and order.[24]

BAKORSTANAS operated as a non-judicial, organisation with extraordinary powers, which allowed it to intervene in events almost anywhere and at anytime. The organisation acted with impunity and in the course of its existence was responsible for the extra-judicial arrest, imprisonment and torture of numerous political opponents of the New Order regime. Significant evidence also exists of the organizations involvement in extra-judicial executions.[25]

In March 2000 President Wahid signed a Decree BAKORSTANAS. The abolition of BAKORSTANAS was an important step in bringing the military closer to civilian control. Further the abolition of such extra-judicial agencies is likely to improve the militaries human rights record by removing the impunity with which such organizations operated.

4.18 The empowerment of the Attorney General's Office (AGO) & the establishment of a Ministry of Justice and Human Rights

Empowerment of State agencies that functioned in little more than a rubber stamp capacity during the Soeharto period has also proved an important element in the State's capacity to investigate and prosecute human rights abuses.

In November 1999 the Wahid government appointed Marzuki Darusman as Attorney General. Numerous human rights investigations have now been reported to the AGO which has then been responsible for the appointment of prosecutors and the beginning of trial proceedings. This process combined with the establishment of human rights courts also aims to make military activities accountable to civilian courts.

Despite reform of the AGO and its active role in human rights prosecutions the AGO has continued to lack public credibility and has frequently been accused of dragging its feet and avoiding prosecution of influential New Order figures.

In response the AGO conducted an independent audit of its structures and procedures financed by the Asian Development Bank- Subsequently the AGO announced the formation of a "Reform and Restructuring Team", to be headed by Deputy Attorney for Career Development Affairs, Suparman and prominent lawyer and human rights advocate Todung Mulya Lubis.[26]

Reforms include the proposal of legislation for future Attorney Generals to be appointed by the DPR, instead of the President, in an effort to further secure the professional independence of the AGO and changes of to the selection of prosecutors to ensure their professional and legal competence.

In addition the Wahid government has elevated the priority of human rights as an executive concern by creating a State Minister for Human Rights. Elevating human rights to Ministerial level means that it will remain a permanent issue on the mind of cabinet and thus hopefully an area of ongoing conscious governmental attention.

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[24] Lubis, Todung Mulya *"Ihe Rechtsstaat and Human Rights':,* in Lindsey, Timothy (ed.), Indonesia Law and SgpLety, The Federation Press, 1999, at page 180

[25] Ibid., at page 180

[26] *Marzuki determined to reform Attorney General's Office ",* The Jakarta Post, 8 March 2001

4.19 The strengthening of KOMNAS HAM

Since the resignation of Soeharto in 1989 a number of important reforms have been introduced that have strengthened the role of KOMNAS HAM as the national independent investigator of human rights abuses.

In September 1999 the Habibie government introduced and the DPR approved legislation which increased the number of members sitting in the commission and replaced secured the ongoing basis of the commission by providing it with a legislative basis to replace the founding Presidential Decree that had established the commission. In doing so the KOMNAS HAM effectively received an additional security of autonomy and freedom from executive control.

Perhaps more importantly with respect to the day-to-day workings of KOMNAS HAM, the Habibie legislation also granted the commission subpoena powers for the first time, increasing its effectiveness as an investigative body.

During the Wahid administration KOMNAS HAM has also been empowered to seek immediate clarification from the AGO with respect to the progress of human rights prosecutions. This important additional power introduces a degree of accountability in the prosecution of human rights cases by the AGO, which it is hoped will lead to an improvement in the performance of the AGO and prosecutors with respect to human rights cases in the future.

4.2 Reform and the protection of specific human rights

Despite the many legal and structural reforms introduced human rights continues to be an issue of major concern in Indonesia. Despite heightened consciousness about human rights issues across many levels of Indonesian society, Indonesia's human rights record has been uneven. While there have been improvements with respect to some areas, others remain unchanged or have even worsened.

The following section attempts to make a brief assessment of Indonesia's human rights record with respect to specific political and civil rights that form the basis of protection for most other human rights.

4.20 Denial of Fair Public Trial

The right to a fair public trial is a foundation human right. The protection of many other additional human rights depends to some extent on the right to due process in legal procedure. The Indonesian judicial system suffers many limitations, which impede its ability to protect and arbitrate human rights in the country.

While the 1945 Constitution provides for the independence of the judiciary, in practice the judiciary remains subordinated to the executive and the military. Pursuant reforms instituted in 1999 a gradual transfer of administrative and financial control over the judiciary from the Department of Justice to the Supreme Court is taking place over a period of 5 years. However, judges currently are civil servants employed by the executive, which controls their assignments, pay, and promotion. Low salaries encourage widespread judicial corruption, and judges are often subject to considerable pressure from governmental authorities, which often exert influence over the outcome of cases.

In addition the right to a fair public trial is impeded numerous limitations in the *Kitab Undang-Undang Hukum Acara Pidana (KUHAP),* Indonesia's code of criminal procedure.

Investigations

Article 102(1) and 106 of the KUHAP provide that the National Police must have "reasonable suspicion", that a crime has been committed. However, this provision is rendered useless by the fact that there is no provision for judicial review of this requirement and no sanction if it is violated. This means that in practice investigations may be conducted with or without reasonable suspicion that the law has been breached.[27]

Pre-Trial Procedures

The KUHAP provides for a pre-tnial hearing to determine if the arrest and detention of an accused has been made legally at Articles 77-83. Should such a hearing find that either arrest or detention is illegal then the suspect is to be released with compensation.

Such a procedure appears to protect the rights of the accused, however in practice it has served to hide human rights abuses. The court may only hear matters in relation to the lawfulness of the arrest or detention. Abuses under arrest or detention are to be filed with the police, the same body that would be responsible in most cases for such abuse. Secondly the procedure means that such complaints are only available as a pre-trial procedure and cannot be raised in the trial itself. Further there is no capacity to compel arresting officer or those responsible for detention. The police routinely fail to appear until such time as trial procedure begins. Once the trial begins the pre-trial procedure is no longer available. Finally arrests are frequently made by the military. The military does not have authority to make arrests under the KUHAP and thus the validity of such an arrest is not judicially reviewable under the pre-trial procedure.[28]

Legal Assistance

Free legal aid is made available to only those crimes carry a penalty of five years or more at Article 56. Article 55 establishes the right to legal assistance of ones choosing, excluding where free legal aid is granted. Legal advisors are also given the right to access their clients at any time under Articles 69 and 70. However the Ministry of Justice, during the New Order interpreted this as "at any time during office hours." Thus many interrogations were held outside of normal office hours to prevent legal advisors being present.[29]

Further still, there is no obligation for the National Police to inform the accused of their right to legal assistance. Further still in many rural areas there simple is no legal adviser available to observe police procedures.[30]

Trial Procedure

Article 66 of the KUHAP states that an accused "shall not be burdened with the duty of giving evidence." However Article 175 states that if the accused refuses to answer a question the chairman of the court can suggest that the accused answer, after which the examination will continue. As such the right to remain silent is not guaranteed by the KUHAP. In fact in a social context where deference to authority is normal, such a suggestion by the chairman of the court would persuade the majority of defendants to answer.[31]

This problem also arises where defendants who are party to the same case are tried separately. The defendant in one trial is permitted to be called as a witness in the trial of a co-defendant. This evidence is often used against the defendant in his or her own trial. Worse still the defence is prohibited access to material given in another trial, thus compounding the impact on the defences case.

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[27] Fitzpatrick, Daniel *"Culture, Ideology and Human Rights "*, in Lindsey, Timothy (ed.), Indonesia Law and Society, The Federation Press, 1999, at page 344
[28] Ibid., at page 346
[29] Ibid., at page 346
[30] Ibid., at page 347
[31] Ibid., at page 349

Nonetheless the KUHAP does guarantee, on paper a number of basic rights such as the presumption of innocence (Article 66), the right to be present in person at trial (Articles 52 and 154), and the right to be tried "immediately". [32]

Special Crintinal Laws

The safeguards that are contained in the KUHAP are nonetheless sidestepped by special legislation relating to specific types of crime, which establish a myriad of exceptions. Examples include the Anti-Subversion Law (now repealed), Anti-Corruption Law, the Narcotics Law and the Economic Crimes Law.

Both the Anti-Corruption Law and the Narcotics Law have both been the subject of heated public discussion recently concerning the proposal to reverse the "burden of proof", with respect to such crimes, a principle usually held to be a fundamental aspect of a fair trial.

4.21 Freedom of Speech and Press

The 1945 Constitution was substantial strengthened in 1999 by the inclusion of the human rights chapter, which provides for freedom of the press and freedom of speech. In 1999 the DPR also enacted a Press Laws that provides for freedom of the press, prohibits censorship, and prescribes penalties for anyone who violates these rights. However, the law requires the press to report events and opinions "with respect to religious and moral norms of the public," and to adhere to the presumption of innocence. Press companies that violate this provision can be fined up to Rp.500 million.

The 1999 Press Laws also established a Press Council to create and enforce a code of journalistic ethics. The Council consists of journalists nominated by journalist associations, representatives of press companies, and public figures nominated by journalists and press companies. President Wahid signed a decree in May that appointed members of the Council.

The Wahid government also abolished the Department of Information in 1999, which had been used to censor the press extensively during the Soeharto period. Since its abolition most editors believe that the Government no longer requires a license to publish a newspaper or magazine because there no longer is a controlling body to receive reports.

The government requires radio stations to issue four government news broadcasts a day. Many radio stations have however reduced this to one broadcast per day. Most radio stations now produce their own new broadcasts, which are candid and critical of government and other social organizations.

In addition the government has pursued an open sky policy with respect to television and satellite broadcasts entering Indonesia.

4.22 Freedom of Peaceful Assembly and Association

The Habibie government promulgated laws in 1998 that require police notification three days before the organisation of public demonstrations, representation for every one hundred demonstrators and ban the holding of demonstrations outside or near many public buildings. Demonstrators have rarely complied with the law and it has rarely been employed to arrest demonstrators. Despite this the government continues to use force, often deadly force to disperse demonstrators.

Despite the guarantee of freedom of Association in the 1945 Constitution, the 1985 Social Organizations Law (ORMAS) requires the adherence of all organizations, including recognized religions and associations, to the official ideology of Pancasila. The official status of this law remains unclear, but it has rarely been invoked in the

[32] Ibid., at page 348

post Soeharto period and in practice most organizations act in accordance with their own ideological beliefs even if formally abiding by Pancasila.

Nonetheless the 1999 Law on Crimes Against the State prohibits the formation of organizations that "are known to or are properly suspected" of embracing the teachings of Communism, Marxism and Leninism in all its forms and manifestations. Nonetheless literature pertaining to such ideas is freely available in many bookshops.

4.23 Political and Other Extrajudicial Killing

Historically, politically-related extra-judicial killings have occurred most frequently in areas where separatist movements have been active, such as Aceh, Irian Jaya and East Timor, where the military and National Police continue to employ often extra constitutional methods. In addition security forces have killed unarmed demonstrators, and there are numerous instances of reported extra-judicial killings by security forces in cases involving alleged common criminal activity.

The heightened aspirations of independence amongst a number of separatist movements on Indonesia and renewed efforts to suppress such movements by both the military and the National Police have lead to numerous extra-judicial killings of separatists and security personnel.

In addition the emergence of ethnic conflicts in Kalimantan, Sulawesi and the Maluku Islands has resulted in additional loss of life. Such conflicts have further complicated the ability of the State to guarantee the human right to life. The number of groups actively carrying out extra-judicial killings and the reasons behind such killings is vastly more complicated than during the Soeharto era.

Meanwhile the States own efforts to prevent further abuses of power by its security apparatus has remained slow. Investigations into the killings of protestors and students at Trisakti University, Atma Jaya University and numerous other examples have remained stalled or sluggish at best. Few such events have lead to prosecutions and where prosecutions have occurred, senior political and military figures implicated by evidence have not been charged.

4.24 Disappearance

According to a report issued by the Committee for Missing Persons and Victims of Violence (KONTRAS), 843 persons still are missing as a result of military operations, land disputes, and political and religious activities over the past 20 years.

Most of those reported as missing continue to be from areas were separatist movements are active such as Aceh, Papua and in the former province of East Timor. The rate of disappearances remains alarmingly high. In Aceh KONTRAS reported that in the year 2000, there were 53 cases of forced disappearance involving 69 persons. In addition there remained unanswered reports of disappearances of people from Biak, Irian Jaya in July 1998 after navy and police forces broke up a pro-independence demonstration. Shortly after the event 32 bodies washed ashore, but have remained officially unidentified.

There were no developments in the case of 12 persons who disappeared (and are presumed dead) in Java during a series of kidnappings of opponents of the Soeharto regime carried out by Army Special Forces (Kopassus) personnel in 1997 and 1998. Police have however reopened the investigation into the 1996 PD1 incident in which 16 persons disappeared, and submitted cases to the Attorney General's Office. No new information emerged on the fate of the 16 missing persons to date however.

4.25 Torture and other Inhuman or Degrading Treatment or Punishment

Under the KUHAP it is a crime punishable by up to 4 years in prison for any official to use violence or force to elicit a confession. The KUHAP also provides at Article 50 that a suspect must be interrogated immediately after arrest and that a suspect be informed of what is suspected of him or her. Further still, statements must be given without pressure at Article 117 and 52. Refusal to sign a statement must be recorded in a police report and the reason for refusal included.

In practice legal protections are both inadequate and widely ignored. Both the National Police and the military forces continue to employ torture and other forms of mistreatment, particularly in regions where there were active security concerns, such as Aceh and Irian Jaya. Police also often resort to physical abuse, even in minor criminal incidents. Compounding such problems is the fact that the KUHAP does not give judges any means by which to exclude illegally obtained evidence. Such practices continue despite the signing of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* by the Habibie administration.

4.26 Arbitrary Arrest, Detention, or Exile

The KUHAP contains provisions against arbitrary arrest and detention, but it lacks adequate enforcement mechanisms, and authorities routinely violate it. The code specifies that prisoners have the right to notify their families promptly and that warrants must be produced during an arrest except under specified conditions, such as when a suspect is caught in the act of committing a crime. The law authorizes investigators to issue warrants to assist in their investigations or if sufficient evidence exists that a crime has been committed. However, authorities sometimes made arrests without warrants and backdate warrants at time of trial. There is the notion of unlawful arrest, but there is no notion that an unlawful arrest taints a later trial proceeding.

Under the KU11AP, pretrial detention is limited to those crimes that carry a penalty of five years imprisonment or more. In all other cases suspects must be released within one day of arrest. Police may detain a suspect before trial for up to 20 days. This is a serious deficiency as it allows the police to pressure suspects with threats of detention. Detentions may be extended before up to a period of 90 days under the authority of judges, chairman of the district court or prosecutors.

In practice unlawful arrests have continued especially in separatist areas of the country. Ironically the military often makes arrests. As they have no authority to do so under the KUHAP, a military arrest is not an arrest under the KUHAP and thus there is no provision under which to complain about its legality. As note above the security agency BAKORSTANAS, which was abolished by the Wahid government, was responsible for routine extra-judicial arrests and detention.

4.27 Arbitrary Interference with Privacy, Family, Home or Correspondence

Although judicial warrants are required to enter and search premises pursuant to an arrest in practise the security forces have routinely entered property, searched and removed property. Security forces routinely monitored the activities of political opponents during the Soeharto era. While such practices have declined since Soeharto's resignation, such practices undeniably continue.

4.28 Freedom of Religion

The 1945 Constitution provides for religious freedom for members of five out of six officially recognized religions and belief in one supreme God. The government generally respects these provisions; however, there are some restrictions on certain types of religious activity, including unrecognized religions.

The law states that the Government "embraces" Islam, Protestantism, Catholicism, Buddhism, Hinduism, and Confucianism. Presidential Decree 6/2000, promulgated in January, repealed the ban on the practice of Chinese religion (Confucianism), its beliefs, and its customs (Presidential Decree 14/1967). After the January passage of Presidential Decree 6/2000, Confucians were permitted to celebrate publicly the Chinese New Year for the first time in over 30 years. A Ministry of Interior Circular (No. 477/805), issued in late March, permits Confucianism to be listed as a religion on marriage license applications, allowing Confucian marriages to be recognized and registered officially in the country.

While the law formally "embraces" only these religions, it explicitly states that other religions, including Judaism, Zoroastrianism, Shintoism, and Taoism are not forbidden. The Government permits the practice of the mystical, traditional beliefs of *"Aliran Kepercayaan."* Some religious minorities, including the Baha'i and Rosicrucians, were given the freedom to organize in May when Presidential Decree 69/2000 revoked Presidential Decree 264/1962, which had restricted their activities.

A 1976 decision by the Attorney General, reinforced by a separate decision by the same office in 1978, banned Jehovah's Witnesses from practicing their faith. Open practice of the faith remains banned, and members report that they continue to experience difficulty registering marriages, enrolling children in school, and in other civil matters. Jehovah's Witnesses claim that Trinitarian Christians instigated the Government bans. Mainstream Christian leaders have influenced government policy to be biased against more conservative Christians.

A proposal to implement Islamic law failed to gain the MPR approval in August. President Wahid voiced strong opposition to the proposal, arguing that its implementation would threaten national unity.

The legal requirement to adhere to Pancasila extends to all religious and secular organizations. Because the first tenet of Pancasila is belief in one supreme God, atheism is forbidden. Although individuals are not compelled to practice any particular faith, all citizens must be classified as members of one of the officially recognized religions. As this choice must be noted on official documents, such as the identification card, failure to identify a religion can make it impossible to obtain such documents.

Despite relative tolerance, religiously based violence has broken out across the country since the collapse of the New Order regime.

Chapter 5 - Conclusion

In conclusion, Indonesia's human rights record since the resignation of Soeharto is contradictory. On the one hand there has been an overall improvement in the genuine efforts of the State, especially the executive, towards making genuine efforts to improve the human rights record in the country, and of State apparatus in particular. On the other hand there remains concerted resistance towards such reforms, especially where they involve prosecution for human rights violations conducted during the New Order period. More, significantly and the country has experienced an overall worsening of its human rights record during the post Soeharto period.

5.0 Genuine efforts to promote and protect human rights

The executive and the legislature have taken positive steps towards the promotion and protection of human rights since the resignation of Soeharto. Even the Soeharto regime itself in its final days experience concerted domestic and international pressure to improve the countries human rights record.

Both the Habibie and Wahid administrations have proposed and in most cases the legislature has approved important structural and legal reforms that aim to promote and protect human rights. These have included the establishment of a State Minister for Human Rights, the confirmation of KOMNAS HAM as the countries independent investigator of human rights abuses, improving the accountability of the AGO and State prosecutors in human rights cases, abolishing New Order extra-judicial agencies and the establishment of permanent and ad hoc human rights courts to prosecute past, present and future human rights abusers.

5.1 Resistance to human rights reform and prosecution

Nonetheless both the Habibie and Wahid regimes have been criticised by human rights activists and lawyers for not having gone far enough in reform, for lagging in human rights prosecutions and protecting influential human rights offenders. It has also been noted that while the record of State agencies has improved with respect to human rights abuses, such improvements have been uneven and accompanied by deteriorating human rights practices in some areas.

In the first matter, it is important the human rights reform record of both the Habibie and the Wahid administrations be understood in the context of the broader process of political reform taking place in Indonesia. Such reform is itself uneven and the result of struggles between those favouring reform and those with vested interests in resisting it. Without offering any apologies for the many reforms that remain to be implemented with respect to human rights in Indonesia, it must also be recognised that such reform exists within the context of what is politically possible. What is important is that the general movement remains in favour of reform.

This remains true in respect to the prosecution of human rights offenders also. While it is correct for human rights activist to continue to pressure the executive, the AGO, prosecutors and the judiciary to prosecute human rights offenders without delay it must also be acknowledged that such prosecutions in the context of contemporary Indonesia are highly politicised.

In this respect the State is not acting as an autonomous social force. Rather sections of the State will be in favour of pursuing such prosecutions and sections will be trying to resist such moves (as with the broader process of political reform itself). In this respect prosecutions will be subject to an array of forces, which will advance and delay a prosecution in accordance with their relative strengths.

This also introduces an inherent uncertainty about the future of human rights reform in Indonesia. There are no guarantees that the current momentum for human rights reform will be maintained.

Further still the very process of change, reform and restructuring of the State apparatus in the context of a highly charged national and regional political ~on means that many state agencies, even assuming the best of intentions, may be ill equipped to ensure protection and promotion of human rights. The Indonesian National Police force is perhaps the best example. Charged with security affairs, the National Police, in the middle of being structurally separated from the military, and in dire need of professional training and reform, will take some time before being able to execute their duties and remain ever mindful of their human rights obligations. This is not to excuse transgression of such obligations, but it is to recognise the enormity of the tasks still to be undertaken.

5.2 Worsening of overall human rights situation

Added to this is the fact that the national political situation in Indonesia is inherently more complicated than only a few years ago. The relative retreat of the State as final arbiter has resulted in the growth of new centre of political, economic and social power. This has created a more divided society and conflicting tensions have resulted in outbreaks of violence along ethnic, religious and other lines. In such a situation the State is not the only actor capable of committing human rights abuses.

The State does however, at least at international law, have a responsibility to protect its citizens from such abuses. With multiple outbreaks of violence and multiple social actors responsible for such occurrences the ability of the State to protect the human rights of its citizens is inherently more difficult.

Further still the unevenness of the reform program means that some State agencies, or sections of State agencies may have vested interests in refiraining from intervention in certain situations, in order to strengthen their own hand at the national or regional political level. Hence the emergence of accusations with respect to "shadow

military units", provoking violence in Sampit earlier in February 2001, and the claim that military units refrained from intervening in violence in Ambon, or even sided with on group against others.

What remains true is that the political situation confronting Indonesia remains extremely fluid. Until this broader political struggle is resolved and a degree of political authority and stability returned to the country it will remain very difficult for any State administration to significantly improve the overall human rights situation, both in terms of the structural and legal reforms required and the actual practice and culture of State agencies as a promoter and protector of human rights.

Appendix A - Timeline of Human Rights Developments in post Soeharto Indonesia

(NB: The following is a brief outline of major political and human rights developments, it is not intended as a comprehensive record, rather an overview for the Purposes of context.)

1998

January

February

In the lead up to the Presidential election Jakarta police warned that political protests would not be tolerated and that political demonstrators would be charged under an emergency decree from 1963 related to illegal political activity with a maximum sentence of five years.

March

President Soeharto re-elected for a seventh 5-year term.

April

30 April — KOMNAS HAM announced that disappearances of pro-democracy activists during 1997 and 1998 were and continue to be organised by a professional group, with possible military links.

May

In Irian Jaya, Churches issued a report, and KMONAS HAM later confirmed that during May the military was responsible for the extrajudicial killing of 11 people in the South Central Highlands.

Soeharto government ratified ILO *Convention 87* on freedom of association and issued a new regulation on the registration of workers' organizations. The new regulation eliminated numerical and other requirements that were previously a barrier to union registration. It provided for registration of unions at the factory, district, provincial, and national level and allowed unions to form federations and confederations. The regulation however prohibited unions based on political orientation, religion, gender, or ethnic groups.

9 May — Student demonstrations continue around the country and become more focused on their demands for *Reformasi.*

In Yogyakarta. security forces beat four bystanders while breaking up a large student demonstration. One of the victims later died.

12 May — Security forces shot and killed four unarmed students who were participating in a large, peaceful demonstration at Jakarta's Trisakti University.

13 - 15 May — Anger over the shooting of Trisakti University students combined with demands for *Reformasi* lead to massive demonstrations and rioting in Jakarta. Demonstrations and rioting occur in many other large cities.

In Jakarta, during rioting, some mobs targeted ethnic Chinese. It is later revealed that numerous Chinese women were raped in an organised and systematic fashion.

Police and military are accused of standing by and not protecting the Chinese community. Fact finding team later uncovers evidence of military complicity and provocation.

18 May — Student demonstrations continued, growing larger as they are joined by millions of ordinary people. The movement becomes increasingly focused on the demand that President Soeharto resign.

21 May — Mass pressure forces Soeharto to resign as President of Indonesia. BJ Habibie assumes Presidency automatically.

23 May — Security forces remove remaining students out of the DPR early in the morning without violence.

June

Habibie government revokes ***1984 Press Licence Decree,*** which allowed the Minister of Information to cancel press publication licenses. Habibie government also simplified the process for obtaining a publishing licence but maintained the right to suspend publishing licences.

29 June — General Wiranto revealed that the armed forces had identified several of their personnel who were "allegedly involve& in the kidnapping of activists and who "exceeded their authority", confirming earlier reports by KOMNAS HAM.

July

Habible government and DPR ratify *the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

A respected East Timorese is appointed director of the East Timorese branch of KOMNAS HAM. The branch had been open but dormant since 1996.

Habibie government begins to release Soeharto era political prisoners. Amongst the first numerous prisoners associated with the People's Democratic Party and 36 political prisoners associated with other organizations.

East Java police resume investigations, questioning old and new witnesses, after NGO's and labour groups called for a fresh effort to solve the Marsinah case.

1-7 July — In Irian Jaya, resentment among indigenous groups against the central government results in demonstrations for independence in five cities. Security forces responded harshly, killing one person in Jayapura, one in Sorong, and an undetermined number in Biak.

3 July — The Armed forces reveal that an internal investigation concluded that Special Forces personnel were involved in 1997-1998 activist disappearances.

8 July — KOMNAS HAM announces that during rioting that took place May 12-14 and afterward in Jakarta and other cities it had been "unequivocally ascertained" that 'widespread and repeated rape of a particularly inhumane nature occurred, perpetrated by brutal gangs successively in Jakarta and other cities." It was carried out in a systematic manner" and focused on ethnic Chinese women.

28 July — Habibie government issues Public ***Demonstrations Decree*** that required a police permit for demonstrations by more than 50 persons, prohibited demonstrations in front of the presidential palace, military facilities, places of worship, hospitals, public transport centres, and other important public areas.

August

Habibie government signs a *Memorandum of Understanding* with the United Nations High Commissioner for Human Rights (UNHCHR) regarding "cooperation in the development and implementation of comprehensive programs for the promotion and protection of human rights in Indonesia," which is understood to include the assignment of a UN1ICHR program officer to Jakarta, who would have access to East Timor and all other parts of Indonesia.

3 August General Wiranto announces that an officerslionour council has been formed to question senior officers about the 1997-1998 kidnapping and torture of activists. It would question Lieutenant General Prabowo, Major General Muchdi Purwopranjono, and Colonel Chairawan.

13 August Habibie government rescinds ***Public Demonstrations Decree,*** which required permits for demonstrations involving more than 50 people. Instead Habibie government decides to submit the substance of the decree to DPR as regulations.

17 August Habibie government releases another 27 political prisoners.

September

11 September Habibie government submits *Public Demonstrations Regulations* to DPR.

29 September Pressure inside and outside the DPR forces the Habibie government to withdraw *Public Demonstrations Regulations* and resubmit the substance of the regulations to DPR as *Public Demonstrations Legislation.*

October

22 October DPR passes *Public Demonstrations Legislation.* The DPR however drops the requirement to obtain a permit for demonstrations, requiring instead that three days notice be given to the police. The DPR also drops the requirement for journalists to obtain permission to cover demonstrations. However the DPR retains the ban on demonstrations near public institutions.

November

The Habibie government drafts new legislation setting out regulations governing elections, political parties, and the organization of the DPR and MPR. The legislation is sent to the DPR for consideration.

The MPR passes a decree at its November Special Session that includes a provision calling for the revocation of the *Anti-subversion Law* and its replacement with *National Security Legislation.* The Minister of Justice states publicly that the Habibie government will submit *National Security Legislation* in 1999 and revoke the *Anti-subversion Law.*

The MPR passes a *Decree on Human Rights* at its November special session, which calls on government institutions and officials to respect human rights and for the ratification of international human rights agreements (not in violation of the state ideology Pancasila or the Constitution). It also mandates that KOMNAS HAM be established by law (the Commission had thus far been established by presidential decree only). Preparation of the legislation begins, and KOMNAS HAM members discuss publicly the goal of strengthening KOMNAS HAM's investigatory authority (e.g., the authority to summon witnesses).

10 November Anti Habibie demonstrations grow outside the DPR/MPR in the lead up to the MPR November Special Session. Students call for the resignation of Habibie and the replacement of the DPR/MPR by a People's Council *(Dewan Rakyat).*

Large numbers of paid pro-government militia appear on the streets of Jakarta with the stated aim of protecting the MPR Special Session. It is later revealed that the militia received support from both President Habibie and General Wiranto.

11 November Anti-government demonstrators and security forces co-operated throughout much of the day and avoid clashes with pro-government demonstrators and militia.

12 November Situation in Jakarta becomes more violent when security forces use water canon, tear gas, and batons to disperse anti-government demonstrators that had gathered outside the DPR to protest against the MPR Special Session. Security forces also fire upon students who were trying to break through security lines and reach the DPR building.

13 November Security forces fire on and beat student and non-student demonstrators at Atma Jaya University. At least nine demonstrators are killed, mostly from gunshots and one member of the security forces is killed when beaten by demonstrators.

In separate incident anti-government civilians kill four pro-government militias by beating them to death.

22 November KOMNAS HAM announces investigation into 13 November 1998 killings at Atma Jaya University.

ABRI disciplines over 100 KOSTRAD and KODAM JAYA soldiers for discharging weapons without orders during the 13 November 1998 incident. No senior military figures are reprimanded.

December

23 December After being detained in July, 11 officers (none higher than major) and non-commissioned officers from the special forces went on trial for their alleged involvement in the abductions of the nine student and NGO activists who already had been released. The torture that the detainees reported was not addressed in the trial, and it was asserted that these military personnel had acted on their own initiative without orders from above. The trial did not address the possible killing of one abductee and the fact that at least 12 others remained missing, probably dead.

According to credible local human rights monitors, the confirmed disappearances occurred in three phases: (1) At the time of the May 1997 election; (2) in the two months prior to the March People's Consultative Assembly (MPR) session, and; (3) in the period just before Soeharto's May 21 resignation. By May 1998, nine of those kidnapped in the second phase were released from captivity and had "reappeared."

Despite admitting his involvement in the abduction of the nine activists who reappeared, General Prabowo was discharged honourably from the military, and as of year's end no legal action had been taken against him. General Prabowo took no responsibility for the 12 remaining activists who were still missing.

31 December Habibie government releases another 43 political prisoners.

1999

January

Communal violence breaks out in the Maluku Islands between Christians and Muslims and continues throughout the year resulting in high fatalities (estimated at over 1000 by May 1999), and massive population displacement. Witnesses give credible reports of military involvement in some attacks.

27 January — Habibie government announces it willingness to reach agreement on East Timor. The Minister of Information, Yunus Yosfiah announced that East Timor would be offered an opportunity to vote on an autonomy plan, and that if the East Timorese rejected this offer the Habibie government would suggest to the MPR that East Timor formally be released from the country.

Foreign Minister, All Alatas subsequently clarifies that the Habibie government would not accept any formula that called for a transition period of several years after which the East Timorese would render their verdict on autonomy, asserting that such a delay would lead to civil conflict.

28 January — The All-Aceh Student Congress calls for a referendum similar to the one in East Timor. The Acelinese initiative for a referendum grows stronger during the year. It is later taken up by others including the local DPR and by the Ulema Council of Aceh.

February

Ethnic tensions result in violent clashes between Dayak, Malayu and Madurese in Sambas, Kalimantan claiming over 200 lives and beginning the displacement of Madurese who begin to relocate.

March

Habibie governinent frees an additional 52 political prisoners (with some restrictions).

April

Habibie government ratifies the ***International Convention on the Elimination of All Forms of Racial Discrimination.***

In East Timor pro-integration militia armed and supported by elements of the Indonesian military begin a campaign of violence and property destruction across East Timor, aimed at **intimidating pro-independence supporters.** It is estimated that several hundred East Timorese are killed and others displaced before the August 30 poll.

DPR repeals the ***1963 Anti-Subversion Law.*** However it subsequently incorporated six crimes specified in that law into the Criminal Code, ***(Law No. 2 7 of 1999,*** e.g., propagating communism, damaging government facilities, and interfering with distribution of essential goods).

A military court handed down sentences of 12 to 22 months' imprisonment to 11 officers (none higher than major) and non-commissioned officers from the special forces for their alleged involvement in the abductions of 9 student and NGO activists kidnapped in early 1998 and later released. May

The first five months of the year saw the murder of suspected practitioners of black magic. Police claimed 37 people were killed, but KONTRAS put the figure at 57.

5 May Indonesia concludes agreement with Portugal to hold popular consultation on future of East Timor. In Irian Jaya armed insurgents of the Free Papua Organization (OPM) kidnap 11 people from a plantation near Arso.

31 May Free Papua Organization (OPM), frees hostages kidnapped on 5 May.

June

International Labour Organization's (ILO) Committee on Freedom of Association calls on the Habibie government to "institute without delay an independent judicial inquiry into the Marsinah homicide so as to identify and punish the guilty parties."

7 June Indonesia holds elections, which are contested by 48 political parties. Observers note that the elections are generally fair, within the context of the electoral system.

July

The Indonesian Police Force is formally separated from the armed forces. In reality they remain linked as a slow process of bureaucratic and organisational separation is begun.

6 July In Irian Jaya a group of armed men abducted six employees of the district forestry office on a survey in Arso subdistrict.

August

The DPR passes laws by which the judiciary is formally separated from the executive branch of government. Judges remain public servants however and a transition period is instituted to introduce the reforms.

30 August East Timor referendum takes place with higher than expected voter turn out despite pro-integration militia violence and Indonesian military complicity.

September

DPR enacts, and President Habibie signs, a new ***Human Rights Law*** that mandates the creation of a ***Human Rights Court*** within 4 years.

DPR gives KOMNAS HAM a statutory basis and increases its membership to 35. KOMNAS HAM members are henceforth to be appointed and confirmed by the President and DPR. KOMNAS HAM is also given subpoena powers for the first time.

4 September East Timor referendum results are announced. Overwhelming support for autonomy is recorded. However, following the poll pro-integration militias armed and supported by elements of the Indonesian military unleash a campaign of terror resulting in massive property destruction, displacement of thousands of people and between 1000 and 2000 deaths.

7 September Xanana Gusmao formally released from prison by Habibie government.

17 September United Nations endorsed forces (INTERFET) arrive in East Timor.

23-24 September In the vicinity of Atma Jaya University, security forces shoot and killed nine demonstrators during large, student-led demonstrations protesting the passage of new ***Security Laws.***

27 September Security forces shoot and kill two students in Lampung who were involved in a demonstration protesting the killing of demonstrators in Jakarta three days earlier.

October

Wahid government abolishes the ***Department of Information,*** formerly used as the Government's propaganda and censorship arm.

1 October The new DPR and the MPR installed.

8 October President Habible signs a ***"government regulation in lieu of statute" creating a human rights court within the general judicial system.*** The proposed court has the authority to hear and adjudicate cases that occur subsequent to October 8, that involve extinction of a national or ethnic group, extrajudicial killings, forced disappearance, slavery, systematic discrimination, and torture.

The regulation also allows the KOMNAS HAM to request an explanation at any time from the Attorney General on the status of a human rights case.

20 October MPR elects Abdurrahman Wahid as President.

21 October MPR elects Megawati Soekarnoputri Vice-President.

25 October NIPR approved revocation of the 1978 ***Decree Annexing East Timor,*** clearing the way for the UX Transitional Authority in East Timor (UNTAET) to take responsibility for the region.

November

The MPR takes steps to limit presidential powers, including imposing a two-term limit on the President and Vice President. The MPR creates a working group to study further constitutional amendments to be considered during the 2000 MPR session.

The Wahid government appoints a forceful, respected Attorney General and for the first time, a State Minister for Human Rights.

December

By the years end government sources claimed that all political prisoners from the Soeharto period had been released from prison.

2000

January

President Wahid issues ***Presidential Decree No. 6,*** which repeals the ban (passed in 1967) on the practice of Chinese religion (Confucianism), beliefs, and customs. Ethnic Chinese celebrated New Year's openly for the first time in over 30 years.

31 January The Commission for Investigation of Violations of Human Rights in East Timor (KPP-HAM) delivers its report on human rights violations in East Timor to the Attorney General's Office on January 3 1.

The Attorney General states that his office will initially prosecute five major cases arising from the April 6, 1999 massacre in Liquisa; the April 17, 1999 killings at independence leader Manuel Carrascalao's house; the September 5, 1999 attack on the compound of the Catholic Diocese in Dili; the September 6, 1999 massacre of priests and displaced persons at a church in Suai; and the September 21, 1999 killing of Dutch journalist Sander Thoenes.

February

KOMNAS HAM forms a commission to investigate the September 1984 killing of scores of demonstrators by security forces at Tanjung Priok. The commission questioned senior army and police officials, exhumed mass graves where victims were buried, and reported the investigation results, including names of 23 persons considered to be responsible for the killings, to the Attorney General in October.

March

President Wahid signed a ***Decree Abolishing the Agency for Coordination of Assistance for the Consolidation of National Security (BAKORSTANAS),*** which had given the security forces wide extra constitutional powers to detain and interrogate persons who were perceived as threats to national security.

4 March — President Wahid goes on national television and asked for forgiveness for the 1965-67 massacres of suspected members of the banned Indonesian Communist Party (PKI), and for the role of his organization, Nahdlatul Ularna (NU), in the killings.

April

May

June

2 June — An agreement signed in May between the Wahid government and the leaders of the Free Aceh Movement, providing for a humanitarian pause in the fighting between them, comes into operation.

July

President Wahid signs a ***Decree Removing the National Police force of 175, 000 members from the supervision of the Minister of Defence and providingfor civilian oversight.*** This step, in addition to the formal separation of the police from the armed forces in 1999, was intended to give the police primary responsibility for internal security.

In Kalimantan inter ethnic violence continued between Dayak, Malayu, and Madurese. Conflicts are worsened by the fact that internally displaced Madurese become the targets of new violent acts. It is estimated that at least 50 000 Madurese had fled their homes by years end.

August

During its August session, the MPR amended the **1945** ***Constitution*** to, among other changes, incorporate human rights protections modelled on the U.N. ***Universal Declaration of Human Rights.*** Human rights activists expressed concern that a constitutional amendment prohibiting retroactive application of laws could be used to shield past human rights violators from prosecution.

September

Despite July humanitarian pause, violence in Aceh returns to approximately pre cease-fire levels and continues to worsen throughout the rest of the year. Numerous human rights violations are committed on both sides.

6 September In West Timor pro-integration militia members attack UNVICR offices in Atambua, and kill three international UNVICR staff members.

Security forces that were assigned to protect the UNI1CR office fail to prevent the militia forces from attacking and left the area before the militia's second attack on the building, when the three UNI1CR workers were killed.

October

November

The National Police spokesman announces that the police would summon for questioning by military police 11 policemen who were suspected of involvement in the May 1998 shooting deaths of 4 students at Trisakti University in Jakarta; however, none of the 11 policemen had been questioned by year's end.

DPR enacts a law establishing a permanent human rights court. The law, mandated by the **1999** ***Human Rights Law (Law*** **39199),** creates four new courts to adjudicate gross violations of human rights.

December

The DPR forms a special committee to conduct an investigation of the Trisakti killings.

By years end inter-religious tensions, in Ambon and other islands in North Maluku, Maluku, and Central Sulawesi were estimated to have caused over 6000 deaths and massive population displacements. Population displacements further ethnic tensions and lead to further ethnic violence.

2001

January

Violence continues to escalate between ethnic Dayak and Madurese in Kalimantan.

February

Violence breaks out between Dayak and Madurese and continues into March in Sampit, Kalimantan. Violence results in hundreds of deaths and massive population displacement. Media records violent clashes between the National Police and the Armed Forces in dealing with the conflict. Credible reports record the presence of shadow units, provoking violence.

March

21 March DPR approves the establishment of an ad hoc court to try human rights abuses related to the 1 984 Tanjung Priok and 1999 East Timor incidents.

April

23 April — Ad Hoc Human Rights court established by *Presidential Decree No. 53* as mandated by *Law 26/2000* to hear East Timor and Tanjung Priok cases.

27 April — Numerous NGO's and human rights organizations question the Attorney General Office (AGO), as to why General Wiranto and other prominent military figures named in numerous reports on atrocities in East Timor have as yet not been set down for trial for human rights abuses.

KONWAS HAM represented by the investigating commission on human rights violations (KPP-HAM), had reported some TNI high-ranking officials, including Wiranto.

May

3 May — Attorney General's office notes that a Presidential decree establishing an ad hoc human rights court to hear East Timor cases limits the said court to hearing cases that occurred after the 30 August 1999 Timor ballot. A number of cases under investigation would thus not proceed based on this date as the events concerned occurred before 30 August 1999.

Bibliography

Budiman, Arief, (ed.), 1990. State and Civil Socie!y in Indonesia. Monash University, Clayton,

Budiman, Arief, (ed.), Reformasi, Crisis and change in Indonesia, Monash University, Clayton, 1999.

CISIS Penegakan HAM Bagi Peregpatan Demokrasi, Ananlisis CISIS, Tahun XXIX/2000, No 2.

Dick, Howard, *"Corruption and Good Governance "*, conference abstract - Rethinking Indonesia, 8 February 2000.

Denzin, Norman K. (et. a].), Handbook of Oualitative Research, SAGE Publications, London, 1994.

Fine, Bob., Democracy and the Rule of Law, Liberal Ideals and Marxist Critiques, Pluto Press, London, 1984.

Harris, J.W., Legal Philosophies, Butterworths, London, 1980.

ICJ., Indonesia and the Rule of Law The International Commission of Jurists, Geneve, 1987.

King, Blair A., *"Constitutional tinkering, the search for consensus is taking time "*, Inside Indonesia, No 65, January - March 2001.

Lindsey, Timothy (ed.) Indonesia, Law and SociM, The Federation Press, Sydney, 1999.

Lindsey, Timothy *"Abdurrahman Wahid, Law Reform & Corruption: The Enemy Within "*, conference absract - Rethinking Indonesia, 8 February 2000.

Luwarso, Lukas (ed.) Jakarta Crackdown, ISAI, AR, FORUM ASIA, Jakarta, 1997.

Masduki, Teten (et.al.), Human Rights as Development Parameter, ESLAM, Jakarta, 1996.

National Democratic Inst., Indonesia's Road to Constitutional Reform: The 2000 MPR Annual Session. National Democratic Institute for International Affairs, Jakarta, 2000.

Mudjiono, S.H., Sistern Hukum dan Tata Hukurn Indonesia, Liberty, Yogyakarta, 1997.

Pinto, Julio Tornas Peranan Kornnas HAM Dalarn Penegakan HAM di Indonesia, Universitas Muhammadiyah, Malang, 1998.

Robertson, Geoffrey, Crimes against Humanity: The Struggle for Global Justice, Penguin, 2000.

Ricklefs, M.C., A History of Modern Indonesia. Macmillan Asian Histories Series, London, 1986.

Tanter, Richard (et.al.), The Politics of Middle Class Indonesia. Monash University, Clayton, 1990.

Wicaksono *"High Hopesfor Minister 'Atlas "'*, TEMPO, February 27 - March 6, 2001.

Zurbuchen, Mary *"Looking back to moveforward"*, Inside Indonesia, No 65, January - March 2001.