

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

VOLUME 09/II, FEBRUARY 2010

MAIN REPORT |

Freedom of Religion in Indonesia: Multiple Choices not Short Answer

Freedom of religion in Indonesia has faced a number of significant public challenges in recent years, shedding doubt upon the government's commitment to their international and domestic obligations to protect this fundamental freedom. From ongoing discrimination against and abuse of religious minority the Ahmadiyya, to the discriminatory 1965 Blasphemy Law, the question of freedom of religion has dominated public discourse. The Republic of Indonesia now faces a critical period, one in which the people and the government must determine whether this constitutionally guaranteed freedom is worth the paper it's printed on.

NEW FEATURES:

RIGHTS IN ASIA and REPORTAGE

ADDITIONAL FEATURE |

Reading the Book Banning Policy

In December last year, the Attorney's General Office (AGO) published decrees banning five books on the basis that the books are threat to public order. The ban has sparked controversy amongst the human rights activists, academician, and those who concern in democracy. Banned author, Darmawan, filed a complaint with the Constitutional Court at the beginning of February this year, asking the Court to declare the legislative authority which enabled the AGO to ban printed materials as unconstitutional and invalid.

OPINION |

Indonesian Odyssey: A Drug User's Quest for Treatment

The story of Rose - the first drug user sentenced by Indonesian courts to rehabilitation instead of prison - continued this month, with some dramatic twists and turns that highlight obstacles to implementing Indonesia's newly improved policy.

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CAVEAT:

Let her or him be aware

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THE EDITOR'S CUT

February this year is a special month for the Chinese as they've just celebrated the Chinese New Year. Gong Xi Fat Cai! May the New Year bring us new blessings, new happiness and new wealth. It is not only a new year; there are also new things in CAVEAT, starting in this month's edition. In cooperation with a regional NGO based in Hong Kong, the Asian Human Rights Commission (AHRC), we will present updates on the human rights situation in other Asian countries in *Rights in Asia*. CAVEAT's other new column, *Reportage*, highlights the work of LBH Masyarakat and details some of our February activities.

In this month's Main Article column, we examine the controversy currently surrounding the fundamental human rights of freedom of religion and freedom of expression. A recent application for constitutional review of the 1965 Blasphemy Law has re-invigorated the freedom of religion debate in Indonesia. The Indonesia Constitution and domestic law on human rights guarantee freedom of religion and freedom of worship. Unfortunately, in practice, one cannot rely on this 'guarantee' to exercise the right to worship the religion of one's choice. Those who have beliefs which are different to the mainstream religions may be labelled as deviant, or face physical abuse, as in the case of followers of Islamic sect, Ahmaddiya. This article critiques this gap between words and practice in relation to freedom of religion in Indonesia.

The Additional Feature in this month's episode highlights the debate around the power of the Attorney General's Office (AGO) to ban printed materials believed to have the potential to disrupt public order. In December last year, the AGO banned five books by a decree, igniting a debate on freedom of expression. Author of banned book *Enam Jalan Menuju Tuhan*, Darmawan, filed an application for constitutional review with the Constitutional Court in February,

on the grounds of violation of his right to freedom of expression.

The government and supporters of the book ban defend the actions of the AGO on the basis that freedom of expression and freedom to information are subject to limitation. Notwithstanding this, it is important to critically analyse whether the power to limit these rights is exercised in a manner compatible with the principles of human rights. We argue that, in accordance with the International Covenant on Civil and Political Rights (ICCPR), a degree of proportionate limitation on the exercise of the right to freedom of expression and information in the name of public order is justifiable. However, even in such circumstances, the power to ban books must be exercised in accordance with certain criteria; the exercise of power should be a proportionate response to the threat, it should be exercised in accordance with a set of objective criteria and should be subject to review or appeal.

The final article is an opinion piece written by Ricky Gunawan which looks at the story of Rose, a drug user sentenced by Indonesian courts to rehabilitation. Rose was asked to pay an amount of money for her rehabilitation even though Indonesia's Narcotics Law clearly states that the state will pay the treatment costs of drug addicts found guilty of drug offences under the Narcotics Law. Gunawan criticizes Indonesian's legal system which is unprepared to serve convicted drug users in need of rehabilitation.

Last but not least, we invite your constructive criticism. We hope you find this month's CAVEAT along with its new columns, useful for your understanding of human rights affairs in Indonesia

Thank you for your ongoing support!

The Editor

MAIN REPORT

Freedom of Religion in Indonesia: Multiple Choices not Short Answer

FREEDOM OF RELIGION – IN PRINCIPLE

Freedom of religion in Indonesia has faced a number of significant public challenges in recent years, shedding doubt upon the government's commitment to their international and domestic obligations to protect this fundamental freedom. From ongoing discrimination against and abuse of religious minority the Ahmadiyya, to the discriminatory 1965 Blasphemy Law, the question of freedom of religion has dominated public discourse. The Republic of Indonesia now faces a critical period, one in which the people and the government must determine whether this constitutionally guaranteed freedom is worth the paper it's printed on.

Freedom of religion is a key entitlement in the suite of inalienable rights and fundamental freedoms enshrined by the Universal Declaration of Human Rights (UDHR). Freedom of religion, along with the right to life and liberty, freedom from arbitrary detention, torture and slavery and freedom of expression are the basic rights that all human beings should enjoy, respect and protect and are broadly considered to form the foundations of a fair, just, functioning society. These fundamental human rights should be "a common standard of achievement for all peoples and nations" (Preamble to the UDHR). This view is shared almost universally, as reflected by the strength of the international commitment to the International Covenant on Human Rights (comprised of the International Covenant on Civil and Political Rights and the International Covenant on

The object of formally recognizing human rights in laws and treaties is to protect people from injustice and to support universal participation in society. However formal recognition is not in itself sufficient to achieve this; it is critical that human rights are genuinely respected and vigorously upheld and enforced.

Economic, Social and Cultural Rights. The Republic of Indonesia acceded to the Covenant on 23 February 2006.

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FREEDOM OF RELIGION IN INDONESIA – ON PAPER

On paper, Indonesia accepts and recognizes the universal validity of basic human rights and fundamental freedoms. Indonesia is a committed member of the United Nations and a member of the Human Rights Commission since 1991. In recent years, Indonesia developed and implemented a National Plan of Action on Human Rights and passed legislation to establish a Human Rights Court and an independent National Human Rights Commission.

Freedom of religion or belief is guaranteed by the Indonesian Constitution and reinforced by the Law Concerning Human Rights (No. 39 of 1999) ('the Human Rights Law'). Both instruments stipulate that everyone has the freedom to worship according to the teachings of his religion and beliefs.

However one needs to look no further than the Indonesian Ministry of Religious Affairs before one glimpses cracks in this veneer of rights protection. The Ministry of Religious

Affairs extends official status to six religions: Islam, Catholic, Christian Protestant, Buddhist, Hindu, and Confucianism. The Ministry does not recognize atheism. Since the passing of a civil registration bill in 2006 (which merely formalized already existing administrative practices), citizens have been required to identify themselves on government identification cards as belonging to one of these six official religions.

The official status granted to these six religions has significant, but broadly tolerated, repercussions for state registration processes (including identity, births and marriages), which adversely impact on the freedom of people choosing to practice a religion not on the select list.

Religious organizations outside the six officially recognized religions can register with the Ministry for Culture and Tourism as social organizations but not as religious groups. Unregistered religious groups do not have the right to establish a house of worship.

FREEDOM OF RELIGION IN INDONESIA - IN PRACTICE

In practice, the Government of Indonesia has demonstrated a reluctance to protect freedom of religion. The government's tolerance of discrimination against minority religious groups (and the abuse of religious groups by private actors), failure to punish perpetrators of religious discrimination and failure to proactively review or revoke local laws in violation of freedom of religion directly contravene its international commitments and the constitutional guarantee of freedom of religion.

The Setara Institute's 2009 Report on the Condition of Religious and Faith Freedom in Indonesia (Setara Report) (released January 2010) draws attention to the existence of widespread violations of religious freedoms

in Indonesia.¹ The Setara Report indicates that 200 violations against freedom of worship were reported throughout 2009. The report claims state agencies were involved in 139 of the 200 cases. Of these 139 cases; 38 cases were a result of state omissions; 101 cases involved active participation of state officials.

It must be recognized that the highly publicized violations of religious freedoms, public scrutiny of government action and heated debate speak volumes for Indonesia's tolerance for free press and freedom of expression. Without the government's steadfast commitment to these particular rights, it would be significantly more difficult to assess the

status of freedom religion in Indonesia.

In consideration of Indonesia's track record in the area of religious freedoms, this article will examine public responses to the ongoing incidents of violent discrimination against followers of Islamic sect, Ahmadiyya, and the recent challenge to the constitutionality of the Blasphemy Law focusing on public responses to allegations of discrimination and the application of the law itself.

ABUSE OF FOLLOWERS OF AHMADIYYA

The small Islamic sect of Ahmadiyya crept into the public conscious in 2005 when mainstream Muslim groups (including the

¹ The Setara Institute for Democracy and Peace publishes an annual report on the condition of freedom of religion/belief in Indonesia: (<http://www.setara-institute.org/>) with the aim of informing the public/ encouraging the State to fulfill its assurance of freedom of religion/belief. In 2009, West Java had the highest number of violations of religious rights, with 57 cases, followed by Jakarta with 38 cases and Banten with 10 cases.

Islamic Defenders Front (FPI) and the Indonesian Mujahidin Council (MMI) along with many moderate groups)² called for the sect to be outlawed. This push resulted in the Indonesian Council of the Ulama (MUI), issuing a fatwa which explicitly banned Ahmadiyya as a heretical sect (a key factor being the Ahmadiyya's belief in a prophet after Muhammad). Following this, violence against the Ahmadiyya community increased and a number of policies, regulations and local government bans were enacted to further restrict the religious freedom of the Ahmadiyya community. In 2007, the MUI issued a further fatwa containing guidelines condemning Islamic groups such as the Ahmadiyya.

The treatment of Ahmadiyya followers is significant not only on the basis of the grave rights violations it has entailed; this issue has the potential to set a dangerous precedent for freedom of religion, allowing majority religious beliefs to influence regulation and policy.

Throughout 2006 and 2007, the government remained silent in respect of the MUI fatwas, failed to review or revoke local government regulations restricting the Ahmadiyya and tolerated ongoing violence (with police failing to arrest those responsible for violence against the Ahmadiyya). According to the Setara Report, followers of the Ahmadiyya sect are the most persecuted religious community in Indonesia.

The government response, in the form of the June 2008 Joint Ministerial decree on the rights of the Ahmadiyya sect reflected no political will to seriously defend or protect the freedom of religion. Ahmadiyya was not conclusively banned but instructed to 'stop practising their beliefs' and strongly encouraged to 'return to mainstream Islam.' Although, some sources indicate that for the most part, Ahmadiyya followers have been able to continue worshipping in private;

² Notably, progressive Muslim groups opposed the call for Ahmadiyya to be outlawed on the basis of tolerance and pluralism and belief in the right of citizens to practice the religion of their choice.

reports of the burning of Ahmadiyya mosques and forced displacement of Ahmadiyya followers from their villages, contradict this suggestion.³

The treatment of Ahmadiyya followers is significant not only on the basis of the grave rights violations it has entailed; this issue has the potential to set a dangerous precedent for freedom of religion, allowing majority religious beliefs to influence regulation and policy.

CONSTITUTIONAL REVIEW OF THE 1965 BLASPHEMY LAW

In recent months, human rights groups applied to the Constitutional Court for judicial review of the 1965 Blasphemy Law on the grounds that certain articles impede upon freedom of religion, are adverse to human rights principles and irrelevant to a democratic Indonesia. Protestors from major Muslim organizations rallied at the opening of the constitutional hearing on 4 February 2010, highlighting the perceived importance of this issue and extent to which the right to freedom to worship has both engaged and polarized Indonesian society.

The articles of the Blasphemy Law currently under review are those that regulate the government's authority to dissolve religious groups whose beliefs and practices are deemed blasphemous by religious authorities and those that grant the government the authority to charge leaders and followers of suspected heretical groups under the Criminal Code.⁴ The relevant article of the Criminal Code provides that

³ The U.S Department of State International Religious Freedom Report for 2007 reported that 187 members of the Ahmadiyya continued to live at a refugee camp in Mataram, Lombok.

⁴ Article 1 of the Blasphemy Law stipulates that it is illegal to "intentionally publicize, recommend or organize public support for a different interpretation of a religion practiced in Indonesia, or to hold a religious ritual resembling that of another religion." The Blasphemy Law also provides that "practicing an interpretation of a religion that deviates from the core of that religion's teachings" is illegal.

spreading hatred, heresy, and blasphemy are punishable by up to 5 years in prison.

The Government of Indonesia and major Muslim organizations (including two of the biggest Muslim organizations in the country, the Nahdlatul Ulama (NU) and the Muhammadiyah and hard-line groups, FPI and Hizbut Tahrir Indonesia) have expressed their strong opposition to the review of the Blasphemy Law. The government claims the Blasphemy Law has served to maintain harmony in religiously diverse Indonesia for decades and that “[annulment of] the law will create conflict, instability and disharmony. It is urgently needed to endorse religious tolerance.”⁵ However, the government has provided little evidence to support these statements. To the contrary, a review of recent prosecutions under the Blasphemy Law fails to produce a single example of the Blasphemy Law facilitating religious tolerance.

Human rights activists claim the Blasphemy Law is discriminatory towards minority religious groups and protects only a single interpretation of a religion. The fact that the law appears to be most frequently used to bring charges of blasphemy and heresy against Islam, supports this argument. Prosecutions under the Blasphemy Law demonstrative of this include the case of school teacher Welhelmina Holle in Central Maluku in 2008, the 2007 College Student Service Organization produced training video in East Java and the 2006 case of Regent, Ratna Ani Lestari, also in East Java.

In 2008, Holle, an elementary school teacher, was accused of making insulting remarks about Islam in a lecture. Rumors incited a rally which resulted in mob violence. The mob destroyed 67 houses, a house of worship, and a community building. Holle was charged under the Blasphemy Law. Notably, in this case, police took an even-handed approach, also

charging Asmara Wasahua, the leader of the rally turned riot, with the crime of ‘encouraging criminal behavior’.

In April 2007, eight people were arrested in Malang, East Java on blasphemy charges on the basis of the allegation that they disseminated a prayer training video. The video, produced by the College Student Service Organization, depicted 30 Christians being instructed by their leader to put Qur’ans on the floor.⁶ An additional 33 persons were later arrested in connected with the videos and, in September 2007, all 41 persons were sentenced to five years in prison for blasphemy. All 41 persons were released on reprieve during August 2008 Indonesian Independence Day Celebrations.

Finally, in May 2006, the East Java regional legislature of Banyuwangi voted to oust their Regent from office on the grounds of blasphemy. The case of blasphemy rested on the grounds that Regent, Ratna Ani Lestari - a Muslim by birth, allegedly practiced a religion different to that stated on her identity card. It was argued that this issue was precipitated by Ratna’s marriage to a Hindu.

These cases exemplify the propensity of the Blasphemy Law to be applied in a manner which discriminates against minority religious groups and or applied in a manner which advances a mainstream Muslim perspective. Arguably, the relationship between the law and the Criminal Code penalty can be said to qualify freedom of thought or freedom of religion as a crime; a further violation of fundamental freedoms.

The Constitutional Court holds a delicate and highly volatile issue in its hands and its ability to make a reasoned and fair determination on the constitutionality of this law has the capacity to direct Indonesia’s future commitment to human rights and freedom of religion.

⁵ Religious Affairs Minister Suryadharma Ali quoted in ‘Court to stage debate on religious freedom’ by Ary Hermawan, The Jakarta Post, 02/05/2010.

⁶ Christian church leaders denied allegations that Christians were involved in the production or distribution of the videos.

The Constitutional Court is scheduled to issue a verdict on its review of the Blasphemy Law in April 2010 (hearings are scheduled for every Wednesday until then).

FUTURE CHALLENGES

The fate of Indonesia's freedom of religion lies in the hand of the Constitutional Court. It is theirs to decide whether freedom of religion in Indonesia will be carried out in accordance with the basic human rights principle abovementioned or not. If the Constitutional Court revokes this Blasphemy Law, one will no longer be prosecuted for what she believes in – something that is not mainstream religion/belief. However, this does not mean that everyone can do whatsoever and untouchable by laws. This also does not mean that freedom of religion is a borderless freedom. For example, if someone kills a child as manifestation of a religion she believes in, she will not be punished for her belief, but she can be prosecuted for murder. Deciding this case may not be an easy task for the Constitutional Court. However, judges' knowledge, integrity and visionary is hoped to set the debate of freedom of religion into its origin place: belief is individual's sphere and state should not intervene it. State is not entitled to decide which religion is deviant and which one is not, as Franz Magnis Suseno, a Catholic intellectual, rightly said that "state does not have God's eye".

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ADDITIONAL FEATURE

Reading the Book Banning Policy

In December last year, the Attorney's General Office (AGO) published decrees banning five books on the basis that the books are threat to public order. The five banned books are 'Dalih Pembunuhan Massal Gerakan 30 September dan Kudeta Suharto' by John Roosa, 'Suara Gereja Bagi Umat Tertindas Penderitaan, Tetesan Darah, dan Cucuran Air Mata Umat Tuhan di Papua Barat Harus Diakhiri' by Socratez Sofyan Yoman, 'Lekra Tak Membakar Buku Suara Senyap Lembar Kebudayaan Harian Rakjat 1950-1965' by Rhoma Dwi Aria Yuliantri and Muhidin M. Dahlan, 'Enam Jalan Menuju Tuhan' by Darmawan, and 'Mengungkap Misteri Keberagaman Agama' by Syahrudin Ahmad.

The ban has sparked controversy amongst the human rights activists, academician, and those who concern in democracy. Banned author, Darmawan, filed a complaint with the Constitutional Court at the beginning of February this year, asking the Court to declare the legislative authority which enabled the AGO to ban printed materials as unconstitutional and invalid.

Book-banning in Indonesia was legalized during the Soekarno regime under the Law No. 4/PNPS/1963 on Printed Materials Pacification which grants the AGO the authority to ban the circulation of printed materials believed to have the potential to disrupt public order. Under article 1 paragraph (3) of the law, anyone who keeps, owns, delivers, distributes, sticks, sells, or re-prints banned printed materials shall be punished by a maximum light imprisonment (*kurungan*) of one year or a maximum fine

of fifteen thousand rupiahs. The AGO's authority to ban printed materials was later restated in article 27 paragraph (3)(c) of AGO Law No. 5/1991. When the AGO Law was revised in 2004, this power was preserved.

This power to ban books raises the issues of freedom of expression and freedom of information. Those who criticize the AGO's authority believe that banning books violates the author's right to freedom of expression and information. On the contrary, those who support the AGO's authority argue that human rights, including freedom of expression and information, are subject to limitation. The power to impose such limitations on human rights is proscribed under article 28J paragraph (2) of the Indonesian Constitution.

The International Covenant on Civil and Political Rights (ICCPR), a key covenant under the International Bill of Rights, also provides that the exercise of the right to freedom of expression and information are subject to limitation (at Article 19 paragraph (3)). Specifically, limitation of these rights in the name of 'public order' is permitted. Notwithstanding this, the question remains, how should we interpret such vague clause in practice?

The International Covenant on Civil and Political Rights (ICCPR), a key covenant under the International Bill of Rights, also provides that the exercise of the right to freedom of expression and information are subject to limitation (at Article 19 paragraph (3)). Specifically,

limitation of these rights in the name of 'public order' is permitted. Notwithstanding this, the question remains, how should we interpret such vague clause in practice?

Let us examine the international human rights standard.

Point 22 of Siracusa Principles defines public order as 'sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded' and that, 'respect for human rights

is part of public order'. Human rights expert, leading scholar on international law and UN Special Rapporteur on Torture, Manfred Nowak, admitted that 'public order' (and also any other interests such as 'national security' etc.) is intentionally defined vaguely so that states are basically free to interpret the term as they wish, so long as the interpretation meets the principle of proportionality: is the limitation present a suitable means of achieving a purpose? Does it represent the most lenient means of achieving said purpose? Does it observe moderation? Nowak believes that while states have the right to freely interpret such vague clauses, there are still principles that should guide their interpretation.

What about in Indonesia's context?

It is stated in the explanation of article 1 of Printed Materials Pacification Law that the authority to decide whether printed materials have the potential to disrupt public order is granted solely to the AGO. It is the right of AGO to judge, on its own subjective opinion, what 'public order' means.

This subjective power explains an interesting phenomenon in Indonesia; the 'theme' of banned books changes according to the ideology and agenda of the ruling party. Under the Soekarno regime, books which disseminated liberalism were banned as they were deemed to be disruptive to Indonesia's goal to reach revolution. In contrast, under Soeharto and his New Order (even up to post reformation era), banned books were those which were deemed to be left wing such as Moestopo's '*Sosialismus a la Indonesia*', Kim Byong Sik's '*Modern Korea*' (both were banned in 1971). Even books which appeared to support the Indonesian Communist Party (PKI) were banned. This happened in 2007 when many history books were banned simply because they failed to mention that the 30 September 1965 Movement –the abduction and assassination of six Indonesian Army generals and an aide de-camp of one of the targets, General Nasution- was conducted by PKI. In light of this, we can not naively

believe that the books are banned solely to maintain public order.

To the extent that that freedom of expression and information are subject to limitation, we must ask: Is Indonesia's current mechanism on book banning compatible with the principles of human rights? Are the limitations imposed upon the freedom of expression and information a 'suitable means of achieving a purpose?' and 'are they the most lenient means of achieving said purpose?' There are at least two issues emerging from these questions.

First, as states are granted the privilege of defining 'public order', they should also define specific criteria and set a threshold for what is deemed to disrupt public order. These criteria could then be objectively applied to determine whether a book has the potential to disrupt public order and therefore, should be banned. If proportionate limitations are placed upon freedom of expression, and a book breaches this limitation, banning such a book is arguably not a violation of human rights. For example, if a book advocates racial hatred towards a specific ethnic group or contains propaganda on war – and objectively breaches reasonable criteria for what is deemed to disrupt public order, it may be reasonable to ban such book.

To the extent that that freedom of expression and information are subject to limitation, we must ask: Is Indonesia's current mechanism on book banning compatible with the principles of human rights? Are the limitations imposed upon the freedom of expression and information a 'suitable means of achieving a purpose?' and 'are they the most lenient means of achieving said purpose?' There are at least two issues emerging from these questions.

Establishing a set of criteria or a threshold for what has the potential to disrupt public order is alone, an inadequate limitation on the power to ban books. The AGO should be obligated to provide reasons for their determination. Further, there should be avenue for appeal of such determinations. As pointed out by John Roosa, in most democratic polities that allow for the banning of books, the decision to ban a book

is done through the court system. A proper system of checks and balances is critical to moderate the exercise a power to limit freedom of expression and information. The imposition of checks, balances and controls meets the criteria enshrined in point 24 of the Siracusa Principles which provides that 'state organs or agents responsible for the maintenance of public order (*order public*) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.'

The current power to ban books in Indonesia on the grounds of maintaining 'public order' (under 'Name of Law) is little more than a facade for 'preservation of the ruling party's power.' While there is a place for political agendas and power preservation in a democratic society, these factors cannot be confused with maintaining public order and do not justify a limitation of the freedom of expression and information.

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OPINION

Indonesian Odyssey: A Drug User's Quest for Treatment

By: Ricky Gunawan*

Jakarta, Indonesia — The story of Rose - the first drug user sentenced by Indonesian courts to rehabilitation instead of prison - continued this month, with some dramatic twists and turns that highlight obstacles to implementing Indonesia's newly improved policy.

Rose was transferred from Pondok Bambu Detention Center to Cibubur Drug Dependence Hospital (RSKO Cibubur), on Monday, February 8, 2010. As I wrote in December, it took months after her July sentence for the corrupt detention system to actually move her to the hospital. During that time, Rose suffered from withdrawal symptoms without any medication. But even once the transfer was finally completed, it seemed the drama had only begun.

Rose was transferred to RSKO Cibubur using a hospital vehicle, and accompanied by staff of our organization, LBH Masyarakat. Once she arrived, hospital staff examined Rose regarding her addiction history, and gave her some medicine. They then charged a fee of around US\$42.

In response to the medical fee, we argued that Rose was transferred to the hospital as ordered by the court, and also that she comes from poor family. Therefore, she should be released from any fees.

The administration officer at the RSKO Cibubur informed us that in order to get free drug treatment there, a civil health insurance card (*jamkesmas* - insurance for poor people) would be required. Otherwise, Rose would be liable for the fees of about US\$270/month for six months - an

astronomical sum for an impoverished Indonesian family.

Actually, we suspected this might happen. Rose's mother had already begun the process of applying for a *jamkesmas* card in Bandung, West Java, where Rose is a resident. However, Rose's mother found herself trapped in Indonesia's rotten bureaucracy, ping-pong-ed from one unit to another unit.

Eventually, she was informed by the first officer who assisted her at the regional health agency that *jamkesmas* has a quota system. In other words, the government can only cover a limited number of poor people. If a poor person wants to apply for *jamkesmas*, s/he has to wait until someone from that quota dies.

This information was conveyed to RSKO Cibubur, but the administrative officer still refused to treat Rose without a *jamkesmas* card. Knowing Rose's condition in Jakarta, Rose's mother became seriously distressed about the bureaucracy in Bandung.

We were asked to deposit a large amount of money and sign a guarantee letter saying that if by Wednesday, February 10, Rose's *jamkesmas* card is not submitted, we agree to cover all the medical expenses. We did so, and then we asked Rose's auntie in Jakarta to sign the guarantee. But, she would only guarantee the costs until Wednesday. If on Wednesday Rose's *jamkesmas* is not ready, Rose's family has to pay all the medical expenses. Of course, as an underprivileged family, this is impossible for them.

And if Rose's family can't afford to pay the expenses, and the hospital can't receive her,

what's the point of sending Rose to a drug treatment hospital for rehabilitation?

The hospital's standpoint -- that they want to treat Rose but need some guarantee of payment -- is understandable. Since it is the state's responsibility to pay the expenses, the state should provide a *jamkesmas* card. But the *jamkesmas* system, in which an impoverished person can join only if another *jamkesmas* holder dies, is completely ridiculous.

Luckily, we learned that in December 2009 the Ministry of Health had introduced a new program called "*Jamkesmas* for Newly Impoverished Persons". This new program is available for impoverished people who are in correctional facilities, detention centers, social shelters or who are victims of natural disasters. Fortunately, Rose qualifies for this program.

On Tuesday afternoon, Rose prepared all the documents needed and on the next day her application was approved. At first, the administration officer at the hospital refused her application, because the program is so new that detention facilities don't even know about it yet. Finally, Rose was accepted for treatment at the hospital.

Rose's dreadful experience once again reflects the fragility of Indonesia's legal system when it addresses drug users and the issue of addiction. Indonesia's Narcotics Law clearly states that the state will pay the treatment costs for drug addicts who are found guilty of committing drug offenses, as this is considered part of the punishment period. But as the first person to be so sentenced, Rose had to work hard to convince the hospital that she is impoverished, and that her rehabilitation is a court's order.

Rose's case shows that Indonesia does not yet have a system in place ready to serve convicted drug users who need rehabilitation. Had the whole system been set up, it would be obvious that Rose had to go to rehab first, treat her addiction and then serve her prison sentence. It would also be clear who is responsible for

transferring Rose from detention center to the hospital, and what procedures to follow when arranging for treatment costs. Instead, Rose and her supporters have had to advocate to create such a system at every step of the way.

One thing is for sure: Indonesia needs to develop a good system that can address the above issues very quickly. If a drug user needs to be imprisoned, it is far better for her or him to go to rehab first to treat the addiction, instead of prolonging her or his suffering and creating new health crises for prisons.

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

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RIGHTS IN ASIA

Information contained in this column is provided by the Asia Human Rights Commission (AHRC).

Maguindanao massacre in the Philippines

57 people-including two human rights lawyers and 30 journalists - were slaughtered on November 23, 2009 in Maguindanao, a province in central Mindanao, allegedly for political reasons. A group of 100 armed men blocked the convoy in broad day light, took the victims to a remote hilly area, executed them and buried them in shallow graves.

There are clear indications that the massacre was premeditated and thoroughly planned. It took place in a context of common violence and impunity. People on Mindanao have indeed been for decades victim of massive displacements, killings, abductions and summary executions either by the government or military forces. The Civilian Volunteer Organization (CVO) – one of the government's militia forces – and the police are accused of having been involved in the massacre, whereas the Department of Justice paid no attention to the survivors' testimony.

In addition to a shocking example of extra-judicial killings and impunity, the massacre – the largest number of deaths in a single incident in the Philippines' recent history – has also crippled the press freedom on Mindanao and shows how journalists have to fight for the press of freedom and right to information.

Threats against human rights defenders in Thailand

In Thailand, human rights defenders are continuously victims of threats and intimidation from security forces. Last year, the Working Group on Justice for Peace's office in Pattani province in the south of the country was searched for several hours by a group of soldiers and police. They went through data in the computers and files and interrogated the two volunteers present on the premises.

The WGJP is one of the groups in Thailand in recent years that has systematically documented and reported abuses in the south of the country. Noteworthy is the fact that the raid took place two days after the military warned in Bangkok Post Newspaper, 7 February 2009 that "southern militants may take the opportunity to disguise themselves as rights activists, in order to incite hatred against officials or distort information to create misunderstanding about security operations among locals".

It is a striking example of how the authorities take martial law as an excuse to search private properties without search warrants or reasonable doubts, in order to intimidate human rights activists.

Lasting corruption in the Pakistani Army

In Pakistan, there is a strong call to remedy the previous governments' opposition to change in terms of corruption in the Army. Indeed, successive governments and courts have conspicuously been avoiding the trying of corruption cases against the former top hierarchy of the armed forces. The media, judiciary, military and civil bureaucracy became part of the loot of the generals' corruption and these institutions in turn made the armed forces out to be a sacred cow and above the law. Anything said to point out the corruption of the armed forces has been referred to as attempts to undermine the national security.

On December 6, 2009, The Daily News published a list bearing the details of those generals and army officers who were running private businesses during their years of service and who received huge loans which were later on written off because of their positions in uniform. They thus tried to put an end to a 62-years period of impunity, during which no officer from the armed forces has ever been tried for corruption.

REPORTAGE

LBH Masyarakat calls for reform of the Indonesian Criminal Procedure Law

February 7 -- LBH Masyarakat, in cooperation with Indonesian Coalition for the Reform of Criminal Procedure Law (KuHAP), held a community discussion at the Bina Mandiri Foundation (YABIM) – a school for street children and those who don't have any sufficient financial means to study at formal school – located at the Depok Bus Terminus. The topic for the discussion was torture and the criminal procedure law. Approximately 70 people from Depok and its surrounding areas, Kali Adem (north Jakarta) and Jati Selatan (east Jakarta) community attended the discussion.

LBH Masyarakat opened the discussion by introducing participants to the concept of torture and explaining the difference between torture and maltreatment. Participants then shared their experiences dealing with the police and raised questions about what they could do if they found themselves the subject of torture. LBH Masyarakat's Legal Aid and Human Rights Assistant Manager, Yura Pratama, outlined the issues faced by victims of torture and explained that "there are many loopholes in the existing laws that contribute to the practice of torture in Indonesia." Examples of such loopholes include detention periods which permit state agents to detain someone for up to 400 days. "These loopholes are the reason why reform of KUHP is urgently needed" Pratama explained.

LBH Masyarakat also invited the participants to urge the government and House of Representatives (DPR) to reform KuHAP. Legislative reform represents a critical step in preventing or, at least, minimizing the practice of torture in Indonesia.

At the end of the discussion participants expressed their support for the reform of KUHP by signing a petition.

New community, new empowerment

February 18 -- Since its establishment in December 2007, LBH Masyarakat has been intensively empowering four communities in the broader Jakarta region: a community of drug users; a community of traditional fishermen in Kali Adem, North Jakarta; families of victims of human rights violation in Jati Selatan, Eastern Jakarta; and the students of an alternative school in Depok.

LBH Masyarakat commenced building a new relationship with a workers community in Simpangan area, Depok this month. "We're glad to welcome the new community. As we do in other communities, the first topic to be discussed is police force," said Answer Styannes from LBH Masyarakat, during the first gathering with the community. In the first discussion, LBH Masyarakat explained what police should and should not do. "Arrest, detention, search, seizure and checking letters are police powers. However these powers must be exercised in accordance with the law. This means these powers should not be exercised unlawfully or arbitrarily" Styannes explained to participants. In addition to the topic of the police force, LBH Masyarakat covered issues relating to witness and victim protection. Some participants admitted that sometimes they want to do something to act against arbitrary exercise of power by the police, but that often they remain silence because they fear further reprisal.

"We found this kind of discussion very useful" explained Supri, a participant, "I myself also dealt with police once, but as I didn't know what to do, I just decided to pay them, as I was extorted." Legal and human rights education will be held every Thursday night in the Simpangan community.

ABOUT US

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

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

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

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

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

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

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