Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
TABLE 1
SNAPSHOT

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>Republic of Indonesia</th>
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<tbody>
<tr>
<td>Capital City</td>
<td>Jakarta</td>
</tr>
<tr>
<td>Independence</td>
<td>17 August 1945</td>
</tr>
<tr>
<td>Historical Background</td>
<td>The Dutch began to colonize Indonesia in the early 17th century; Japan occupied the islands from 1942 to 1945. Indonesia declared its independence on 17 August 1945 and enacted the 1945 Constitution on 18 August 1945. Soekarno was the first president of the Republic Indonesia (18 August 1945-12 March 1967), while Suharto is the second one (12 March 1967-21 May 1998). The first and second presidents were very long in power due to the weaknesses in the 1945 Constitution. After Suharto's authoritarian regime fell in 1998, the political setting changed dramatically. The first parliamentary election after Suharto was in 1999, which was then followed by constitutional amendments in 1999, 2000, 2001 and 2002. In 1999, the then East Timor Province of Indonesia, backed by the UN, held a referendum, opted for independence and thereafter obtained independence as Timor-Leste in 2002. After 1998, the presidents are the following: B.J. Habibie (21 May 1998-20 October 1999), Abdurrahman Wahid (20 October 1999-23 July 2001), Megawati Soekarnoputri (23 July 2001-20 October 2004), Susilo Bambang Yudhoyono (20 October 2004-20 October 2014), Joko Widodo (inaugurated on 20 October 2014 for 5-year fixed term of office).</td>
</tr>
<tr>
<td>Size</td>
<td>1,904,569 sq km</td>
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<tr>
<td>Land Boundaries</td>
<td>Total: 2,958 km</td>
</tr>
<tr>
<td></td>
<td>Timor-Leste 253 km, Malaysia 1,881 km, Papua New Guinea 824 km</td>
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<tr>
<td>Population</td>
<td>255,993,674 (July 2015 est.)</td>
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<tr>
<td>Demography</td>
<td>0-14 years: 25.82% (male 33,651,533/female 32,442,996)</td>
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<td>15-24 years: 17.07% (male 22,238,735/female 21,454,563)</td>
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<td></td>
<td>25-54 years: 42.31% (male 55,196,144/female 53,124,591)</td>
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<tr>
<td></td>
<td>55-64 years: 8.18% (male 9,608,548/female 11,328,421)</td>
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<td></td>
<td>65 years and over: 6.62% (male 7,368,764/female 9,579,379) (2015 est.)</td>
</tr>
<tr>
<td>Ethnic Groups</td>
<td>Javanese 40.1%, Sundanese 15.5%, Malay 3.7%, Batak 3.6%, Madurese 3%, Betawi 2.9%, Minangkabau 2.7%, Buginese 2.7%, Bantenese 2%, Banjarese 1.7%, Balinese 1.7%, Acehnese 1.4%, Dayak 1.4%, Sasak 1.3%, Chinese 1.2%, other 15% (2010 est.)</td>
</tr>
<tr>
<td>Languages</td>
<td>Bahasa Indonesia (official, modified form of Malay), English, Dutch, local dialects (of which the most widely spoken is Javanese)</td>
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<tr>
<td></td>
<td>Note: more than 700 languages are used in Indonesia</td>
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<tr>
<td>Religion</td>
<td>Muslim 87.2%, Christian 7%, Roman Catholic 2.9%, Hindu 1.7%, other 0.9% (includes Buddhist and Confucian), unspecified 0.4% (2010 est.)</td>
</tr>
</tbody>
</table>

### Adult Literacy

<table>
<thead>
<tr>
<th>Definition</th>
<th>Total population: 93.9%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male: 96.3%</td>
<td>Female: 91.5% (2015 est.)</td>
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</tbody>
</table>

**Total population:** 93.9%
**Male:** 96.3%
**Female:** 91.5% (2015 est.)

### Gross Domestic Product

<table>
<thead>
<tr>
<th>Year</th>
<th>Value</th>
</tr>
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<tbody>
<tr>
<td>2015 est.</td>
<td>$2.839 trillion</td>
</tr>
<tr>
<td>2014 est.</td>
<td>$2.712 trillion</td>
</tr>
<tr>
<td>2013 est.</td>
<td>$2.582 trillion</td>
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</tbody>
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*note: data are in 2015 US dollars*

### Government Overview

- **Executive Branch:** President and vice president are elected for five-year terms (eligible for a second term) by direct vote of the citizenry. The Cabinet is appointed by the president.
- **Legislative Branch:** Dewan Perwakilan Rakyat (House of Representatives) and Dewan Perwakilan Daerah (Regional Representatives Council), election held at the same time as presidential election.
- **Judicial Branch:** Supreme Court or Mahkamah Agung is the final court of appeal but does not have the power of judicial review. Constitutional Court or Mahkamah Konstitusi has the power of judicial review, jurisdiction over the results of a general election, and reviews actions to dismiss a president from office.

### Human Rights Issues

- Holding the military and police accountable for past human rights violations; religious minorities face harassment, intimidation, and violence by Islamist militants; Islamic bylaws violate the rights of women, LGBT people, and religious minorities; torture and killings in Papua; death penalty against convicted drug traffickers.

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<th>Membership in International Organizations</th>
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3 Supra note 1.
I. INTRODUCTION

There has generally been no significant change in Indonesia since the 2011 Rule of Law Baseline Study in terms of the Constitution and legal regime. The Constitution has several provisions aimed to regulate the power of the state and its bodies and to ensure equal status of all citizens before the law. It also provides measures with regard to legal certainty and just judicial proceedings. Nonetheless, similar issues still occur within the realm of law enactment, law enforcement, as well as equal access to legal procedures.

A number of laws and policies enacted and implemented in between 2011 and 2016 affect the rule of law in Indonesia. On a positive note, the House of Representatives and the government passed three laws that further regulate constitutional rights as well as implement international treaties, namely Law No. 16 of 2011 regarding Legal Aid, Law No. 11 of 2012 regarding the Juvenile Justice System, and Law No. 8 of 2016 on People with Disability.\(^5\)


On a negative note, there are laws and policies that are not in accordance with rule of law principles. In 2013, for instance, the government enacted the Societal Organization Law (Law No. 17 of 2013) which hinders freedom of organization by imposing additional registration requirements as well as increasing the government’s control over societal organizations. The Law stipulates a registration mechanism for all organizations regardless of form (foundation or association or organizations without legal entity status), which in practice has been used by a number of local governments to control civil society organizations.\(^6\)

On freedom of expression, Law No. 11 of 2008 on Electronic Information and Transactions (ITE) has been used arbitrarily to curtail alleged defamatory comments on social media. The Law may have seemed sound at the time it was enacted, but its arbitrary use is increasing along with the increased use of social media. In May 2015, Minister Rudiantara of the Ministry of Communication and Information, in supporting the revision of the law, mentioned that 74 people have been accused of defamation on social media under this Law.\(^7\)

In addition, there are reports showing the failure of state institutions, such as the police, to protect the constitutional right to freedom of religion. Indonesia-based human rights advocacy group Setara Institute recorded 197 cases and 236 incidents of violence related to religious intolerance in 2015, most of which were perpetuated by local administrations. In 2014, the number of cases was 134, with 177 incidents of violence.\(^8\)

Furthermore, the change of government in 2014 has brought some changes in terms of policies related to the rule of law and human rights. For example, the new government led by President Joko Widodo of the Indonesian Democratic Party Struggle resumed the imposition of the death penalty on a number of drug traffickers. The death penalty had been suspended by the previous government of President Yudhoyono of the Democrat Party. In 2015, 14 people were executed. As Amnesty International reported, the Indonesian government has vowed to use the death penalty to tackle a national “drugs emergency,” while President Widodo has issued a statement that he will reject all clemency petitions of death row prisoners on drug charges.\(^9\)

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\(^6\) The Law is more often cited in the media as “Mass Organization Law,” although the correct translation is ‘societal organization’ (from ‘Organisasi Kemasyarakatan’). For more information on the law, see: http://www.icnl.org/research/monitor/indonesia.html, accessed Feb 26, 2016. It should be noted that The Constitutional Court in 2014 through its decisions No. 82/PUU-XI/2013 and No. 3/PUU-XII/2014, annulling 10 articles and providing constitutional interpretation for two. One of the most important impacts of this decision is that registration is no longer compulsory for societal organizations. However, until 2015, there local governments erroneously use this law to control societal organizations, for example through denial of services for or even disbandment of organizations that are not registered. See for example, ‘UU Ormas, Dulu dan Sekarang,’ Kompas, 12 November 2015, http://print.kompas.com/baca/2015/11/12/UU-Ormas%2c-Dulu-dan-Sekarang, accessed 06 May 2016.


Key Rule of Law Structures

The 2011 Rule of Law Baseline Study lists nine institutions that are relevant to the rule of law, namely: Supreme Court, Constitutional Court, Judicial Commission, Attorney General’s Office, National Human Rights Commission, Human Rights Court, Witness and Victim Protection Agency, Indonesian National Police, and Anti-Corruption Commission. In addition to this, the Ombudsman has raised into political prominence after its establishment in 2008. Furthermore, the role of the legal profession (advocates) should also be highlighted.

The Indonesian judiciary involves three institutions: (1) the Supreme Court and the lower courts; (2) the Constitutional Court; and (3) the Judicial Commission.

Supreme Court (Mahkamah Agung) is the highest court in the Indonesian judicial system. Indonesia subscribes to “one-roof system,” in which both judicial and administrative matters of the courts are under the authority of the Supreme Court. There are 54 Supreme Court Justices and a total of 8,097 judges at all levels under the Supreme Court. Beneath the Supreme Court there are four branches of the judicature: (i) the courts of general jurisdiction, which have jurisdiction to try civil and criminal cases; (ii) the courts of religious affairs (for Islamic family law); (iii) the courts of state administration; and (iv) the courts of military affairs.

Under the Supreme Court are Districts Courts at the district/regency level and Courts of Appeal at the provincial level. Each of the four branches of the court has its own Appellate Courts. Law No. 4 of 2004 regarding basic provisions on Judicial Power, which was amended by Law No. 48 of 2009, regulates matters pertaining to the lower courts. Cases at all levels are tried by a panel of three judges, except for certain special courts that are under the Court of General Jurisdiction.

In 2003, the Supreme Court published a blueprint for the Supreme Court’s reform. In 2010, the Supreme Court reviewed the implementation of the blueprint and published a blueprint for judicial reform 2010-2035. The new blueprint provides the vision of bringing about “excellent court values” of independence, integrity, impartiality, transparency, and accountably.

The Indonesian Supreme Court Annual Report of 2015 shows that there were 4,584,104 pending and ongoing cases registered in the Courts of the First Instance in 2015. The total number of cases registered is considerably small compared to the population of Indonesia of over 255 million in 2015 and shows the high reluctance of Indonesian citizens to use the court to settle disputes. The reasons to avoid courts include: high cost, lengthy process, complex procedures, intimidating court rooms and lack of trust in the judiciary.

11 Article 4 (3) of Law No. 5 of 2004 regarding the Supreme Court (amendment to Law No. 14 of 1985) provides that the maximum number of the Supreme Court justices is 60.
Indonesia

Constitutional Court (*Mahkamah Konstitusi*). The Constitutional Court was set up in 2003 based on the amended Constitution (2001) and Law No. 24 of 2003, which was amended by Law No. 8 of 2011 and Law No. 4 of 2014. Its authorities and responsibilities include reviewing laws against the Constitution, determining disputes over the authorities of state institutions whose powers are given by the Constitution, overseeing the dissolution of political parties, and hearing disputes regarding the results of a general election. Also, the Constitutional Court has the authority to impeach the President and/or the Vice-President. Persons and entities whose constitutional rights are injured by the enactment of a law may file judicial review petitions with the Constitutional Court.

While laws (parliamentary act or statute) are reviewed by the Constitutional Court against the Constitution, regulations (Government Regulation, Presidential Regulation and Local Regulation) are reviewed by the Supreme Court against laws. As mentioned in the *2011 Rule of Law Baseline Study*, this means that regulations cannot be reviewed against constitutional principles.

**Judicial Commission.** According to the Constitution, the Judicial Commission has the authority to propose candidates for appointment as justices of the Supreme Court, and possesses further authority to maintain and ensure the honour, dignity and behaviour of judges. This institution is further regulated by Law No. 22 of 2004 as amended by Law No. 18 of 2011 regarding Judicial Commission, which provides details on how the Commission proposes candidates for Supreme Court justices and the oversight mechanism of the Commission on the conduct of the Supreme Court.

**Attorney General’s Office.** The key functions of the Attorney General’s Office (AGO) are instituting prosecutions on behalf of the state and executing final binding judicial orders and decisions. AGO may also conduct investigations into certain crimes. Prosecutors also have the authority to act on behalf of the state in civil and administrative matters, both in and out of court. Moreover, AGO is tasked, among others, to secure the policy on law enforcement, supervise the distribution of printed materials, supervise religious beliefs that may be harmful to the state and society, and prevent misuse of religion and/or blasphemy. Mirroring the court structure, there are prosecutor offices at the district level and provincial level (high prosecution office). According to the AGO Annual Report of 2014, in 2013, there were 9,007 prosecutors in Indonesia.

**National Commission of Human Rights (Komisi Nasional Hak Asasi Manusia or Komnas HAM).** The National Commission of Human Rights was established during the Soeharto administration with Presidential Regulation No. 50 of 1993 and was put under the control of the president. Law No. 39 of 1999 regarding Human Rights provides the new basis for the National Human Rights Commission.

The main roles of the Commission are to educate the government and the public on human rights, establish a network of human rights defenders, and receive complaints on human rights violations. The Human Rights Law no. 39 of 1999 provides for 35 commissioners nominated by the Commission and selected by the House of Representatives for maximum of two five-year terms. It should be noted that despite this stipulation, only 13 commissioners have been appointed for the 2012-2017 term of office.

17 The “hierarchy of law and regulations” is provided in Law No. 12 of 2011 on Law Making, as follows: (1) constitution, (2) Decree of the People’s Consultative Assembly, (3) Laws (parliamentary act or statute) and Government Regulation in Lieu of Law, (4) Government Regulation, (5) Presidential Regulation, (6) Provincial Regulation, and (7) Regency/ City Level Regulation.

18 Law No. 16 year 2004 on the Attorney General of Indonesia provides this power in so far it is regulated by Law. To date the following laws grant investigative power to prosecutors: Law No. 26 year 2000 on Human Rights Court, Law No. 31 year 1999 on Eradication of Corruption as amended by Law No. 20 year 2001, and Law No. 30 year 2002 on The Commission for The Eradication of Corruption (KPK”)

Human Rights Court. The Human Rights Court, which was established under Law No. 26 of 2000, is under the Court of General Jurisdiction and tries what are termed as “gross violations of human rights” that consist of genocide and crimes against humanity. One of the main features of this special court is the number of judges. Cases are examined by five judges, three of which are ad hoc judges. There are 12 ad hoc judges selected by the Supreme Court for maximum of two five-year terms. Cases that occurred before entry into force of Law No. 26 of 2000 may be tried in an ad hoc Court on Human Rights set up especially for that purpose upon the recommendation of the House of Representatives. Such ad hoc courts were established relative to crimes committed in Timor-Leste in 1999, the Tanjung Priok massacre in 1984, and the bloody violence in Abepura in 2000. The Court, however, has ceased to function for almost a decade. This is primarily due to the lack of cases filed before it. Despite the fact that to date Komnas HAM has filed 10 investigative reports on gross human rights violations, they have not been followed by prosecution, either because the Attorney General’s Office deemed there was insufficient initial evidence to pursue formal investigation or the refusal of the Parliament to establish the ad hoc human rights court.

Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban or LPSK). The Witness and Victim Protection Agency was established by Law No. 13 of 2006 regarding Witness and Victim Protection and started its operation in 2008. There are seven members of the Agency selected by the House of Representatives based on candidates nominated by the President. In December 2009 the Agency signed a Memorandum of Understanding with the National Commission on Human Rights to set up a joint committee to formulate technical guidance on the protection to victims of gross human rights violation.

Anti-Corruption Commission (Komisi Pemberantasan Korupsi or KPK). The Anti-Corruption Commission was set up by Law No. 30 of 2002 regarding the Commission for Corruption Eradication and started its operation in 2003. The Commission deals with corruption prevention and investigation as well as prosecution of corruption cases involving law enforcement agencies, state apparatus, and other people who (i) have some degree of involvement with corruption committed by law enforcers or government executives, (ii) attracted disconcerting public attention, and/or (iii) involves a loss to the state of a minimum of one billion rupiah (equal to USD114,000). The Commission has five commissioners selected by the House of Representatives based on candidates nominated by the President. As with other corruption cases, those investigated and prosecuted by KPK are filed only with the Special Court on Anti-Corruption, which was also established by the same law. The Special Court has five judges, three of which are ad hoc judges. Ad Hoc Judges of the Special Court were selected by a special selection Committee under the Supreme Court.

The Indonesian National Police (Kepolisian Republik Indonesia or POLRI). The Indonesian National Police is governed by Law No. 2 of 2002 regarding the Indonesian National Police. The police has the authority to investigate almost all crimes on their own initiative, except for those defined in the Law on Criminal Procedure as “complaint crimes” (delik aduan). This refers to crimes that require a request from an “interested


21 For example, the House of People’s Representatives (DPR) determined that the case of the shooting of student activists and civilians in Trisakti University and Semanggi area was not gross human right violations therefore requiring no establishment of Ad Hoc Human Rights Court. This became the ground for the Attorney General’s Office to suspend investigation on these cases. See: Mys, ‘Nebis in Idem Tak Berlaku dalam Kasus Trisakti dan Semanggi,’ *Hukumonline*, 17 March 2003, http://www.hukumonline.com/berita/baca/hol7640/inebis-in-idemi-tak-berlaku-dalam-kasus-trisakti-dan-semanggi (accessed 06 May 2016).

22 Memorandum of Understanding No. 490/TUA/XII/2009.

23 It should be noted that the law initially only established one such court in Jakarta. Later, in response to a judicial review against the constitutionality of the law, it was amended by Law No. 46 year 2009 on Corruption Court, which stipulated that the court should be established in all provincial capitals in Indonesia, and the Attorney General’s Office may also prosecute corruption cases before the courts.

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party” to take action against the person who allegedly committed the crime before the police can investigate
the matter. They include a number of family matters, crimes of defamation, and disclosure of confidential
information. In the annual report press release on 29 December 2015, the National Police Chief stated that
there are 429,711 police officers.24

Ombudsman. The Ombudsman was initially formed in 2000 as a commission with minimal powers and
resources by Presidential Decree No. 44 of 2000. In 2008, the Ombudsman was re-constituted with more
powers and resources by Law No. 37 of 2008 on the Ombudsman of the Republic of Indonesia. Since then,
the Ombudsman has become an increasingly active watchdog institution that has now grown substantially
in size, capacity and influence.

By the end of 2014, the Ombudsman had established offices in 32 of the 34 provinces in Indonesia. The
Ombudsman handles public complaints free of charge, funded fully by the government. Most complaints
are about government’s services—including business licensing, health and education services, the police,
and the National Land Agency. The most prevalent type of complaint related to “undue delay in decision-
making,” which is often a proxy for corruption. It received 5,173 complaints in 2013 and 3,021 complaints
from January to June 2014.25 In 2015, the Ombudsman received 6,859 complaints and processed 47.46 per
cent or 3,255 complaints. In terms of prevalence, complaints about courts ranked sixth (261 cases) and the
police second (806 cases).26

Legal Profession. The reform of the legal profession is needed in order to strengthen rule of law, as disorder in
the legal profession contributes to a corrupt judiciary. The narrative goes back to the 1960s under President
Suharto’s authoritarian rule.

The first Indonesian Bar Association was established in 1964, but Suharto’s government intervened against
the organization in the early 1980s until it was replaced by IKADIN (Ikatan Advokat Indonesia or Indonesian
Advocate League).27 Thereafter, other bar associations were set up without proper codes of conduct and
oversight so that integrity in the legal profession declined. In addition, participants had to bribe court officials
to pass the bar exam. After reformasi, a unified and self-governed bar association that is independent from
the government was established based on Law No. 18 of 2003 on Advocates’ Profession. The organization is
called Indonesian Bar Association (Persatuan Advokat Indonesia or Peradi).

Peradi started to organize annual bar examinations in February 2006. However, due to a three-year (2003-
2006) transition period and limited number of bar intakes, many law graduates were disappointed. Backed
by lawyers who criticized the establishment process of Peradi, another bar association called Indonesian
Advocates’ Congress (Kongres Advokat Indonesia or KAI) was set up in 2008. Further, due to heightened
tension within Peradi, it split into three factions during its national congress to select a new chairperson in
March 2015. The split brought challenges to the courts as to which advocates would be allowed to appear
before them, although the Constitutional Court does not require bar admission for legal representation

26 Ombudsman’s Statistical report 2015 http://ombudsman.go.id/index.php/laporan/laporan-statistik.html, last accessed Feb 27,
2016.
27 See Daniel S. Levy, “Between State and Society: Professional Lawyers and Reform in Indonesia,” in Daniel S. Levy, Legal Evolution
Binziad Kadafi, et. al., Advokat Indonesia Mencari Legitimasi: Studi Tentang Tanggung Jawab Profesi Hukum di Indonesia [Indonesian
and lawyers working in companies and state institutions are not required to be members of the bar. To resolve the issue, the Supreme Court issued the Letter of the Chief Justice No. 73/KMA/HK.01/IX/2015 (25 September 2015) to allow the Appellate Court (at the Provincial level) to administer the oath of advocates to members of any bar association who have passed all requirements provided in the 2003 Law on Advocates.

According to the Law on Advocates, to be admitted to the bar, a candidate must hold an undergraduate law degree (“Sarjana Hukum” degree, obtained after approximately four years of study), be at least 25 years of age, and have completed advocate professional course (Pendidikan Kekhususan Profesi Advokat or PKPA) provided by institutions approved by Peradi, which usually takes several weeks. Then the candidate must take the bar exam. Upon passing the exam, the advocate has to do internship for two years. In early 2016, Peradi claimed to have more than 35,000 members.

Foundation & Evolution of Rule of Law

As mentioned in the 2011 Rule of Law Baseline Study, the Indonesian legal system is inherited from the Dutch colonization period. The “rule of law” tradition in Indonesia is closer to the continental European “rechtsstaat” tradition. This was elucidated in the original text of the 1945 Constitution, which stated that “Indonesia is based on law (rechtsstaat), and not based on mere power (machtsstaat).” The elucidation of the Constitution was abolished in the 1999-2002 amendments and this statement was then inserted into the text of the Constitution in the third amendment (2001). The rechtsstaat concept is widely known as “negara hukum.”

In the early years after Indonesian independence, negara hukum served as the legitimating ideology of the constitutional republic. Under Soekarno’s regime of Guided Democracy (1958-1967) negara hukum declined due to the regime’s patronymic. Corruption in legal institutions commenced and President Soekarno started to subjugate the judiciary under the executive. During Suharto’s rule, the discourse of negara hukum was generally dominated by the government and the idea of negara hukum was only discussed in the context of legitimizing Suharto’s power. It has been noted that Soekarno used the term to support his vision of unfinished revolution, whereas Suharto interpreted it for the purpose of “economic development, stability, security and order.”

The end of President Suharto’s regime in May 1998, which is usually termed as “reformasi” (reform), opened rule of law projects from various countries and donors, especially in line with the language of good governance. In those projects, rule of law by and large is understood as having an independent and professional judiciary as well as more public participation, transparency and accountability in governance. This definition of rule of law is reflected in the society until today, with the term “rule of law” being used by different actors, including international and local non-governmental organizations.

Human Rights Treaties

Indonesia has signed nine major human rights instruments and has ratified eight of these instruments.\(^{32}\) Ratification must be followed by incorporating the conventions’ stipulations into relevant national laws and policies. However, the main challenge in Indonesia is the lack of implementing laws and policies for these instruments.

It is important to note that decentralization in Indonesia allows subnational authorities (provinces and regencies/cities) to issue local regulations ("Peraturan Daerah" or Perda). The United Nations Country Team noted in its submission for the Universal Periodic Review in 2011 that there were more than 1,000 local bylaws and policies that were not in accordance with national and internationally agreed standards.\(^{33}\) The problem is two-fold. First, there is a lack of effective control mechanism at the central government level to ensure that local governments adhere to the national legal framework on human rights based on the ratifications of the international treaties.\(^{34}\) Second, the Supreme Court’s authority to review local regulations against national law has not been used effectively by the general public at the local level because of its distance, literally and figuratively. The Supreme Court does not have the authority to review local laws against the Constitution and the Constitutional Court cannot review local regulations.

The nine major human rights instruments signed by Indonesia and their implementing laws are as follows:


Date of Ratification: 25 June 1999. The treaty was enacted as a national law by Law No. 29 of 1999 regarding the Ratification of International Convention on the Elimination of All Forms of Racial Discrimination 1965. To implement the treaty, the Indonesian government has been revoking laws and policies that discriminate against Indonesian citizens of Chinese descent, such as the requirement for these citizens to have an additional document to acknowledge their Indonesian citizenship. In the Second Cycle of the Universal Periodic Review, the Compilation prepared by the Office of the High Commissioner for Human Rights noted that Indonesia’s fourth to sixth reports on CERD have been overdue since 2010.\(^{35}\)

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\(^{32}\) As discussed later in this section, the Convention for the Protection of All Persons from Enforced Disappearance has been signed by Indonesia but has not yet been ratified at the time of writing of this Report.


\(^{34}\) Pursuant to Law No. 23 year 2014 on Regional Government the Ministry of Interior Affairs monitors regional regulations and may annul one if it conflicts with a higher law, public interest, and morality. The current Minister of Interior Affairs in 2015 issued a statement that since November 2014 to May 2015 his Ministry has repealed 139 Regional Regulation, including the controversial Aceh Qanun that prohibited women from leaving home alone after 23.00 pm. However, a specific monitoring for local bylaws’ compliance to the human rights standards Indonesia has subscribed to and the effectiveness of this mechanism to repeal discriminatory regional regulations is not immediately evident. See: See ‘Sejak November 2014 hingga Mei 2015, Mendagri Batalkan 139 Perda,’ Kompas, July 22, 2016, http://nasional.kompas.com/read/2015/07/22/17054251/Sejak.November.2014.hingga.Mei.2015.Mendagri.Batalkan.139.Perda, accessed May 6, 2016;

International Covenant on Civil and Political Rights (ICCPR) (in force 23 March 1976)

Date of Ratification: 23 February 2006. The treaty was ratified as a national law by Law No. 12 of 2005 regarding the Ratification of International Covenant on Civil and Political Rights (ICCPR). There remain to be some challenges after the ratification. For example, as outlined previously, freedom of organization is facing some restrictions because of the enactment of the Societal Organization Law (Law No. 17 of 2013) that imposes additional registration requirements, as well as increased the government’s powers and control over societal organizations. For instance, foreign foundations are to refrain from activities which “disrupt the stability and the unity” of Indonesia or “disrupt diplomatic ties.” They must also have minimum assets allocated for the establishment of the organization of USD1 million for a foreign legal entity and USD100,000 for a foreign individual. The Societal Organization Law was reviewed by the Constitutional Court in 2013 and decided in December 2014. While the Court ruled that the law is not too excessive in nature in light of Article 28J of the Constitution, some provisions in the Law considered to inflict undue risks to the principle of freedom of association were repealed. It should be noted that although the ICCPR was referred to in the petitioners’ argument, the Constitutional Court based its decision only on its interpretation of the Constitution.

Freedom of expression also faces challenges, among others, because of Law No. 11 of 2008 on Electronic Information and Transactions (ITE), which has been used arbitrarily for alleged defamatory comments on social media. In addition, the government’s failure to protect civil rights of minority groups such as minority religions as well as the LGBT (Lesbian, Gay, Bisexual, and Transgender) community has been noted by a number of human rights advocacy groups as well as the National Commission on Human Rights.


Date of Ratification: 23 February 2006. The treaty was ratified as a national law by Law No. 12 of 2005 regarding the Ratification of International Covenant on Economic, Social and Cultural Rights (ICESCR). While there have been improvements in terms of economic, social and cultural rights in Indonesia, the implementation of the ICESCR in Indonesia still needs major improvements, such as on the right to social security and to an adequate standard of living, right to health, labour rights, right to land, right to

housing, and right to education, especially for people living in remote areas.\textsuperscript{40} It is hard to gauge whether the convention has been taken into account in the design of developmental policies.

**Convention on the Elimination of all forms of Discrimination Against Women (in force 3 September 1981)**

Date of Ratification: 13 September 1984. The treaty was ratified as national law by Law No. 7 of 1984 regarding the Ratification of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). A number of relevant laws have been enacted since the CEDAW ratification, for example Law No. 21 of 2007 regarding the Eradication of Human Trafficking and Law No. 23 of 2004 regarding the Elimination of Domestic Violence. Nevertheless, discrimination against women is still rampant, due to cultural and religious thoughts that undermine gender equality.

**Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (in force 26 June 1987)**

Date of Ratification: 28 October 1998. The treaty was ratified as national law by Law No. 5 of 1998 regarding the Ratification of Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although the principles have been ratified, in reality there remain to be reports regarding the use of torture by police officers to obtain statements, inhumane treatments (and killings) by the military and the police in conflict areas such as West Papua, and the use of flogging as punishment in Aceh Province under Sharia Law.

**Convention on the Rights of the Child (in force 2 September 1990)**


An important law to implement this treaty was enacted in 2012, namely Law No. 11 of 2012 on Juvenile Justice System. This Law has a strong focus on the diversion of juveniles away from the prison system. It includes a fundamental change of juvenile law enforcement orientation from punishment to restorative justice.\textsuperscript{41}

\textsuperscript{40} For example, UN Committee on Economic, Social and Cultural Rights in its 2014 concluding observations for Indonesia noted that while some policies such as universal health coverage are commendable, the government’s performance can still be further improved in a number of areas, including more effective prohibition of discrimination in providing economic, social and cultural rights, conditions of work in the informal sector, domestic worker situation in home and abroad, child marriage, human rights impact of mining and plantation operations as well as forced evictions. See: \textit{The United Nations Committee on Economic, Social and Cultural Rights Concluding Observations on the Initial Report of Indonesia}. E/C.12/IDN/CO/1. June 19, 2014. Accessed May 7, 2016. http://www.refworld.org/publisher,CESCR,CONCOBSERVATIONS,IDN,53c788264,0.html.

\textsuperscript{41} The new law guarantees a number of important changes. These include a diversion mechanism; a family and community based reconciliation approach; specialised justice systems for child offenders, victims and witnesses; capacity development of law enforcement agencies; and restorative justice principles.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (in force 1 July 2003)

Date of Ratification: 31 May 2012. The Convention was ratified by Law No. 6 of 2012 regarding the Ratification of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Before the ratification of this convention a law concerning migrant workers was enacted in 2004, namely Law No. 39 of 2004 regarding Placement and Protection of Indonesian Workers Abroad. This Law, however, contains provisions that put Indonesian migrant workers in a weak position, with lack of clear enforcement mechanism and the lack of government protection abroad. A number of human rights advocacy groups have been pushing the government to amend the law and policy concerning migrant workers in accordance with the convention.


Date of Ratification: 30 November 2011. The Convention was ratified by Law No. 19 of 2011 regarding Convention on the Rights of Persons with Disabilities. Further, Law No. 8 of 2016 on People with Disability was enacted on 15 April 2016.

International Convention for the Protection of All Persons from Enforced Disappearance (entry into force 23 December 2010)

On 27 September 2010, the Indonesian government signed the Convention for the Protection of All Persons from Enforced Disappearance. However, until this report is written, it has not been ratified although the ratification bill has been tabled since 2015.

<table>
<thead>
<tr>
<th>Other main relevant international instruments</th>
<th>Ratification, accession or succession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Prevention and Punishment of the Crime of Genocide</td>
<td>Yes</td>
</tr>
<tr>
<td>Rome Statute of the International Criminal Court</td>
<td>No</td>
</tr>
<tr>
<td>Palermo Protocol</td>
<td>No</td>
</tr>
<tr>
<td>Refugees and stateless persons</td>
<td>No</td>
</tr>
<tr>
<td>Geneva Conventions of 12 August 1949 and Additional Protocols thereto</td>
<td>Conventions only</td>
</tr>
<tr>
<td>ILO fundamental conventions</td>
<td>Yes</td>
</tr>
<tr>
<td>UNESCO Convention against Discrimination in Education</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: UN Universal Periodic Review 2008
Interpretation and Use of the ‘Rule of Law’

Since 1998, the government has been issuing five-year National Action Plans on Human Rights (Rencana Aksi Nasional Hak-Hak Asasi Manusia or RANHAM). They contain detailed plans ranging from human rights trainings in the regions to ratifications of international covenants. The government also issued the National Strategy and Action Plan on Corruption Eradication for 2010-2025 (Strategi Nasional dan Rencana Aksi Pemberantasan Korupsi 2010-2025 or Stratnas PK).

Additionally, the government formally acknowledges the rule of law in the National Long Term Development Plan 2005-2025 and the National Medium Term Development Plans. The current Medium Term Development Plan (2015-2019), for example, identifies law and justice as intrinsically linked to the nation’s political and economic development objectives. Without rule of law, investors and the private sector cannot operate with confidence. The legal development component of the MTDP focuses on “achieving greater enforcement and awareness of legal norms.” The MTDP, in turn, proposes that this be achieved by focusing on three objectives: improved transparency, accountability and speed in law enforcement; improved effectiveness of corruption prevention and eradication; and respect, protection and fulfilment of human rights.

For the purpose of implementing the plan, the government, through the State Ministry of National Development Planning (“Badan Perencanaan Pembangunan Nasional”), specifically developed the National Strategy on Access to Justice that aims to strengthen Indonesia as a negara hukum.42

Although the government’s commitment looks good on paper, there are challenges in implementation. Challenges occurred mainly in reforming legal institutions that did not have procedures and mechanisms (such as recruitment and oversight mechanisms) that promote independence and professionalism. In addition, the government also faces challenges in regard to the rights of minority, such as the minority religious groups and LGBT groups. The challenge may be caused by lack of understanding about constitutional rights and the inability of the government to stand against intolerant groups.43

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42 See the website of the project: http://akseskeadilan.org/, accessed Feb 26, 2016.

43 There are even cases where the government and/or the legislatures issued regulations that are not in accordance with the rule of law principles. See, for example, Setara Institute’s Tolerant City Index 2015 that provides ranks of cities based on (1) state rules on religion, (2) favouritism, and (3) social rules: http://setara-institute.org/en/english-tolerant-city-index-2015/, accessed May 1, 2016.
**TABLE 2**

**ADMINISTRATION OF JUSTICE GRID**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
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</table>
| No. of judges in country                      | Supreme Court, including all courts under it: 8,097[^44]  
                                             | Supreme Court Justices: 54  
                                             | Constitutional Court: 9                                                                                     |
| No. of lawyers in country                     | In 2014, the head of Peradi claimed to have 26,000 members.[^45]  
                                             | (Peradi members only, not including judges and state prosecutors.) In early 2016, Peradi claimed to have more than 35,000 members.[^46] |
| Annual bar intake (including costs and fees)  | The numbers are fluctuating until now as the system was reformed in 2006. In 2015, 88.7% (4,574 of 5,154);[^47] in 2010, 25% (832 of 3,325); in 2009, 57.1% (1,915 of 3,352); in 2008, 36.1% (1,323 of 3,665); and in 2007, 30.3% (1,659 of 5,473).[^48]  
                                             | Cost: IDR1,250,000 (94.77USD) for taking the bar exam. The cost of obligatory special education for advocates prior to taking the bar exam varies depending on the course provider. |
| Standard length of time for training/qualification | Advocates: special education for advocates (several weeks) and 2 years internship.  
                                             | Judge: 106 weeks or 2 years.                                                                                   |
| Availability of post-qualification training   | Required for promotion of judges and prosecutors. Required by the bar association for advocates.                                        |
| Average length of time from arrest to trial (criminal cases) | 111 days (maximum number of days allowed by the Law on Criminal Procedure)                                                      |
| Average length of trials (from opening to judgment) | 290 days: 90 days at the district court, 90 days at the high court and 110 days at the Supreme Court (maximum number of days allowed by the Law on Criminal Procedure) |

Accessiblity of individual rulings to public | Rulings are accessible on the Supreme Court’s website.49
---|---
Appeal structure | District court → high court → Supreme Court
Cases before the National Human Rights Institution | The National Human Rights Commission received 8,249 complaints in 2015.50
Complaints filed against the police, the military, lawyers, judges/judges, prosecutors or other institutions (per year) | Prosecutors: 77 prosecutors sanctioned in January-June 2010.51 There is a decrease since the last report: 156 prosecutors in 2010. Complaints filed with the Ombudsman in 2015: 117.52 Constitutional Court: 1 complaint resulted in 1 justice being given notice in 2011, but he resigned. The Chief Justice of the Constitutional Court, Akil Mochtar, was arrested by the Anti-Corruption Commission in October 2013 and removed immediately by the Court. He was found guilty by the Court in June 2014 and the decision was upheld by the Supreme Court in February 2015. Supreme Court: 1,408 complaints submitted in 2015, 266 disciplinary sanctions taken by the Court. In addition, 6 justices were tried in the Judge’s Honorary Council, in conjunction with the work of the Judicial Commission.53 Police: based on the press release quoted by the media, in 2014 9,892 police officers received disciplinary sanctions.54 There is no data in 2015. The Police does not publish reports. Reports against the police filed with the Ombudsman: 806.55
Complaints filed against other public officers and employees | Reports filed with the Ombudsman in 2015.56
- Against local government: 2,853
- Against military personnel: 39

56 Id. There are many other institutions and groups of institutions (such as “ministries) in the statistics, which cannot all be explained in this Grid. Ombudsman further classifies the numbers according to the substance of the report, such as health, environment, etc; and types of complaints, such as discrimination, conflict of interest, undue delay, etc.
II. COUNTRY PRACTICE
IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW FOR
HUMAN RIGHTS

A. On Central Principle 1
(Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

There is no change since 2011. As indicated in the 2011 Rule of Law Baseline Study, the Constitution provides a set of provisions regarding the power of the executive, legislative and judicial bodies. It regulates the term for the elected President and Vice President and provides an impeachment mechanism for acts of treason, corruption, bribery, other serious criminal offences, or moral turpitude as well as when the President and/or the Vice-President no longer meets the qualifications to serve as President and/or Vice President. The manner of electing or appointing members of the legislature and judiciary are also stipulated.

The Constitution establishes a system of checks and balances. For example, government policies can be questioned in the State Administration Court, while the constitutionality of laws can be challenged in the Constitutional Court. Government Regulations, Presidential Regulations and Local Regulations can be brought to the Supreme Court for review.

The Constitution also provides for the independence of the judiciary, with a Judicial Commission that has the authority to “propose candidates for appointment as justices of the Supreme Court and… maintain and ensure the honour, dignity and behaviour of judges.”

Amendment or Suspension of the Fundamental Law

There is no change since 2011. Constitutional amendments require a proposal by at least 1/3 of the members of People's Consultative Assembly. A minimum of fifty per cent plus one members of the total member of the People's Consultative Assembly must vote in favour of the amendment in a session that is attended by at least 2/3 of the total membership of the Assembly.

Laws Holding Public Officers and Employees Accountable

Some changes have been made in the legal framework since the 2011. There are various laws that aim to hold public officials and employees accountable, although written permission is required to initiate an investigation against high-ranking officials.

As mentioned in the previous study, written permission was required under Law No. 27 of 2009 with regard to investigations by law enforcers of members of the House of Representatives. This law has been replaced by Law No. 17 of 2014, which maintains the requirement for a written permission from the House Honor Tribunal, except if members of the House of Representatives are (i) caught committing a crime, (ii) suspected

57 Article 24(1), Constitution.
58 Article 24B(1), Constitution.
59 Article 37, Constitution.
of committing a crime punishable by death or imprisonment for life or a crime against humanity and the security of the state based on sufficient preliminary evidence, or (iii) suspected of committing a special crime. However, there is Constitutional Court Decision No. 76/PUU-XII/2014 that effectively changed the meaning of the provision so that the written permission from the president is required to investigate members of the House of Representatives, House of Regional Representatives, and the People's Consultative Assembly, with the same exceptions as stated above. For the local House members, permission from the Minister of Home Affairs is required.⁶⁰

Similarly, although Law No. 32 of 2004 on Regional Government has been repealed by Law No. 23 of 2014 on Local Government, the new law still requires written approval prior to investigation against local leadership. Article 90 states that, with regard to governors and vice governors, written approval shall be sought from the President; with regard to regents, vice-regents, mayors and deputy mayors, approval should be obtained from the Minister of Interior Affairs. The investigation may be initiated if (i) written permission is not granted 30 days after the request was received (a reduction from the 60 days given in the previous law), (ii) the official is caught in the act of the crime, or (iii) the official is suspected of committing a crime that carries the capital punishment or a crime related to state security. Bases for dismissing governors, vice governors, regents, vice-regents, mayors, deputy mayors, and members of the provincial assembly, as well as the procedure to be followed are also stipulated in the law.⁶¹ The grounds and procedure for impeaching the President and Vice-President are provided for in the Constitution.

As to the implementation of the Code of Ethics for judicial officers, internal oversight over judges under the Supreme Court is conducted by the Supreme Court Supervisory Body (Badan Pengawasan Mahkamah Agung) led by the Deputy Chief Justice on Supervision. This body handles reports on misconduct of judges and court clerks as well as receives complaints from the public. External oversight is conducted by the Judicial Commission. (See Part I. on “Key Rule of Law Structures.”) There is no permanent oversight over the justices in the Constitutional Court; instead, a Council of Ethics of the Constitutional Court shall be set up when an inquiry on misconduct is to be conducted.

Special Courts and Prosecutors of Public Officers and Employees

There are no dedicated courts and prosecutors that handle cases against public officers and employees.

B. On Central Principle 2
   (Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)

Publication of and Access to Criminal Laws and Procedures

There is no change in the condition relative to publication and access of criminal laws and procedures since 2011. The Penal Code, which is a translation of the Dutch colonial government code, and Law No. 8 of 1981 on Criminal Procedure are readily available in both Bahasa Indonesia and English. Laws are published in Bahasa Indonesia, the official language, with unofficial translations into English usually made by private publishers and non-governmental organizations. The government does not translate laws and regulations into English or local languages. According to Law No. 10 of 2004 on the Law Making Process, laws that have been approved by the House of Representatives and signed by the President are to be published in the

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⁶⁰ Article 122, Law No. 17 of 2014.
⁶¹ Articles 78, 79, 139, and 140, Law No. 23 of 2014.
State Gazette of the Republic of Indonesia. Laws are easily accessible as they are published by commercial as well as non-profit publishers both in printed and digital forms.

**Accessibility, Intelligibility, Non-retroactivity, Consistency, and Predictability of Criminal Laws**

There is no significant change since 2011. As noted in the 2011 Rule of Law Baseline Study, while laws are readily accessible, they may not be very understandable, as they tend to be in a complicated writing style. Article 28I of the Constitution, Article 1 of the Penal Code, and Articles 4 and 18(2) of Law No. 39 of 1999 on Human Rights all provide for the non-retroactivity of criminal laws.

Predictability and consistency of criminal laws remains a challenge, since judges are not obliged to follow previous decisions of similar cases. The absence of sentencing guidelines also results in big differences in sentencing similar crimes. The out-dated Penal Code, of which an amended draft has been languishing in the Ministry of Law and Human Rights since 1981, has not been revised. While the House of Representatives and the executive government started to discuss the Draft Penal Code in July 2015, due to its extensive content, there has not been any significant development at the time this report is written.

In addition, widespread corruption in judicial institutions (AGO, courts, police) greatly undermines predictability of court decisions generally, including criminal laws. There are cases in which judges had been separately caught red handed by the Corruption Eradication Commission as they took bribes to change their convictions.62

**Detention Without Charge Outside or During an Emergency**

There is no change since 2011. Law No. 8 of 1981 on the Criminal Procedure allows investigators to detain for a maximum of 20 days for investigation, which may be extended by a prosecutor for a maximum of 40 days.63 After the 60-day period, the investigator must release the suspect. Law No. 15 of 2003 on the Eradication of Terrorism, in Section 28, allows investigators to detain any person suspected of committing a criminal act of terrorism for seven days. For the “purpose of investigation and prosecution,” a person may be detained for a maximum of six months.64 Investigations may be instituted based on intelligence reports checked by the head of a District Court. Law No. 23 of 1959 on the State of Emergency allows preventive detention for a maximum of 50 days without charge.

In the aftermath of the January 2016 terrorist attacks in Jakarta, the government is reportedly considering revising the anti-terror law, with the view to broaden the definition of terrorism and raise the allowable length of time for detention without trial for up to three months from the one-week stipulation in the present law.65

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63 Articles 20 and 24, Law No. 8 of 1981 on the Criminal Procedure.

64 Section 25, Law No. 15 of 2003 on the Eradication of Terrorism.

Rights of the Accused

Freedom from Arbitrary Arrest, Detention without Charge or Trial, Extra-legal Treatment or Punishment, and Extra-Judicial Killing

There is no change since the 2011 Rule of Law Baseline Study. The Constitution, Law No. 39 of 1999 on Human Rights and Law No. 8 of 1981 on the Criminal Procedure provide protection from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial and extra-judicial killing by the state.66 Chapter VI of the Law on Criminal Procedure provides the procedures to ensure the rights of the accused and suspects. A procedure called “pra-peradilan” may be availed of to exercise the right to habeas corpus.67 A suspect, his family or his attorney-in-fact may thus request a district court to examine the legality or illegality of an arrest or detention.

However, issues of abuse in the pre-trial stage and in detention centers consistently occur. Despite numerous reports of abuse, including torture, “No credible investigation has ever been conducted, while the police have sought to shield themselves from accountability by making illusionary pledges to investigate themselves.”68 The most recent incident that has been highlighted by the media and human rights groups is that of Siyono, suspected leader of an offshoot of the extremist group Jemaah Islamiyah. He died after he was arrested in March 2016 by Densus 88, the police’s counter-terrorist wing.69 Autopsy revealed that he was hit by a blunt object that broke six ribs. One of the bones pierced his heart, causing his death. Another wound was also found on his head. The House of Representatives has called on the National Counterterrorism Agency to coordinate with the National Police for the establishment of standard operational procedures in preventing terrorism.70

Between June 2014 and May 2015, the NGO Commission on the Disappeared and Victims of Violence (KONTRAS) recorded 84 reports of torture by the police involving 274 victims, including 16 cases of torture resulting in death. Many of these incidents involved the investigative General Crimes (Reskrim) units, also known as Criminal Investigation Division (CID) units. Although CID units comprise only 10 per cent of the police force, 95 per cent of complaints of police misconduct made to Komnas HAM in 2014 involved CID units.71

Excessive use of force and unjustified killings by both the military and the police have also been highlighted by human rights groups and the media. For instance, on 8 December 2014, soldiers shot to death five persons

66 Articles 28(G) and 28(I), Constitution; Articles 4, 33, 34, and 66, Articles 77-83, Law No. 39 of 1999 on Human Rights; and Law No. 8 of 1981 on Criminal Procedure.
67 Articles 77-83, Law No. 8 of 1981 on Criminal Procedure.
aged between 16-18 years and injured 22 others. The shooting occurred at a protest held in Papua over the brutal attack committed by a unit of Army Battalion 753 on Yulianus Yeimo, a 15-year-old boy, which had occurred the previous night. “Police and military personnel fired live ammunition at about 800 peaceful demonstrators, including women and children,” who were armed with ceremonial hunting bows and had expressed their grievance through a traditional Papuan dance that involved shouting, running in circles and mimicking birdsong.

**Presumption of Innocence**

There is no change since the 2011 Report. Presumption of innocence is acknowledged, with Article 18(1) of Law No. 39 of 1999 on Human Rights stating as follows: “Everyone arrested, detained, or charged for a penal offence has the right to be presumed innocent until proven guilty according to law in a trial at which he has had all the guarantees necessary for his defence, according to prevailing law.” Article 8 of Law No. 48 of 2009 on Judicial Authority also provides for presumption of innocence.

**Legal Counsel and Assistance**

Several laws touch on the right to counsel. Article 54 of the Criminal Procedure Law states that, “For purposes of defence, a suspect or an accused shall have the right to obtain legal assistance from one or more legal counsels during the period of and at every stage of examination...” Article 56(1) of the Law on Criminal Procedure further obligates the official concerned at all stages of examination in the criminal justice process to assign legal counsel to a suspect or an accused who is (i) suspected of having committed an offense punishable by the death penalty or imprisonment of 15 years or more, or (ii) destitute, liable to imprisonment of five years, and without his or her own legal counsel. Any legal counsel who is assigned under this provision of the Law shall provide his or her assistance free of charge.

Article 18(4) of the Human Rights Law recognises the right to counsel in criminal cases. Articles 56(1) and (2) and 57(2) of Law No. 48 of 2009 on the Judicial Authority stipulate that anyone facing a criminal charge against him or her is entitled to legal aid and the state should cover all legal fees for those who cannot afford them until a “permanent legal force” (kekuatan hukum tetap) has been reached.

Anyone who cannot afford to pay legal fees may avail of legal aid in accordance with Articles 4 and 5 of Law No. 16 of 2011 on Legal Aid. This is applicable with regard to civil, criminal and administrative matters and may be in the form of assistance, representation, defence or other appropriate action. Following the issuance of this Law and its implementing regulation, the Supreme Court issued Supreme Court Regulation No. 1 of 2014 on the Guidelines to Provide Free Legal Services for the Poor. (See Part II.D.)

Despite these legal provisions, the right to counsel is not regularly afforded to accused persons. In a report documenting 12 cases that involved crimes punishable by death, Amnesty International found that, in all

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12 cases documented, the defendants did not have access to legal counsel from the time of arrest and at different stages of their trial and appeals. For example, Yusman Telaumbanua, who was detained on 14 September 2012 by the police for the murder of three men, received legal assistance only when the District Court appointed a lawyer on 29 January 2013.75

A report of the Institute for Criminal Justice Reform (ICJR) analysing court documents of 42 death penalty cases concluded that in seven of those cases the suspects were denied legal counsel at various stages of the proceedings.76 ICJR also classified 11 of the 42 cases as “questionable” in terms of access to counsel, “as the decision stated that there is an indication of the lack of legal aid” among the identified formal procedural issues. Other legal matters with relation to the death row inmates include faulty application of procedure in submitting legal action, which is common due to the lack of legal knowledge of the death convicts as well as the lack of legal aid.

**Knowing the Nature and Cause of the Accusation**

There is no change in the law since the 2011 Report. Article 21(2) of the Law on Criminal Procedure requires investigators or public prosecutors to present a person to be detained with a warrant of detention or the ruling of a judge which sets forth, among others, the reason for detention and a brief explanation of the criminal case of which he is suspected or accused of.

A bill of indictment must also include “an accurate, clear and complete explanation of the offense of which accusation is made, stating the time and place where the offense was committed.” A copy of the bill of indictment shall be sent to the suspect, his attorney in-fact or his legal counsel at the same time that the letter bringing the action is submitted to the district court. Where a public prosecutor changes a bill of indictment, he shall send a copy of it to the suspect or his legal counsel.77

Article 51 of the same Law also states that, “in order to prepare a defence, (a) a suspect shall have the right to be clearly informed in a language he understands about what he is suspected of at the time an examination begins; (b) an accused shall have the right to be clearly informed in a language he understands about what he is accused of.”

Further, the Law on Criminal Procedure provides that, to aid his defence, a suspect or an accused has the right to obtain the assistance of counsel during and at every stage of his examination, as well as the right to contact and correspond with his counsel.78

**Guarantees during Trial**

There is no change in the law since the 2011 Report. Article 50 of the Law on Criminal Procedure states that accused persons “have the right to be promptly adjudicated by the court.”

With regard to the right to be present, the Law states that if an accused who is not in detention fails to be present during the examination of a case, the head judge at trial shall ascertain if the accused was legally

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75 Ibid.
77 Articles 143 and 144, Law No. 8 of 1981 on Criminal Procedure.
78 Articles 54, 57 and 62, Law No. 8 of 1981 on Criminal Procedure.
summoned. If the accused was not properly summoned, the trial shall be postponed and the accused summoned. If in fact the accused was properly summoned but failed to be present at trial without a valid reason, the examination of the case cannot continue and the head judge at trial shall order that the accused be summoned once again. If the accused is not present without valid reason after he has been summoned for the second time, the head judge at trial shall order that he be forced to be present in the next following trial session. An accused person can be tried without their presence only in fishery, money laundering and corruption cases, after certain procedures have been conducted.

Further, Article 65 provides for the right of an accused to seek and call a witness and/or a person with special expertise to provide testimony that is favourable to him.

**Appeal**

There is no change in the law since the 2011 Report. Article 67 of the Law on Criminal Procedure and Articles 23 and 26 of Law No. 48 of 2009 on Judicial Authority provide for the right to appeal against conviction and/or sentence to a higher court.

**Freedom from Double Jeopardy**

There is no change since the 2011 Report. Article 18 of the Human Rights Law states that “No one shall be charged more than once for an action or omission concerning which a tribunal has previously made a legally binding decision.” Article 76 of the Criminal Code also prohibits persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted.

**Remedy before a Court for Violations of Fundamental Rights**

There is no change in the law since the 2011 Report. Law No. 26 of 2000 establishes that gross violations of human rights that consist of genocide and crimes against humanity are to be tried by the Human Rights Court under the Court of General Jurisdiction. Besides such cases, there is still no specific provision on the right to seek a timely and effective remedy before a competent court for violations of fundamental rights. Remedy for violation of rights may be sought through the regular courts when acts result to injury or contravene a law, such as the Penal Code and other special laws.

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79 Article 154, Law No. 8 of 1981 on Criminal Procedure.
80 Articles 36 and 37 of Law No. 15 of 2002 regarding Money Laundering Crimes, Article 38 of Law No. 31 of 1999 on the Eradication of Corruption, and Article 79 of Law No. 31 on Fishery as amended by Law No. 45 year 2009. This does not include the right to be represented by another person during criminal proceeding for traffic crimes (Article 214 of the Law on Criminal Procedure) and, pursuant to the Circular Letter of The Supreme Court No. 9 year 1985 on Decisions to be Announced Without the Presence of the Defendant, misdemeanors as determined by Article 205 of the Law on Criminal Procedure.

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C. On Central Principle 3: (The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

Openness and Timeliness of Release of Record of Legislative Proceedings

There has been no significant difference in terms of the legal framework surrounding openness and timeliness of legislative proceedings since 2011. The same provision about legislative meetings is adopted in the Law No. 17 of 2014 that replaced Law No. 27 of 2009, which was cited in the 2011 report. Specifically, the law states that all meetings of the parliament, including those at the provincial, regency, and city levels, are open—except for certain meetings that are declared closed.\textsuperscript{81} Further regulation on session and meeting procedures shall be provided for in a Regulation on Procedures (or Code of Conduct) for the different parliaments.

The legislative bodies, however, have not done much to ensure that legislative proceedings are held with up to date notice and open to the public. As noted in the 2011 Rule of Law Baseline Study, it is not easy to obtain information on the parliament’s schedule. Their websites are not regularly updated with timely information on parliamentary sessions and legislative materials.

Timeliness of Release and Availability of Legislative Materials

Since 2011, there has been no significant change in terms of the legal framework and actual practice with regard to providing legislative materials in a timely manner. As noted in the previous Rule of Law Baseline Study, official drafts of laws and transcripts and minutes of legislative proceedings are not made available to the public in timely manner. The different parliaments at the national and local levels do not have an information management system that can make these documents easily accessible.

However, a positive difference is the more effective use of social media, such as Twitter, and collaborative work on technology employed by civil society. In 2014 \textit{wikidpr.org} was launched, which is a platform for crowdsourcing information related to the House of Representatives. “DPR” in the name of the website is short for the House’s name in Bahasa Indonesia, \textit{Dewan Perwakilan Rakyat}.

Equality before the Law

The legal framework and practice are still the same as what were described in the 2011 Rule of Law Baseline Study. Article 27 of the Constitution states that “All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exception.” Article 28D(1) further declares that “Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law.”

However, enforcement of these guarantees has continued to fall short. In fact, a number of cases of discrimination based on belief, sexual orientation, and political views, especially on communism, may cast...
the assumption that they are sanctioned by the state. For instance, in October 2015, the well-known “Ubud Writers and Readers Festival” in Bali was pressured by the police to cancel panels, exhibition, and screening that are linked to the 50th anniversary of the massacre of the alleged communists in 1965.82 The head of the Gianyar Regency Police, Farman, stated that the police’s recommendation to cancel some sessions is in accordance with the Decree of the People’s Consultative Assembly No. XXV of 1966 regarding the Prohibition of Communism in Indonesia and Law No. 27 of 1999 that regulates crimes related to state security.83

Along the same vein, in January 2016, the Minister of Research, Technology and Higher Education issued a statement that LGBT people “corrupt” Indonesian social norms and values, and therefore he would ban all LGBT activities in Indonesian universities. Later, on 3 February 2016, the Indonesian Broadcasting Commission (KPI) issued a letter recommending that all television and radio stations ban programs promoting LGBT activities in order to “prevent children from learning indecent behaviour.” Furthermore, on 24 February 2016, the Al Fatah Pesantren Waria, a transgender Islamic boarding house in Yogyakarta was closed down by the local authorities after a complaint was filed by Front Jihad Islam, a hard-line Islamist organization.

Reparation for Crimes and Human Rights Violations’ Victims/Survivors

There is no change since the 2011 Report. There is still no law providing a comprehensive scheme on reparation for victims of crime or human rights violations. Nonetheless, there are forms of reparation in practice, based on various laws. Law No. 13 of 2006 on the Protection of Witness and Victim provides the right to medical assistance and psycho-social rehabilitation to victims of gross violation of human rights.84 A request for compensation for cases involving gross violation of human rights and restitution for victims of crime may be submitted to the court through the Witness and Victim Protection Agency (LPSK).85 Government Regulation No. 44 of 2008 on Compensation, Restitution, and Assistance for Witnesses and Victims determines the procedures for the pursuance of the above rights through the agency. In 2011, a Joint Decree of the Ministry of Law and Human Rights, the Attorney General Office, the Commission for Corruption Eradication, and the LPSK was issued, further regulating the procedures to protect those who report crimes and cooperating witnesses. In 2015 LPSK announced that it had afforded protection and support for 323 victims and witnesses on cases ranging from human trafficking, corruption, sexual violence, to tax evasion.86

The 2011 Rule of Law Baseline Study had mentioned that the Aceh Reintegration Board (Badan Reintegrasi-Damai Aceh or BRA) was established by the Decree of the Aceh Governor No. 330/032/2006 dated 11 February 2006 to manage programs on reintegration of former members of the Free Aceh Movement into the society. One of the agreed ways of reintegration was to provide compensation to the victims of the conflict between the Indonesian government and Free Aceh Movement. This compensation scheme was


83 Ubud Writers Festival Batal Bahas G30S, Ini Alasan Polisi [Ubud Writers Festival was cancelled, this is the reason according to the police], Tempo.co, October 23, 2015 [https://m.tempo.co/read/news/2015/10/23/114712469/ubud-writers-festival-batal-bahas-g30s-ini-alasan-polisi](https://m.tempo.co/read/news/2015/10/23/114712469/ubud-writers-festival-batal-bahas-g30s-ini-alasan-polisi), accessed Feb 27, 2016.

84 Article 6, Law No.13 of 2006 on the Protection of Witness and Victim.

85 Ibid, Article 7.

managed by the BRA. The BRA was dissolved in January 2013 as the reintegration of the former combatants of the Free Aceh Movement is considered done.

Also with regard to the conflict in Aceh, a key element of the 2005 Helsinki peace agreement which ended the 29-year conflict in Aceh was the establishment of a truth commission in Aceh. The Aceh Truth and Reconciliation Commission (TRC) bylaw (Qanun No. 17/2013 tentang Komisi Kebenaran dan Rekonsiliasi) was passed by the Aceh parliament on 27 December 2013. On 21 November 2015, the Aceh provincial parliament announced the appointment of five members of the selection team for the Aceh TRC. The selection team has the mandate to propose 21 candidates as commissioners to the Aceh parliament, which will eventually select seven commissioners. The Aceh TRC is expected to operate between 2016 and 2021.87

**Law Enforcement**

*Equal Protection Before the Law and Non-Discrimination*

Equal protection and non-discrimination remain as challenges. There are cases showing different treatments provided to different groups. Many cases of discrimination against religious minorities, either sanctioned or condoned by the state by omission have been found in the country, as extensively discussed in the Indonesia Country Report in HRRC's recent report on freedom of religion in ASEAN.88 Local governments, although they have no authority to implement laws based on sharia or religious consideration (unlike Aceh, which has special authority to implement sharia regulations), enforced regulations that mandate female modesty and discriminate against women. NGOs noted, for instance, that local anti-prostitution regulations in Bantul and Tanggerang have been used to detain women walking alone at night. As the US Department of State reports:

> According to the National Commission on Violence against Women, there were 365 local laws that were unconstitutional and discriminatory towards women. The Ministry of Home Affairs is responsible for “harmonizing” local regulations that are not in line with national legislation, and a 2014 law reinforces this authority, but to date the ministry has never invoked this authority to overturn discriminatory local regulations.89

Another example involves the treatment of members of the LGBT community. As mentioned above, they face legal challenges and prejudices not experienced by others. For example, "local regulations across the country criminalize same-sex sexual activity,… Under a local ordinance in Jakarta, security officers regard any transgender person found in the streets at night as a sex worker."90

90 Ibid.
D. On Central Principle 4: (Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

There is generally no change since the 2011 Report. Supreme Court justices are nominated by the Judicial Commission, selected by the House of Representatives, and appointed by the President. The retirement age for Supreme Court Justices is 70 years, but they can be dismissed based on disciplinary measures conducted by Honorary Council. The promotion of judges in the lower courts is regulated in Government Regulation No. 41 of 2002. In line with the “one-roof” policy in regards the judiciary, the executive government does not have direct involvement in the appointment, promotion, assignment, discipline and dismissal of judges.

The Attorney General heads the Public Prosecution Service. He is appointed and removed by, and is directly accountable to, the President. Law No. 16 of 2004 on the Public Prosecution Service provides for the functions and duties of the Public Prosecution Service. Career path and promotion of prosecutors are generally regulated according to the government employee scheme, which is based on achievements and performance, while at the same time allowing for “regular promotion.”

Training, Resources, and Compensation

The Judicial Training Center (Pusat Pendidikan dan Pelatihan Mahkamah Agung or JTC) of the Supreme Court provides a two-year integrated initial judicial training program for candidate judges. This compulsory program trains candidates to perform all daily tasks at the court, i.e. court administration, case management, and judicial competence. The JTC also began offering “mid-career” judges with continuing judicial education. However, the training program is still a developing process, with subject matter and materials prepared on an ad hoc basis. In 2012, for instance, trainings focused on case management, the quality of decisions, and the Code of Ethics. The manner of selecting participants for the continuing judicial education is not identified in available literature.

Prosecutors have four years of training in total. The two-year pre-inauguration training includes governance system, prosecutorial tasks and organizational culture. The two-year post-inauguration training includes leadership training, functional training on the work of a prosecutor, and technical training. Human rights topics are included in the curriculum, especially in relation to the human rights court.

As mentioned in the 2011 Baseline Study, the salary of judges is considerably small compared to lawyers. There had been efforts to raise the total income of judges by granting them “judge's allowance” and “performance allowance.” In 2012, in the wake of threats by judges to go on strike if their welfare was not looked into, the basic salary of district judges was raised from Rp1.976 million (around USD 150) a month to between Rp10 million and Rp11 million (around USD 760 to USD 830) a month. In addition, judges are also to receive benefits such as transport allowance, cost of living allowance and housing allowance.

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91 Law No. 3 year 2009 on the Second Amendment to Law No. 14 year 2015 on The Supreme Court of the Republic of Indonesia, Article 15
State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions

Of the state budget for 2016, 29.8 per cent of the total budget of IDR 2,121,286.1 billion (around 160,794,113,165 USD) is allocated for the category of “politics, law, and defence,” which includes the Supreme Court, Corruption Eradication Commission, Ministry of Defence, and a number of other ministries and institutions. The total budget for the Supreme Court amounts to IDR 8,964.9 billion (around 678,909,588 USD).95

Impartiality and Independence of Judicial Proceedings

Impartiality in judicial proceedings is a big problem in Indonesia, with the widespread so-called “case brokers” or “judicial mafia” comprising public officials or private corporations who deal with judges as well as court clerks to arrange the convictions.96 It is such a serious problem that former President Yudhoyono set up a special task force to eradicate judicial mafia in 30 December 2009. The task force was dismissed in January 2012 after it transferred its works to relevant ministries, but the issue is still relevant today.

A case that has attracted significant attention involved the Chief Justice of the Constitutional Court, Akil Mochtar, who was arrested by the anti-corruption commission in October 2013. He was found guilty in June 2014 and the decision was upheld by the Supreme Court in February 2015. There is also a case involving a court clerk who was caught red handed by the Corruption Eradication Commission with an allegation of receiving bribes to change judges’ conviction in a case. As this report is written, the investigation shows that the case may lead to a bigger case of a well-networked court staff and judges at the Supreme Court that can arrange how cases would be decided.97

Provision of Competent Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

There is no data regarding the competence and the number of representatives provided by the court to witnesses and victims/survivors. However, the legal framework and the system exist. In 2011, the government enacted Law No. 16 of 2011 regarding Legal Aid, which regulates government-funded legal aid for the first time in Indonesia. With this Law, which has been effective since 2013, the government provides funds for accredited legal aid organizations based on the type of cases they handle. Following this Law and its implementing regulations, the Supreme Court issued Supreme Court Regulation No. 1 of 2014 on the Guidelines to Provide Free Legal Services for the Poor.

The 2014 Supreme Court regulation replaced the previous guideline that was explained in the 2011 Rule of Law Baseline Study, namely Supreme Court Circular Letter (Surat Edaran Mahkamah Agung or SEMA) No. 10/Bua.6/Hs/SP/VII/2010 regarding Guidelines to Provide Legal Aid in Court. The 2011 report noted that the Circular Letter was not well-implemented. The new Supreme Court Regulation of 2014 simplifies


the procedure for the justice seekers to be freed from any court fees. They will know immediately if they are eligible to undergo a “prodeo” procedure because the Regulation provides a system that allows the court clerks to decide on the matter directly.

Thus far, there is no record on the competence and the number of representatives provided by the court to witnesses and victims/survivors, but judging from the number of legal aid organizations accredited by the government (405 organizations nation-wide), the number of lawyers provided by the Court is still minimal compared to Indonesia’s total population.

Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public

There is no change in the law and in the situation since the 2011 Report. There are measures that provide for the safety and security of accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings.

The Law on Criminal Procedure charges the head judge at trial with the duty to maintain rules of order and gives him or her the authority to order the removal of persons who display an attitude unbefitting the dignity of the court. The Law also prohibits the bringing of firearms, sharp weapons, explosives or devices which may endanger the security of the trial; whoever brings them shall be obligated to deposit them at a place especially provided for that purpose.98 Further, Article 48 of Law No. 48 of 2009 regarding Judicial Authority obligates the police to safeguard the security of judges at all courts and the Constitutional Court. In addition, every court has its own rules of procedure to ensure safety and security. However, the courthouses often do not have adequate facilities, such as metal detectors, to enforce those legal procedures. As mentioned in the 2011 Rule of Law Baseline Study, there have been cases where victims and witnesses and their families were attacked physically and verbally during trial.99

There is no data analysing the accessibility of courthouses, whether to disabled people or otherwise.

Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

There is no change since the 2011 Report. Legal standing before the courts is regulated in a number of laws. Citizens Law Suit is acknowledged based on Law No. 23 of 1997 on Environmental Management, Law No. 8 of 1999 on Consumer Protection and Law No. 41 of 1999 on Forestry. The Supreme Court issued Regulation No. 1 of 2002 on Class Action Procedure, providing details on the examination, court proceeding and decision on class actions. Legal standing for NGOs is regulated in Law No. 23 of 1997 on Environmental Management based on a landmark decision regarding an environmental case. Meanwhile, legal standing requirements for the Constitutional Court are clearly provided in the Law No. 24 of 2003 on the Constitutional Court. Specifically, individuals and entities may file judicial review petitions with the Constitutional Court if he/she is able to demonstrate that his/her constitutional rights are injured by the enactment of a law.

98 Articles 217-219, Law on Criminal Procedure.
Publication of and Access to Judicial Hearings and Decisions

There is no change in the legal framework on publication and access to judicial hearings and decisions. According to Article 226 of the Law on Criminal Procedure, affected parties will obtain excerpts of the decision promptly after the judgment has been pronounced, but not the copy of the complete court decision. Affected parties may obtain decisions upon request. The same provision states that other persons may obtain a copy of the judgement with the permission of the head of the court after considering the purpose of such request.100

There has been a positive development in the implementation of provisions surrounding access to court decisions. It was reported in the 2011 Rule of Law Baseline Study that Decrees of the Chief Justice No. 144/KMA/SK/VIII/2007 regarding Access of Information at the Court and No. 1-144/KMA/SK/I/2011 regarding Guidelines in Providing Information at the Court faced challenges in their implementation. Since then, the Supreme Court has undertaken a number of measures to overcome these challenges. As of February 2015, there were 1,191,030 court decisions available for free online, compared to zero in 2007. In addition, as reported in its 2015 Annual Report, the Supreme Court has modernized the mechanism to make decisions available to affected parties, for example, by developing a system whereby the lower courts actively upload decisions to the website. In 2011, 36.98 per cent of all courts participated in the system and by 2015, 100 per cent of all courts have participated in the system so that the speed and accuracy in providing published decisions have significantly increased.100

Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

There is no change since the 2011 Report. Court case fees vary depending on the type and scope of the case, but all courts are obliged to announce the fees in the court buildings based on the Decree of the Chief Justice on Judicial Transparency. The amount of the fees can be seen at the Information Desk of the court or at the website of the court. Supreme Court Circular Letter No. 10/Bua.6/ Hs/SP/VII/2010 dated 30 August 2010 allows fees to be waived for poor people, provided they submit documentation on their economic condition.

The problem lies with the unofficial fees that occur during the pre-trial process, especially during police custody and investigation by prosecutors. As the US Department of State noted, “Police commonly extracted bribes ranging from minor payoffs in traffic cases to large bribes in criminal investigations.”101

Assistance for Persons Seeking Access to Justice

There is no change since the 2011 Report. Those seeking justice may ask for assistance from government institutions such as the police, Ombudsman, National Commission of Human Rights and National Commission on Violence against Women. (See Part I. on “Key Rule of Law Structures.”) Persons may also avail of legal assistance based on Law No. 16 of 2011 regarding Legal Aid.

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Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation

There is no change since the 2011 Report. Article 48 of Law No. 48 of 2009 regarding Judicial Authority and Article 219 of the Law on Criminal Procedure stipulate for the safety of courtroom. Further, Law No. 13 of 2006 on the Protection of Witness and Victim provides the following rights for victims and witnesses:

- To obtain protection on personal security
- To participate in the process of choosing and determining forms of protection and security support
- To provide testimony without pressure
- To have a translator
- To be free from deceiving questions
- To obtain information regarding the progress of the case
- To obtain information regarding the court decision
- To know in the case that the suspect is acquitted
- To obtain a new identity
- To obtain a new home
- To obtain reimbursement on transportation
- To obtain legal advice
- To obtain support for living costs until the protection period ends.

In this regard, a Witness and Victim Protection Agency was established to provide protection and assistance as stipulated in the Law. (See Part I. on “Key Rule of Law Structures.”)

Available and Fair Legal Aid to All Entitled

As discussed above, in 2011, the government enacted Law No. 16 of 2011 regarding Legal Aid, which regulates government-funded legal aid. Effective as of 2013, the Law mandates the government to provide funds for accredited legal aid organizations based on the type of cases they handle. Following this Law and its implementing regulations, the Supreme Court issued the Supreme Court Regulation No. 1 of 2014 on the Guidelines to Provide Free Legal Services for the Poor. Under the Regulation, those entitled to receive aid are the poor, which are defined as justice seekers who are able to produce documents from their local authorities (village or kelurahan level) about their financial condition.

The system is generally fair. It requires the legal aid organizations providing legal aid services to file for reimbursements from the government, thereby the system is open for all justice seekers so long as they can prove their financial condition. Yet, there are weaknesses in the law, such as the reimbursement procedures and the need to address marginalized groups such as women and children, despite their financial conditions. At the time this report is written, there are 405 organizations accredited by the government.102

102 Decision of the Ministry of Law and Human Rights No. M.HH-01.HN.03.03 of 2016.
In addition to government-funded legal aid, there is also a requirement for advocates to provide pro-bono legal services. Law No. 18 of 2003 on Advocates Profession requires advocates (practicing lawyers) to have a minimum of 50 hours of pro-bono legal services per year. However, Peradi, the Indonesian Bar Association, does not have any system to ensure the implementation of this article, especially with the conflict within the association in 2015. A proof of pro-bono hours was required to renew the bar membership until around 2011, but the Bar discontinued the system due to protests by the majority of members because of their inability to provide the proof. To fulfil its ethical obligation on this matter, Peradi set up a legal aid organization. Further, as of 2016, one of the three Bar Associations organizes an annual “Pro-Bono Award” to encourage its members to provide free legal services. It is, however, important to note that the pro-bono legal services by the advocates are not aimed specifically for the poor and there is no mechanism to ensure its use by the poor and marginalized groups.

**General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance**

There is no data on the level of awareness of the general public of the pro-bono initiatives/options for obtaining legal aid or assistance. The Court is obliged to inform the justice seekers about the options and refer them to the nearby accredited legal aid organizations.

**III. INTEGRATING INTO A RULES-BASED ASEAN**

**Progress towards Achieving a Rules-Based ASEAN Community**

**On Mutual Support and Assistance on the Rule of Law**

Although ASEAN integration and the ASEAN Economic Community (AEC) have been increasingly discussed in Indonesia lately, there have not been any measures taken in the development of strategies for strengthening the rule of law and judiciary systems and legal infrastructure in that regard. There are plans to strengthen the rule of law and judiciary systems, but they are not made for the purpose of ASEAN integration. They are mostly for purposes of meeting the needs of the country and are initiatives of the national government and its institutions.

There are policy measures taken by the Indonesian government in terms of ASEAN integration, but they are on the economic and trade areas.

**On Legislative and Substantive Changes Promoting the Rule of Law**

No official information regarding legislative and substantive changes in Indonesia that promote the rule of law in ASEAN (at a regional level) was found. However, it can be argued that Indonesia is one of the most democratic countries in ASEAN and, as such, has contributed significantly to ensuring that democratic principles are included in regional aspirations.

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103 Article 22, Law No. 18 of 2003 on Advocates Profession.
The proposal to transform ASEAN into a security community, which requires ASEAN to become a democratic entity, was first made by Indonesia in June 2003 at the ASEAN Senior Officials’ Meeting. By political development, Indonesia meant the imperative for ASEAN member states: (a) ‘to promote people’s participation, particularly through the conduct of general elections’; (b) ‘to implement good governance’; (c) ‘to strengthen judicial institutions and legal reforms’; and (d) ‘to promote human rights and obligations through the establishment of the ASEAN Commission on Human Rights’. This proposal by Indonesia broke new ground for the working practices of ASEAN with regard to the place of democracy and democracy building in its official discourse.

On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plans

Aside from presidential issuances in line with the AEC, there has not been any law enacted in regards the ASEAN Community Blueprints. The government has however showed its commitment in implementing the AEC through Presidential Instruction No. 11 of Year 2011 on the Implementation of Commitments of the Association of Southeast Asian Nations Economic Community Blueprint in 2011. Another is Presidential Decree No. 39 of 2014, which contains the Investment Negative List in Indonesia (Daftar Negatif Investasi or “DNI”) that distinguishes between foreign ownership restrictions for non-ASEAN and ASEAN investors.

On Integration as Encouraging Steps toward Building the Rule of Law

There has not been any real action taken by the government to build rule of law in the country that is encouraged particularly by the integration.

On the Contribution of ASEAN Integration to the Building of Stronger State Institutions

There is no apparent effect of the integration on building stronger state institutions.

Prospects and Challenges

Challenges to a Strengthened Commitment to the Rule of Law

There are changes in terms of Indonesia’s commitment to the rule of law. However, there is no clear indication that the recent developments are linked to the ASEAN integration. The increase or decrease in the commitment to the rule of law in this paper has been framed in the domestic context. The ASEAN is yet to be seen as an important factor in Indonesia’s political and social contexts, albeit more discourse has been taking place nationally about the regional association’s impact in the context of trade and the economy.


Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

There has not been any specific plan on the state’s conformity to ASEAN-initiated/formed commitments and declarations on human rights. Indonesia has signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, Treaty on Mutual Legal Assistance in Criminal Matters, and ASEAN Convention on Counter Terrorism.\(^{106}\) Up to date, there is no reliable data on changes made in terms of domestic legislation in this regard.

IV. CONCLUSION

With regard to rule of law and ASEAN integration in the Indonesian context, there is no apparent connection between the state’s commitment to the rule of law and the ASEAN integration. While some improvements have been made relating to law enforcement and judicial institutions, none of the changes can be unequivocally claimed to be made specifically or in part for the purpose of ASEAN integration.

In general, Indonesia’s commitment to the rule of law is increasing in terms of legal framework and policies. This is shown by the enactment of, for example, the Legal Aid Law and the passing of the Law on Disability. The Supreme Court continues its commitment to strengthen its institution as well as the courts under it according to the Blueprint of Court Reform 2010-2035 by, for instance, taking serious efforts to publish decisions online to increase their public access and by extension, the judiciary’s transparency.

However, commitment to the rule of law cannot be measured only by making a list of laws, regulations, and institutional changes. It is important to also assess the state’s actions in applying the legal framework and in protecting and promoting the rights of the citizens. In terms of taking action to protect constitutional rights of minority groups, such as the LGBT community and minority religious and political groups, there remains to be an expansive room for improvement for Indonesia’s commitment.

Nexus of the Changes to the Overall State of the Rule of Law for Human Rights

There is no specific indication that the developments in ASEAN have influenced the rule of law for human rights in Indonesia. In fact, unfortunately, some recent changes in Indonesia do not promote the rule of law for human rights.

Contributing Factors

The changes in domestic politics, especially the president and the political parties in power, have been the main factors impacting the rule of law in Indonesia. There are studies on how the post-1998 legal framework as well as the political space on the rule of law have actually been used by the elites. This situation, with the exception of a number of regions with notably critical and human rights friendly local leaders, has not changed significantly since the fall of President Suharto in 1998.\(^{107}\)

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\(^{107}\) See, for example, Jeffrey A. Winters. “Oligarchy and Democracy in Indonesia”. Indonesia 96 (2013): 11-33.
Role of the ASEAN Declaration on Human Rights in Strengthening Rule of Law for Human Rights

The ASEAN Declaration on Human Rights has not played a specific role in national developments pertaining to the rule of law and human rights in terms of the actions of the state. There is stronger cooperation among non-governmental actors, but there are challenges for member states of ASEAN with regard to addressing specific human rights issues. Additionally, while commitments have been made, they have yet to be acted upon and implemented in practice. There are wordings on security and mutual cooperation, for example, but there have not been any changes in terms of legislation and institutional reform that are directed towards the ASEAN integration.
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