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Rule of Law for Human Rights in the Asean Region: A Base-line Study



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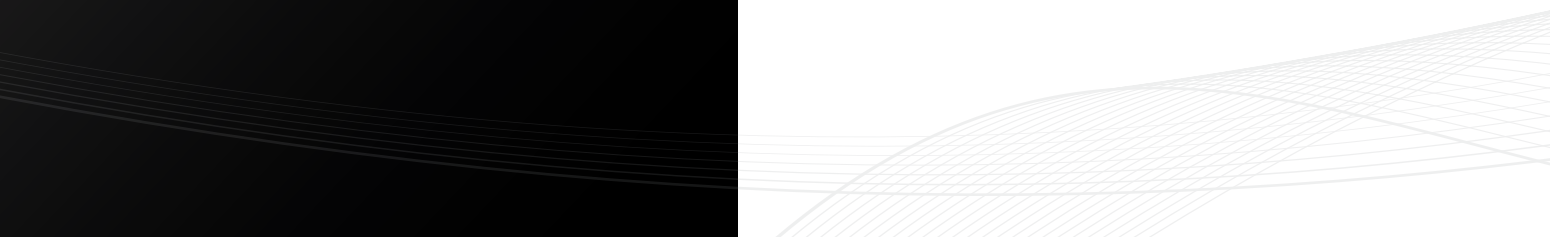


The Republic of Indonesia



Indonesia

Biviri Susanti



Snapshot Box

Formal Name	Republic of Indonesia
Capital City	Jakarta
Independence	17 August 1945
Historical Background	The Dutch began to colonise Indonesia in the early 17th century; Japan occupied the islands from 1942 to 1945. Indonesia declared its independence on August 17, 1945 and enacted the 1945 Constitution on August 18, 1945. Soekarno was the first president of the Republic Indonesia (August 18, 1945- March 12, 1967), while Suharto is the second one (March 12, 1967-May 21, 1998). The first and second presidents were very long in power very long 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 and opted for independence and further obtained independence as Timor-Leste in 2002. After 1998, the presidents are the following: B.J. Habibie (May 21, 1998- - October 20, 1999), Abdurrahman Wahid (October 20, 1999 - July 23, 2001), Megawati Soekarnoputri (July 23, 2001-- October 20, 2004), Susilo Bambang Yudhoyono (October 20, 2004, until 2014 as he was re-elected for another five-year term in 2009).
Size	1.910.931 km ²
Land Boundaries	Timor-Leste 228 km, Malaysia 1,782 km, Papua New Guinea 820 km
Population	237.556.363 (2010 census)
Demography	0-14 years: 28.1% (male 34,337,341/female 33,162,207) 15-64 years: 66% (male 79,549,569/female 78,918,321) 65 years and over: 6% (male 6,335,208/female 7,968,876) (2010 est.)
Ethnic Groups	Javanese 40.6%, Sundanese 15%, Madurese 3.3%, Minangkabau 2.7%, Betawi 2.4%, Bugis 2.4%, Banten 2%, Banjar 1.7%, other or unspecified 29.9% (2000 census)
Languages	Bahasa Indonesia (official), English, local languages
Religion	Muslim 86.1%, Protestant 5.7%, Roman Catholic 3%, Hindu 1.8%, other or unspecified 3.4% (2000 census)
Adult Literacy	definition: age 15 and over can read and write total population: 90.4% Male: 94% Female: 86.8% (2004 est.)
Welfare	More than 32 million Indonesians currently live below the poverty line and approximately half of all households remain clustered around the national poverty line set at 200,262 rupiah per month (US\$ 22 as of March 2010). (World Bank, 2010)
Gross Domestic Product	510.50 billion (current US\$, World Bank, 2008)

Government Overview	<p>Executive Branch: President. Cabinet appointed by the president. President and vice president elected for five-year terms (eligible for a second term) by direct vote of the citizenry; election last held on 8 July 2009 (next to be held in 2014)</p> <p>Legislative Branch: <i>Dewan Perwakilan Rakyat</i> (House of Representatives) and <i>Dewan Perwakilan Daerah</i> (Regional Representatives Council), election held at the same time as presidential election.</p> <p>Judicial Branch: Supreme Court or <i>Mahkamah Agung</i> is the final court of appeal but does not have the power of judicial review; Constitutional Court or <i>Mahkamah Konstitusi</i> has the power of judicial review, jurisdiction over the results of a general election, and reviews actions to dismiss a president from office.</p> <p>Unitary state, with 33 provinces and 476 regencies/cities. Regional autonomy is on regency/city level, except for Aceh and Papua.</p>
Human Rights Issues	Holding the military and police accountable for past human rights violations, torture in prisons, gross human rights violations in Papua.
Membership in International Organisations and Human Rights Treaties ratified	<p>International Organisations: ADB, APEC, APT, ARF, ASEAN, BIS, CICA (observer), CP, D-8, EAS, FAO, G-15, G-20, G-77, IAEA, IBRD, ICAO, ICC, ICRM, IDA, IDB, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM (observer), IPU, ISO, ITSO, ITU, ITUC, MIGA, MONUC, NAM, OIC, OPCW, PIF (partner), UN, UNAMID, UNCTAD, UNESCO, UNIDO, UNIFIL, UNMIL, UNMIS, UNWTO, UPU, WCO, WFTU, WHO, WIPO, WMO, WTO.</p> <p>Human Rights Treaties: ICERD, ICESCR, ICCPR, CEDAW, CAT, CRC, Convention on the Prevention and Punishment of the Crime of Genocide, Geneva Conventions of 12 August 1949 and Additional Protocols thereto (Conventions only), ILO fundamental conventions, UNESCO Convention against Discrimination in Education.</p>
Human Rights Treaties Ratified	<p>CRC (1995) and optional protocol on sale of children (2006) – reservations on CRC articles 14, 20 & 21</p> <p>CEDAW (2006) – reservations on articles 9(2) & 29(1)</p>

Overview

The Indonesian legal system is based on the civil law system inherited from the Dutch colonial period, which heavily relies on codes and statutes while court decisions are generally considered as references instead of as a source of laws as in the common law system. It is somewhat complex because it is the convergence of two distinct systems, namely: Dutch laws inherited from the colonisation and Indonesia’s modern law influenced by different systems through development assistances and aid conditionalities. In addition, Islamic family law is applicable as a formal law for Muslim citizens and customary law (*hukum adat*) is acknowledged. Islamic law is also applied in Aceh as a part of its special autonomy status since 2001 and strengthened in 2006.ⁱ There are still applicable laws from the Dutch colonial period applicable, such as the Penal Code and the Commercial Code.

The prevailing constitution of Indonesia is the amended 1945 Constitution. The 1945 Constitution was enacted a day after the proclamation of independence on August 17, 1945. Due to post-independence diplomacy with the former colonial government, there were also Constitutions in 1949 and 1950. However, the 1945 Constitution was re-enacted in 1959 and has been in effect since. The 1945 Constitution was amended after the fall of Suharto’s authoritarian regime (1966-1998), in October 1999, August 2000, November 2001, and August 2002. It was amended by a political decision by the People’s Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR), which has the authority to amend the constitution, to call the changes ‘amendment,’ although in reality it is almost a new constitution. Major changes in the political and legal systems were made. To mention a few of them: a popular election for president replaced the presidential election by the People’s Consultative Assembly; constitutional adjudication was introduced; parliamentary seat allocation for the military was abolished; and a set of human rights provisions were inserted.

Indonesia applies a presidential system of government with the president as the head of state and the government. The legislative power is held by the House of Representatives (*Dewan Perwakilan Rakyat* or DPR), with a Regional Representatives Council (*Dewan Perwakilan Daerah* or DPD) as a second chamber of the parliament that has limited authority regarding regional autonomy. The Council may propose and provide input only to bills related to regional autonomy, the relationship of central and local governments, formation, expansion and merger of regions, management of natural resources and other economic resources, and which are related to the financial balance between the centre and the regions as well oversee the implementation of the aforementioned laws and laws regarding the State Budget, taxation, education or religion. The law making process requires joint approval from the House of Representatives and the President.

Indonesia is a unitary state with 33 provinces and 476 regencies (*kabupaten*)/cities (*kota*). Regional autonomy is on regency/city level, except for Aceh and Papua under the special autonomy law. It is stipulated by the law on regional government that all implementation of public services are under the authority of the local governments, except for the following matters: foreign policies; defense; security; judicial; national monetary and fiscal; and religious affairs. Regency/city and province have local parliaments (*Dewan Perwakilan Rakyat Daerah* or DPRD) and local governments. The local parliament and the local government are directed by the Ministry of Home Affairs.

A. Institutions Related To Rule Of Law For Human Rights

The post-Suharto political momentum of 1998, which is often called *Reformasi*, brought about new institutions in the legal system. While the Constitutional Court and the Judicial Commission are set up in the Constitutional amendments, the Anti-Corruption Commission (2002), the 'empowered' National Commission of Human Rights (established in 1993, then given a new legal basis for stronger position in 1999), Witness and Victim Protection Agency (2008) were established in Laws enacted after *reformasi*.

This report highlights nine institutions that are most relevant to the Rule of Law for Human Rights issues, namely: Supreme Court, Constitutional Court, Judicial Commission, Attorney General's Office, National Human Rights Commission, Human Rights Court, Witness and Victim Protection Agency, The Indonesian National Police and Anti-Corruption Commission. In addition, the condition of the legal profession (advocates) will be discussed briefly to provide more background for this report.

1. Supreme Court.

The Indonesian Supreme Court (*Mahkamah Agung*) is the highest court in the Indonesian judicial system. Beneath the Supreme Court there are four branches of the judiciary: (i) the court 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, there are Districts Courts at the district/regency level and Courts of Appeal at the provincial level. Each of the four branches has its own Appellate Court. Law No 4 of 2004 regarding Basic Provisions on Judicial Power provides basic provisions pertaining to the lower courts. Cases at all levels are tried by a tribunal of three judges, except for certain special courts, which are under the Court of General Jurisdiction. (see Appendix on the Supreme Court Structure).

The Supreme Court is the court of final appeal or cassation (*kasasi*). The Court has discretion to determine whether it will re-examine the case or only examine the decision

of the respective Courts of Appeal (decisions made by general, special, administrative and military Courts of Appeal may be appealed to the Supreme Court). The Indonesian Supreme Court does not review findings of fact made in lower courts, but instead only hears appeals on questions of law. It is also empowered by statute to review the conformity of government regulation, presidential regulation and local regulation. There are 51 Supreme Court Justicesⁱⁱ and a total of 7,390 judges at all levels under the Supreme Court.ⁱⁱⁱ

In 1999, the Government agreed to apply the so-called “one-roof system,” in which both judicial and administrative matters of the Court are put under the authority of the Supreme Court. Previously, the administrative and financial aspects of the Court were managed by the Ministry of Justice. This old structure was pointed out to be one of the reasons for the lack of independent judiciary. Judges and court clerks had the status of government employees, with its salary scheme, disciplinary mechanism as well as recruitment and promotion schemes.

Another response to the demand for an independent judiciary is to establish special courts that have special, usually expedited, procedural law and, in some courts, especially appointed and/or ad-hoc judges. In 1998, the government and the Supreme Court agreed to establish a special court for commercial cases, which was followed by the establishment of other special courts, namely the tax court (2000), the human rights court (2000), the anti-corruption court (2002), the industrial relations court (2004) and Fisheries Court (2004).

In 2003, the Supreme Court published the Blue Print for the Supreme Court reform and a set of blue prints for court reform. In 2010, the Supreme Court reviewed the implementation of the Blue Print and published the Blue Print for Court Reform 2010-2035.

Despite the abovementioned institutional reform, the Indonesian Supreme Court Annual Report of 2010 shows that there are 3,546,854 cases registered in the Court of the First Instance in 2009 and 3,015,511 cases are misdemeanours or traffic violations. The total number of cases registered is considerably small compared to the population of Indonesia of over 237 million in 2010 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.

2. Constitutional Court.

The Constitutional Court (*Mahkamah Konstitusi*) was a product of *reformasi*. Its authorities and responsibilities include reviewing the constitutionality of 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.

Indonesian individuals, community groups espousing customary law, public or a private legal entities, and state institutions may file judicial review petitions to the Constitutional Court, but only on the condition that he/she is able to confirm that his/her constitutional rights are injured by the enactment of a law. The Constitutional Court is composed of nine judges. Three of the nine judges are selected by the Government, three by the House of Representatives and three by the Supreme Court. The nine judges hear and make decisions only when all nine, or a full bench, is present.

It is important to note that while Laws (parliamentary act or statute) are reviewed by the Constitutional Court against the Constitution, regulations under Law in the hierarchy of Law and Regulations (Government Regulation, Presidential Regulation and Local Regulation)^{iv} are reviewed by the Supreme Court against Laws. As a result, regulations under Law cannot be reviewed against constitutional principles.

3. Judicial Commission.

Side by side with the Supreme Court and the Constitutional Court is the Judicial Commission. According to the amended Constitution, the 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. These constitutional provisions are regulated further in Law No. 22 of 2004 regarding the Judicial Commission,

which provides details on how the Commission proposes candidates of Supreme Court justices and the oversight mechanism of the Commission on the conduct of the Supreme Court justices as well as the Constitutional Court justices. However, the provisions on the Commission's oversight mechanism have been ruled unconstitutional by the Constitutional Court on 16 August 16 2006 on the basis that the details are not clearly regulated so that they create uncertainty.^v Thus, until the Law is changed, the Judicial Commission's authority is only to propose candidates for appointment as justices of the Supreme Court to the House of Representatives.

There are seven commissioners at the Judicial Commission. The commissioner candidates are nominated by the president and selected by the House of Representatives. The Commissioners hold office for five years and can be re-elected for a second term.

4. 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. The AGO may also conduct investigations into certain crimes and conduct further investigations to supplement a brief of evidence before submitting it to a court. Prosecutors also have the authority to act on behalf of the state or government in civil and administrative matters, both in and out of court. Apart from its prosecution and court decision execution tasks, the AGO is tasked, among other things, to secure policy on law enforcement, supervision of the distribution of printed materials, supervision on religious beliefs that may be harmful to the state and society; prevention of misuse of religion and/or blasphemy.

The AGO structure is unique as it has an intelligence unit, although its main tasks is to conduct prosecution services. Law No. 16 of 2004 is a post-*reformasi* law on the AGO, but it keeps old tasks and structure, which have many characteristics of a military unit. The intelligence tasks and structure are the results of having attorney generals from the military since 1964 to 1990. The Attorney General is appointed by the president and a member of the cabinet.

Mirroring the court structure, there are prosecution offices at the district level and provincial level (high prosecution office). As of 8 May 2009, there are 7.698 prosecutors in Indonesia.^{vi}

Although slower than at the Supreme Court, *reformasi* also touched the AGO. It launched "Prosecution Service Reform Agenda" in 2005 and its bureaucratic reform process in 2008.

5. National Commission of Human Rights (*Komisi Nasional Hak Asasi Manusia* or *Komnas HAM*).

The National Commission of Human Rights was established during the Suharto administration due to the pressure from international community. It was established by Presidential Regulation No. 50 of 1993 and was put under the control of the president. As the authoritarian government of Soeharto fell, the Law No. 39 of 1999 regarding Human Rights provided a new basis for the National Human Rights Commission.

The tasks of the Commission are: to conduct research, monitoring, public education, and mediation on human rights cases. The Commission provides consultation, negotiation, mediation, reconciliation, and can to recommend that the parties to go to the Court. The Commission also provides the government and the House of Representatives with recommendations to settle violations of human rights. 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 of 1999 provides that there are 35 commissioners nominated by the Commission and selected by the House of Representatives for a maximum of two five-year terms. However, in the 2007 selection process, the House of Representatives agreed to the input of NGOs to have a smaller number of commissioners for a more effective commission. There are now eleven commissioners on duty until 2012.

The Commission has Representative Offices in three provinces: Aceh; Maluku; and Central Sulawesi. These offices have the general responsibility to assist in program delivery under the direction of the relevant Sub-Commissions. In addition, the Commission has

Representatives (Regional Commissioners) and supporting staff in three other provinces: Papua; West Kalimantan; and West Sumatra. These representatives were appointed by the Commission after being selected by a panel comprised of representatives of the region in question. Representatives have significantly more authority to implement programs directly at the local level than representative offices, but still cannot take certain important decisions.

6. Human Rights Court.

Also related to this report is the special court on Human Rights, which was established in 2000 in Law No. 26 of 2000. The Human Rights Court, which is under the Courts of General Jurisdiction, tries 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 twelve ad-hoc judges selected by the Supreme Court for a maximum of two five-year terms. Cases that occurred before 2006 may be tried in ad-hoc Court on Human Rights set up especially for the cases, after a decision made by the House of Representatives. An Ad-hoc Human Rights Court was set up for the 1999 Timor-Leste Case from February 2001 to April 2003. However, in 2006 the UN Secretary-General noted that the judicial process was not effective in delivering justice for the victims of serious violations of human rights and the people of Timor-Leste. The UN Commission of Experts to review the prosecutions found that they were inadequate, owing to a lack of commitment on the part of the prosecution, as well as to the lack of expertise, experience and training in the subject matter.^{vii}

7. 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 the 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 of victims of gross human rights violations.^{viii}

8. 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 that involve law enforcement agencies; state apparatus; and other people who have some degree of involvement with the crime of corruption by the state apparatus or law enforcement apparatus; gain significant public attention from the public, and/or are related to state losses of the minimum of one billion rupiah (equal to USD 114,000.00). The Commission has five commissioners selected by the House of Representatives based on the candidates nominated by the President. Cases from KPK are filed only to the Special Court on Anti-Corruption, which was also set up in the same law. The Special Court has five judges, three of whom are ad-hoc judges. Ad-Hoc Judges of the Special Court were selected by a special selection Committee under the Supreme Court.

9. 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. POLRI's statutory authority includes raising community legal awareness and assisting in the resolution of disputes between citizens which pose a threat to public order, but its key task is conducting investigations under the Criminal Code and other criminal laws. The police have authority to investigate almost all crimes on their own initiative. However, the Criminal Procedural Code prohibits the police from conducting investigations on crimes that require request by an 'interested party' to take action against the person who allegedly committed the crime. These crimes are referred to as 'complaint crimes' (*delik aduan*) and include a number of family law matters, crimes of defamation, and disclosure of confidential information.

The National Police Chief is selected by the president with confirmation from the House of Representatives and is directly responsible to the President. The structure of POLRI mirrors the governmental administrative structure. POLRI is represented at the provincial level by a provincial police

force (*Kepolisian Daerah* or POLDA) with a Provincial Police Chief. Each provincial police force has the authority to structure their sub-provincial representation in accordance with local needs. Usually police stations are located at the district or municipal levels (*Kepolisian Resort* or POLRES) and at the sub-district level (*Kepolisian Sektor* or POLSEK). In densely populated areas, a police post (*Pos Polisi* or POSPOL) may be established at the village level, but this is not common. There is also a paramilitary mobile brigade (*Brigade Mobil* or BRIMOB) for deployment to the regions to handle 'high intensity security disturbances'. In the annual report press release on 29 December 2010, the National Police Chief stated that there are 390,452 police officers.^x

10. Legal Profession.

Indonesian advocates needed reform as much as other professions in the Indonesian legal system. The first Indonesian Bar Association was established in 1964, but the Suharto government intervened against the organisation in the early 1980's until it was dismissed and replaced by IKADIN (*Ikatan Advokat Indonesia* or Indonesian Advocate League).^x Thereafter, other bar associations were set up without proper codes of conduct or implementation so that the integrity of the legal profession was declining. In addition, the bar exam was conducted by the Court and the participants had to bribe court officials to pass the 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 the Advocates' Profession. The organisation is called the Indonesian Bar Association (*Persatuan Advokat Indonesi* or PERADI).

PERADI started to organise an annual bar exam in February 2006. However, due to three years (2003-2006) transition period and a limited number of bar intake, many law graduates are disappointed. Backed by some senior lawyers who criticised the establishment process of PERADI, another bar association called Indonesian Advocates' Congress (*Kongres Advokat Indonesia* or KAI) was set up in 2008. Until now KAI is not recognised by the Supreme Court to appear in the Court. The Constitutional Court, on the other hand, does not require bar admission for legal representation. Lawyers working in companies and state institutions are not required to be members of the bar. PERADI claims to have 21,043 members.^{xi}

To be admitted to the bar, a candidate must hold an undergraduate law degree ("*Sarjana Hukum*" degree, obtained after 4 years of study), be at least 25 years of age, and to have taken a special education for advocates' profession (*Pendidikan Kekhususan Profesi Advokat* or PKPA) provided by institutions approved by PERADI, which usually takes several weeks. Then she/he must take the bar exam. If she/he passes the exam she/he has to do an internship for 2 years.

B. Foundation, Evolution and the Use of Rule of Law

The term rule of law is often translated in Indonesian language as '*negara hukum*,' which literally means 'law-state'. Although it is not a literal translation of the rule of law, the term *negara hukum* is used as it is in the Indonesian constitution as a translation of *rechtsstaat*, which is often understood as the continental European concept of the rule of law. This term was formally written for the first time in the elucidation of the (original) 1945 Constitution that stated that "Indonesia is based on law (*rechtsstaat*), and not based on mere power (*machtsstaat*)."ⁱⁱ The elucidation of the constitution is abolished in the 1999-2002 amendments and this statement was then inserted into the text of the constitution in the third amendment (2001).

The initial understanding of *negara hukum* as coined in the 1945 Constitution actually came from the Dutch '*rechtsstaat*,' since the influential framers of the 1945 Constitution obtained Dutch education.

The first appearance of the term *negara hukum* in the 1945 Constitution was then followed by different conceptions about *negara hukum* according to who interprets it. In the early years after the Indonesian independence, *negara hukum* served as the legitimating ideology of the constitutional republic.ⁱⁱⁱ Then, under Soekarno's regime of Guided Democracy (1958-1967) *negara hukum* was declining due to the regime's patrimonialism. Corruption in legal institutions commenced and President Soekarno started to subjugate the judiciary under the executive.

The pendulum swung when Suharto was in power. *Negara hukum* was initially used to counter bad practices during Guided Democracy, but in practice the executive's intervention in to legal institutions,

was also high. The discourse of *negara hukum* was generally dominated by the government and the idea of *negara hukum* was only seen as a legitimizing idea for Suharto's power.^{xiii} Todung Mulya Lubis, a well known Indonesian human rights lawyer, notes 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."^{xiv} In 1993 Suharto propounded declared the Bangkok Declaration together with Prime Ministers Lee Kuan Yew of Singapore and Mahathir Mohammad of Malaysia, which announced the "Asian values". The Asian values were claimed to be incompatible with Western values so that the West should not rely on its construction of human rights to intervene in affairs of Asian states. The implication is that Suharto did not regard human rights as being a constituent part of *negara hukum*.^{xv}

The rule of law, however, is a general term used by different actors, including international organisations and local non-government organisations (NGOs). After 1998, the *reformasi* opened rule of law projects from various countries and donors, especially in line with the language of good governance. Various terms are used, ranging from the justice sector reform to access to justice, to name projects that are aimed at strengthening rule of law in Indonesia. In those projects, rule of law by and large is understood as independent and professional judiciary as well as more participation, transparency and accountability in governance.

In 1999, the government revoked laws and regulations that hindered freedom of expression such as Law No. 11 of 1963 on subversive activities. Freedom of press was acknowledged by abolishing regulations on the government's control over the media. A poll of 1,000 respondents in Jakarta, Surabaya, and Bandung in 2009 for the World Justice Project's 2010 Rule of Law Index shows that 63% of the respondents agree that the media are free to express opinions against government policies and actions.

Since 1998, the government issues a five-year National Action Plan on Human Rights (*Rencana Aksi Nasional Hak-Hak Asasi Manusia* or RANHAM). It contains detailed plans ranging from human rights trainings in the regions to ratifications of international covenants. In 2004, the Government also issued the National Action Plan on

Corruption Eradication for 2004-2009, which was then followed by the National Strategy and Action Plan on Corruption Eradication for 2010-2025 (*Strategi Nasional dan Rencana Aksi Pemberantasan Korupsi 2010-2025 or Stratnas PK*).

The government also formally acknowledges the rule of law in the National Long Term Development Plan 2005-2025 and the National Medium Term Development Plans of 2005-2010 and 2010-2014. The medium term plan documents the elected president's commitment during his term of office. The vision of the National Medium Term Development Plans of 2010-2014 is a wealthy, democratic and just Indonesia, with law and as one of the nine priority areas of development.^{xvi} "Just" (justice) in the aforementioned vision, according to the Plan, means strengthening law enforcement and corruption eradication as well as gap reduction. Further, the document shows the understanding of rule of law as "law enforcement" and coupled with "public order." For the purpose of informing the plan, the Government, conducted by the National development Plan Agency, specifically developed the National Access to Justice Strategy that aims at strengthening Indonesia as a *negara hukum* in 2007-2009.^{xvii}

Although the government's commitment looks good on paper, as this report will further elaborate, there are challenges in the implementation. Challenges occurred mainly in reforming legal institutions that did not have procedures and mechanisms, such as recruitment and oversight mechanisms, which promote independence and professionalism. In addition, there have been cases where quick response from the government was needed but the government failed to respond or responded slowly. For example, in the case of violence against the Ahmadiyah sect of Islam in Cikeusik in February 2011, the Police failed to prevent violence against Ahmadiyah members it although they knew about the attack and were actually present at the location.^{xviii}

The budget allocated in the State Budget for the justice sector is relatively small. In 2009 and 2010, only 0.11% of the total state budget was allocated for organisations related to law (Supreme Court, Attorney general's Office, Ministry of Law and Human Rights, the Police and Anti-

Corruption Commission). In the 2011 State Budget the allocation is 1.10% (44,189.5 billion rupiah) of the total budget of 432,779.3 billion rupiah.

C. Human Rights Provisions in the Constitution and Laws

The second amendment to the Constitution in 2000 introduced Chapter XA on Human Rights. Many of the new provisions mirror the rights contained in the international human rights covenants. These rights include civil and political rights (article 28A), equal treatment before the law (article 28D), economic, social and cultural rights (article 28C), the right to a healthy environment (article 28H section 1) and the right to receive medical care (article 28H section 1) and social security (article 28H section 3). The state is obligated to protect, advance and fulfil these rights (article 28I section 4).

The insertion of human rights concerns in the Constitution continued through the fourth (and the last) amendment to the Constitution in 2002. The fourth amendment resulted in even more stringent requirements on the state to fulfil economic, social and cultural rights.

Following the amendments, two new laws concerning human rights were enacted, namely Law No. 39 of 1999 regarding Human Rights and Law No. 26 of 2000 regarding the Human Rights Court. Law No 39 of 1999 further regulates the provisions in the Constitution. Law No 39 also establishes the National Commission of Human Rights and the Human Rights Court. The Human Rights Court, under the jurisdiction of the court of criminal cases, hears cases that pertain to the gross violation of human rights.

D. International Human Rights Treaties

Core universal human rights treaties	Date of ratification, accession or succession	Declarations/ reservations	Recognition of specific competences of treaty bodies
International Convention on the Elimination of all forms of Racial Discrimination (ICERD)	25 June 1999	Art. 22	Individual complaints (art. 14): No
International Covenant on Economic, Social and Cultural Rights (ICESCR)	23 Feb. 2006	Art. 1	
International Covenant on Civil and Political Rights (ICCPR)	23 Feb. 2006	Art. 1	Inter-State complaints (art. 41): No
Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)	29 July 1980	Art. 29 (1)	
Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	23 Oct. 1985	Arts. 30 (1) and 20 (1), (2) and (3)	Inter-State complaints (art. 21): No Individual complaints (art. 22): No Inquiry procedure (art. 20): Yes
Convention on the Rights of the Child (CRC)	26 Jan. 1990	Arts. 1, 14, 16, 17, 21, 22 and 29	

Core treaties to which Indonesia is not a party: ICCPR-OP1 and OP2, OP-CEDAW (signature only, 2000), OP-CAT, OP-CRC-AC (signature only, 2001), OP-CRC-SC (signature only, 2001), ICRMW (signature only, 2004), CPD (signature only, 2007), OP-CPD (signature only, 2007), CED, CED (signature only, 2010).

v. Source: UN Universal Periodic Review 2008

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

vi. Source: UN Universal Periodic Review 2008

G. Administration Of Justice Grid

Indicator	Figure
No. of judges in country	Supreme Court, including all courts under it: 7,390 ^{xx} (Supreme Court Justices: 51) Constitutional Court: 9
No. of lawyers in country	21,043 (PERADI members only, not including members of KAI, judges and state prosecutors) ^{xx}
Annual bar intake? Costs / fees	The numbers are fluctuating until now as the system was reformed in 2006. In 2010 it was 25% (832 of 3,325), in 2009 was 57.1% (1,915 of 3,352), in 2008 was 36.1% (1,323 of 3,665) and in 2007 was 30.3% (1,659 of 5,473). ^{xxi} Cost: Rp.750,000.00 or 85.47 USD for taking the bar exam. The cost for 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: took special education for advocates (several weeks) and 2 years internship. Judge: 106 weeks or 2 years.
Availability of post-qualification training	Required for promotion for judges and prosecutors. Required by the bar association for advocates. Institution providing.
Average length of time from arrest to trial (criminal)	111 days (maximum number of days allowed by the Criminal Procedural Law)
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 Criminal Procedural Law)
Accessibility of individual rulings to public	On paper it should be accessible on the website, but most of the time rulings are provided on request.
Appeals structure	District court à high court à Supreme Court (see appendix)
Cases before national human rights commission or other independent commissions (if applicable)	The National Human Rights Commission received 5,637 complaints in 2010. ^{xxii}
Complaints filed against police, judiciary or other state institutions (per year)? How many resolved?	Prosecutors: 156 prosecutors sanctioned in January/June 2010, 181 prosecutors sanctioned in 2009 and 179 in 2008. No data on number of complaints filed. ^{xxiii} Constitutional Court: 1 complaint, resulted in 1 justice given notice in 2011, but he resigned. This is the only case since its establishment in 2003. Supreme Court: in 2009, 11 cases on judges' misconduct from Judicial Commission (including 3 same cases from the Supreme Court), 3 got sanctions. ^{xxiv} Police: in 2010 there were 5,437 complaints on discipline and 1,889 have been resolved; 682 complaints on crime and 119 have been resolved; 215 complaints on ethics and all have been resolved. There were 294 officers dishonourably dismissed in 2010. ^{xxv}

H. Country's Practice In Applying Central Principles For Rule Of Law For Human Rights

1. The Government And Its Officials And Agents Are Accountable Under The Law

- a. Are the powers of the government defined and limited by a constitution or other fundamental law?

The constitution provides a set of provisions regarding the powers of the executive, legislative and judicial bodies.

The Executive power is provided in article 4 to 16 in Chapter III of the constitution. The term of office of the popularly elected president is five year and she/he can be re-elected once. The president and/or vice president can be impeached through a process in the People's Consultative Assembly involving the Constitutional Court if the President and/or the Vice-President has violated the law through an act of treason, corruption, bribery, or other serious criminal offences, or through moral turpitude, and/or that the President and/or the Vice-President no longer meets the qualifications to serve as President and/or Vice-President.

The Constitution provides clearly for the independence of the judiciary.^{xxvi} The Judicial Commission is provided for in the Constitution to ensure the independence of the judiciary. It is said in the Constitution that the Commission has the authority to maintain and ensure the honour, dignity and behaviour of judges.

Government policies can be challenged in the State Administration Court, while the constitutionality of Laws, including Government Regulation in Lieu of Law, can be challenged in the Constitutional Court. Government Regulation, Presidential Regulation and Local Regulation can be brought to the Supreme Court for judicial review.

- b. Can the fundamental law may be amended or suspended only in accordance with the rules and procedures set forth in the fundamental law?

Provisions to amend constitution are set forth in Chapter XVI of the constitution. Constitutional amendments require a proposal of at least 1/3 of the People's Consultative

Assembly's members, 2/3 of the total member present in the session and a minimum of fifty per cent plus one member of the total member of the People's Consultative Assembly.

- c. Are government officials and agents, including police and judicial officers, accountable under the law for official misconduct, including abuse of office for private gain, acts that exceed their authority, and violations of fundamental rights?

The Indonesian Constitution sets the basis for the equal status before the law. Article 27 section 1 provides: "all citizens have equal status before the law and in government and shall abide by the law and the government without any exception." Therefore, all laws are applicable for government officials.

However, written permission is required to initiate an investigation against high ranking officials. For the members of the House of Representatives and the Regional Representatives Council, permission from the president is required,^{xxvii} for the members of the House of Representatives at provincial level, permission from the Minister of Internal Affairs is required,^{xxviii} and for the members of the House of Representatives at regency level, permission from the Governor is required.^{xxix} If the president has not granted such permission in 30 days, then the investigation can be initiated. In addition, the written permission is not required in the case that the person is caught in the act of the crime, or if the maximum punishment of the crime conducted is capital punishment or life in prison, or if the crime is a special crime (corruption, crimes related to economic activities and crimes related to drugs).

A similar set of provisions is applicable for governors, mayors and heads of regency (*bupati*). Written permission from the president is needed, but the investigation may be initiated if the permission is not granted after 60 days, in the case that the person is caught in the act of the crime, or if the maximum punishment of the crime conducted is capital punishment or crime related to state security.^{xxx}

The written permission requirement may be seen as a mere administrative matter, but these provisions are seen as one of the main problems in combating corruption in Indonesia.

The implementation of the code of conduct of the judges under the Supreme Court at all levels is done internally and externally. The internal oversight is conducted by the Supreme Court Supervisory Body (*Badan Pengawasan Mahkamah Agung*) led by Deputy Chief Justice on Supervision. The Supreme Court Supervisory Body handles reports on misconduct of judges as well as court clerks. It receives complaints from the public directly, through district and high court as well as through the website. According to the Decree of the Chief Justice No. 144/KMA/SK/VII/2007 regarding Transparency on Court Information, all information regarding the complaint procedure by the Supervisory Body must be published.

The external oversight is conducted by the Judicial Commission. Although the articles providing on detailed provisions on the oversight function of the Judicial Commission were ruled unconstitutional by the Constitutional Court,^{xxxii} Law No. 3 of 2009 on the Supreme Court provides that both internal and external oversight on the conduct of judges are based on a code of conduct agreed jointly by the Supreme Court and the Judicial Commission and that there shall be a Honorary Council consisting of three Supreme Court Justices and four commissioners of the Judicial Commission. Judges reported to the Judicial Commission or to the Supreme Court Supervisory Body appear before the Honorary Council to defend themselves. According to the 2009 Annual Report of the Supreme Court, there were eleven reports on judges misconduct in 2009 submitted by the Judicial Commission and two found by the Supervisory Body; and three of them were sanctioned by the Honorary Council.^{xxxiii}

Disciplinary procedure for court clerks is regulated in the Supreme Court Decree No. 145 of 2007, while the case handling mechanism is regulated in the Supreme Court Decree No. 076 of 2009. In 2009, the Supervisory Body received 4,442 complaints and processed 3,193.^{xxxiii} In 2009, the Supervisory Body gave sanctions to 180 court clerks, 44 in 2007, 51 in 2006, 45 in 2005 and 18 in 2004.^{xxxiv}

As for the nine constitutional court justices, there is no permanent oversight mechanism after the Constitutional Court decision nullifying the Judicial Commission's oversight procedures.^{xxxv} The Honorary Council of the

Constitutional Court shall be set up when there is inquiry on misconduct. It is regulated in the Constitutional Court Regulation No. 02/PMK/2003, while the Code of Ethics and Conduct is provided in the Constitutional Court Regulation No. 07/PMK/2005. The Honorary Council consists of three Constitutional Court justices and in the case that the inquiry may result in dismissal of a justice the Honorary Council consists of two Constitutional Court justices, a former Supreme Court justice, a senior practicing lawyer and a law professor. There was one investigation conducted by the Honorary Council in early 2011. In 11 February 2011, the Honorary Council announced its decision that Justice Arsyad Sanusi is found guilty of not safeguarding ethics and proper conduct by letting his daughter meet with a party involved in a dispute on local election result at his house. The sanction was a notice to the justice, but Justice Arsyad Sanusi submitted his resignation to the Constitutional Court immediately after the announcement.

Prosecutors are overseen internally by the supervision unit of the AGO led by the Deputy Attorney General on Supervision. The internal oversight resulted in 156 prosecutors sanctioned in January/June 2010, 181 prosecutors sanctioned in 2009 and 179 in 2008.^{xxxvi}

The AGO has an external oversight body, namely the Prosecutorial Commission (*Komisi Kejaksaan*), but this commission does not have authority to follow up complaints. It can only receive and process complaints and then submit recommendations to the Attorney General. The Prosecutorial Commission is a special unit set up in Law No. 16 of 2004 regarding the Attorney General's Office and Government Regulation No. 18 of 2005 regarding the Prosecutorial Commission. It has seven members, who are selected by the president based on the nomination from the Attorney General. The members serve a four year term and can be re-elected a second time.

The National Police has an internal oversight mechanism. There is a formal external commission that receives public complaints but it does not have the authority to give sanctions. The National Police Commission (*Komisi Kepolisian Nasional* or *Kompolnas*) was set up by Law No. 2 of 2002 on the Indonesian National Police and has six members. The National Police Commission is directly under the president and tasked with providing

assistance to the president in determining policies on Indonesian National Police and providing advice to the president in the selection and dismissal of the National Police Chief. The Commission receives complaints from the public on the police performance and submits the report to the president.

Oversight concerning administrative conduct, discipline, ethics and crime are conducted by the Division on Profession and Security (*Divisi Profesi dan Pengamanan* or *Divpropam*) and Division on Supervision and Law (*Divisi Pembinaan dan Hukum* or *Divbinkum*), while oversight on the investigative function of the police is conducted by the Investigator's Overseer (*Pengawas Penyidik*). In the annual report press released on 29 December 2010, the National Police Chief stated that in 2010 there were 5,437 cases on discipline and 1,889 have been resolved; 682 cases on crime and 119 have been resolved; 215 cases on ethics and all have been resolved. There were 294 officers dishonourably discharged in 2010.^{xxxvii}

2. Laws And Procedure For Arrest, Detention And Punishment Are Publicly Available, Lawful And Not Arbitrary; And Preserve The Fundamental Rights To Physical Integrity, Liberty And Security Of Persons, And Procedural Fairness In Law

- a. Are the criminal laws and procedures, including administrative rules that provide for preventative detention or otherwise have penal effect, published and widely accessible in a form that is up to date and available in all official languages?

The government publishes all laws and regulations, including the Indonesian Penal Code, which is actually a translation of the old Dutch colonial government code, and Law No. 8 of 1981 on the Criminal Procedures in Bahasa Indonesia, the official language. The government does not translate laws and regulations into English nor local languages. Unofficial translations are made by private publishers and non-governmental organisations. While Law No. 10 of 2004 on the Law Making Process provides that laws and regulations are published by the Ministry of Law and Human Rights, the Ministry does not have specific means to distribute them widely. There is no formal publication that is widely distributed by the Ministry

for this purpose, but those laws are widely accessible as they are published by commercial as well as non-profit publishers both in printed and digital forms.

A number of Non-Governmental Organisations (NGOs) publish criminal laws and procedures on specific topics to communities. For example, NGOs working on women issues distribute printed publications highlighting laws regarding domestic violence.

- b. Are these laws accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including the government authorities, and consistent with the other applicable law?

As mentioned above, these laws are generally accessible, but the language may not be easy to understand by all people. All laws are in Indonesian language, but they tend to be in a complicated writing style, which may not be easily understood, and there is little effort to disseminate the laws in ways more understandable.

The Penal Code acknowledges the non-retroactivity principle in article 1. The non-retroactive principle is also stated clearly in article 28I section (1) of the Constitution and Law No. 39 of 1999 on Human Rights. Further, the Constitutional Court upheld that the implementation of the Law on Terrorism to the Bali Bombing case, which happened before the law was enacted, is unconstitutional.^{xxxviii}

Predictability and consistency, however, are issues that warrant further discussion. The judges are not obliged to follow previous decisions of similar cases. Decisions that are important for reference are chosen by a team of judges and printed in the Supreme Court special publication "*Yurisprudensi Mahkamah Agung*." In addition, there are no sentencing guidelines, which results in big differences in sentencing similar crimes.

It is important to note that the Penal Code is actually a translation of a Penal Code from the Dutch Colonial Government. Although it has basic legal principles relevant to the current situation, such as non-retroactivity, the types of crimes, the colonisation context and sentences drawn in the Code are outdated. It had, for example, articles

concerning hatred against the (colonial) government, which are declared unconstitutional and nullified by the Constitutional Court in 2007.^{xxxix} In terms of imprisonment and fines, the Penal Code is also highly problematic because it was issued in 1918. The Indonesian government had changed the amount of fines in the Code in 1960, but had not made any update since then. Petty theft, for example, is defined in the Code as theft in the value of IDR 250 (equivalent to USD 0.03). Thus, provisions on petty theft are practically ineffective. As a result, in November 2009, an old woman who stole 3 cacao of IDR 2,000 (USD 0.23) in value because of her economic situation was tried in the lengthy ordinary procedure and sentenced with 1 month and 15 days probation. Another example is article 362 of the Penal Code on theft that provides a maximum sentence of five years in prison or a fine of IDR 900 (USD 0.10) – an amount that today may simply be ignored. There are a number of ‘new’ crimes regulated in new laws, such as corruption, domestic violence, money laundering and crimes related to information technology. Sentences in the various criminal laws were established without a clear formula and are not consistent with the Penal Code sentencing policy.

There is a draft law to replace the Penal Code that consists of all crimes regulated in different laws as well as sentencing guidelines. Yet, the comprehensive 741-article draft penal code has been sitting in the Ministry of Law and Human Rights since 1981 and has not been put on the table. The main reasons for the delay include the anticipated length of discussion in the House of Representatives and the fact that there are articles that attract much public attention, such as the ones related to pornography and marital rape – two sensitive issues in the Moslem majority country.

The issue of equality in punishment in also needs further elaboration as in practice there are different treatments in correctional institutions for former government officials as well as those who are able to bribe and ordinary prisoners. A recent phenomenon that gained special attention from the Judicial Mafia Task Force (*Satuan Tugas Pemberantasan Mafia Hukum* or *Satgas Mafia Hukum*)^{xl} is the Ayin case and the Gayus Tambunan Case.

In 2008, Ayin or Artalyta Suryani was found to be a major case broker at the Attorney General’s Office and sentenced to five years in prison. In January 2010, the

Task Force visited her prison room unannounced upon receiving a report on the privileges she enjoyed in prison. They found that she was put in a special room that is larger and with air conditioner, flat screen television, smart phone and a karaoke set.^{xli} In 28 January 2011, Artalyta was granted parole because she had served two-thirds of her four-and-a-half-year sentence and because of good behaviour.

Gayus Tambunan is a former tax official who was recently (19 January 2011) sentenced to seven years in prison for bribing a judge and law enforcement officials, which led to his acquittal in March 2010 on money laundering and corruption charges, and for misusing his authority in accepting tax complaints. During the trial, Tambunan confessed to having helped powerful firms evade taxes, paying prosecutors and police officials, and relieving his stress by leaving his jail cell to watch an international tennis tournament in Bali. He also admitted to having flown to Singapore, Kuala Lumpur and Macau using a forged passport while supposedly in detention.^{xlii}

On equal application of laws related to punishment that preserve the fundamental rights to physical integrity, liberty and security of persons, it is important to note the report on the Aceh local regulations that allows corporal punishment. The report of the United Nation’s Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2008 highlights the issue of penalties provided for by Sharia law, such as public flogging, in the 2005 Aceh Criminal Code under the special autonomy status. The consumption of alcohol, closed proximity between unwed couples, and gambling are crimes penalised by flogging. The report notes:

“Corporal punishment constitutes degrading and inhuman treatment in violation of article 7 ICCPR and article 16 CAT and should therefore be abolished. These morality offences under Sharia law are normally tried in public hearings, at which the audience can shout at the defendant, which renders the presumption of innocence meaningless. Moreover, punishments are carried out in public and are often televised.”^{xliii}

- c. Do these laws authorise administrative/preventative detention without charge or trial during or outside a genuine state of emergency?

Law No. 8 of 1981 on the Criminal Procedures does not authorise administrative/preventative detention without charge. However, Law No. 15 of 2003 on the Eradication of Terrorism Act provides a longer detention for investigation purposes. While the Criminal Procedural Law allows a maximum of 20 days with a maximum of 20 days extension detention for investigation, the Anti-Terrorism Law allows a maximum of 60 days preventive detention, which may be based on intelligence reports checked by the head of District Court.

The state of emergency is regulated in Law No. 23 of 1959 on the State of Emergency.^{xiv} This Law allows preventive detention for a maximum of 50 days without charge.

- d. Do these laws protect accused persons 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? Is the right to habeas corpus limited in any circumstance?

The Criminal Procedural Law protects accused persons 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. The Law provides a chapter on the procedures to ensure the rights of the accused and suspects.^{xv} The Law also provides a procedure called "*pra-peradilan*" to exercise the right to *habeas corpus*.^{xvi}

Yet, the report of the UN Special Rapporteur on Torture in 2008 addresses important issues regarding torture at the pre-trial stage.^{xvii} It states concern about the prolonged period of police custody allowed under the Criminal Procedural Law during which many detainees have no or very restricted access to courts. It is said:

"The types of abuse reported to the Special Rapporteur and corroborated by forensic medical analysis include beatings with fists, rattan or wooden sticks, chains, cables, iron bars and hammers, kicking with heavy boots,

electrocution and shots into the legs. Some detainees alleged that heavy implements (chairs, desks, and car jacks) had been placed on their legs for a prolonged period of time. The injuries sustained in a vast number of cases remain without any treatment, putting the health of the detainee further at risk."^{xviii}

The Rapporteur also highlights the high risk of minors and children of corporal punishment and ill-treatment when they are in detention. He further notes:

"At the juvenile detention centres in Pondok Bambu prison (Jakarta), and in Yogyakarta prison, many of the minors alleged that they had been beaten either by policemen or by co-detainees during police custody, often with the knowledge of the officers. At Kutoarjo juvenile prison, detainees consistently reported regular beatings, often in public, to intimidate the other juveniles. The prison authorities openly admitted the regular use of corporal punishment for disciplinary purposes."^{xlix}

With regard to habeas corpus, the UN Special Rapporteur on Torture reports that this procedure is rarely used in practice.^l

- e. Do these laws provide for the presumption of innocence?

The presumption of innocence is generally acknowledged and stated in article 18 section (1) Law No. 39 of 1999 on Human Rights and article 8 of Law No. 14 of 1970 on Judicial Power.

- f. Do all accused persons have prompt and regular access to legal counsel of their choosing and the right to be represented by such counsel at each significant stage of the proceedings, with the court assigning competent representation for accused persons who cannot afford to pay? Are accused persons informed, if they do not have legal assistance, of these rights?

The right to counsel is stated in Law No. 14 of 1970 on Judicial Power as well as the Criminal Procedural Law. In the Criminal Procedural Law, there is a chapter for legal aid, which consists of procedures to implement the rights to legal counsel.^{li} Article 54 of the Criminal Procedural

Law recognises the right to counsel for those who are charged with criminal offences. Article 56 section (1) of the Criminal Procedural Law regulates that the officials are obliged to provide free legal counsel for suspects of crimes punishable by 15 years or more or by capital punishment and for suspects who cannot afford legal counsel and of crimes punishable by five years or more. However, the construction of these two provisions creates a notion that the right to counsel is only applicable for suspects of crimes punishable by 15 years or more or by capital punishment and for suspects who cannot afford legal counsel and of crimes punishable by five years or more. Added to the construction is article 21 section (4) of the Criminal Procedural Law saying that one of the reasons for pre-trial detention is crimes punishable by five years or more. As a result, many of the police officers have the understanding that the right to counsel is only applicable for suspects of crimes punishable by five years or more.^{lii}

Further, article 18 section (4) of the Human Rights Law recognises the right to counsel in the criminal cases. The Law qualifies the right to counsel as a derogable right that can be limited within a public emergency situation. Article 14 Section (3) d of the ICCPR Ratification in Law No. 12 of 2005 recognises the right to counsel in criminal case if the interests of justice require it. In 2004 the Constitutional Court held that the right to counsel is a constitutional right, although the 1945 Constitution itself does not mention explicitly right to counsel.^{liii} The Constitutional Court held that the right to counsel can be derived from the rule of law principle that is part of the Constitution.

Detailed provisions for the Court to provide representation for accused persons who cannot afford to pay are regulated in the Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* or SEMA) No. 10/Bua.6/Hs/SP/VII/2010 dated 30 August 2010. There are two ways to assist the accused person in this matter, namely: using the Legal Aid Post (*Pos Bantuan Hukum* or *Posbakum*) provided in every court and assigning an advocate requested by the accused person on the court's fund.

In practice the laws and regulations are not well implemented. An observation conducted by LeIP (Indonesian Institute for Independent Judiciary), a Jakarta-based NGO, in Central Jakarta, South Jakarta and West Jakarta District Courts in 20 September - 14 October 2010 and 5 - 16 December 2010 revealed important facts.^{liv} Of 1,490 cases analysed during the time of research, in 1,171 cases there were no legal counsel. In only 318 cases did the defendants have advocates and in one case it was not known if an advocate was present. Of all cases without legal counsel, an offer of court-provided legal assistance only occurred 37 times. The research did not enquire as to whether or not they were informed about the right to counsel, but from the small number of offers to get court-provided legal assistance, the research concludes, the number of the suspects informed with such rights would be smaller.^{lv}

The research also found that 90% of the suspects were detained and 90% of them did not have legal representation, although 70% were suspects for crimes punishable by 5-15 years, over 15 years and death penalty. The head of the Central Jakarta District Court, in the interview for the LeIP's research, admits that the condition is resulted from the complicated procedure to request court-provided legal counsel.^{lvi}

The UN Special Rapporteur on Torture also mentions his concern about the condition of legal representation during his mission to Indonesia in 2007. He notes that only very few detainees appear to have access to a defense lawyer.^{lvii}

- g. Do these laws guarantee accused persons the right to be informed of the precise charges against them in a timely manner, adequate time to prepare their defence and communicate with their legal counsel?

Article 59 and 60 of the Criminal Procedural Law guarantees accused persons the right to be informed of the precise charges against them to prepare their defence and communicate with their legal counsel. On this aspect, the UN Special Rapporteur on Torture notes that only few detainees had legal assistance and he received numerous complaints regarding bias of legal aid counsels.^{lviii}

- h. Do these laws guarantee accused persons the right to be tried without undue delay, tried in their presence, and to defend themselves in person and examine, or have their counsel examine, the witnesses and evidence against them?

Article 50 of the Criminal Procedural Law states that accused persons have the right to be tried without undue delay. Further, article 65 of the Criminal Procedural Law states the rights of the accused persons to provide witnesses or experts in the court to defend them. The accused person can be tried without their presence only in money laundering and corruption cases, after certain procedures have been conducted.^{lx}

- i. Do these laws adequately provide for the right to appeal against conviction and/or sentence to a higher court according to law?

Article 67 of the Criminal Procedural Laws and articles 19, 20 and 21 of Law No. 14 of 1970 on Judicial Power provide for the right to appeal against conviction and/or sentence to a higher court.

- j. Do these laws prohibit the use of coerced confessions as a form of evidence and do they guarantee the accused person's right to remain silent?

There is no provision on coerced confessions as a form of evidence in the Criminal Procedural Law or in any other laws related to court procedure. A research published in early 2011 by Jakarta Legal Aid Institute involving interviews with over 1,000 suspects and prison inmates as well as responses from 400 police officers, prosecutors, judges, wardens and rights activists reports that police for the most part are the perpetrators of torture, often to obtain confessions. In addition, prosecutors and judges are complacent in either encouraging or condoning the use of force in interrogations.^{lx}

The UN Special Rapporteur on Torture in his 2008 report said that detainees are more vulnerable to abuse while in police custody than in prison. There are cases where police officers had shot detainees in their legs from close range, or electrocuted them. In some instance, the torture was used to obtain confession. He remarks:

"The overwhelming majority of the detainees interviewed indicated that the ill-treatment was used primarily to extract confessions or, in the cases of drug-related crimes, to receive information on drug suppliers. In a number of cases detainees were offered to be spared in return for the payment of a substantial amount of money. Those interlocutors who had been already tried reported in unison that their coerced confessions had been used during the court proceedings and that objections they had raised were not considered by the judge, prosecutor or even their own legal aid clerk. Furthermore, they were not aware of any complaint mechanisms to which they could address their grievances expecting any kind of outcome."^{lxi}

There is no guarantee on the right of the accused person to remain silent either in laws or in other procedural regulations.

- k. Do these laws prohibit persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted?

Article 76 of the Criminal Code prohibits persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted.

- l. Do these laws provide for the right to seek a timely and effective remedy before a competent court for violations of fundamental rights?

There is no specific provision on the right to seek a timely and effective remedy before a competent court for violations of fundamental rights.

3. The Process By Which The Laws Are Enacted And Enforced Is Accessible, Fair, Efficient, And Equally Applied

- a. Are legislative proceedings held with timely notice and are open to the public?

Until recently, legislative proceedings were closed to the public. It was only after the enactment of Law No. 27 of 2009 regarding the House of Representatives, the Regional Representatives Council and the local House of

Representatives the principle that all parliamentary sessions are open to the public is recognised. The provision says that all meetings are in principle open except the ones decided otherwise.^{bxi}

In practice, however, it is not easy to obtain information on the parliament's schedule. Their websites are not user friendly or updated for providing timely information on parliamentary sessions and legislative the materials.

- b. Are official drafts of laws and transcripts or minutes of legislative proceedings made available to the public on a timely basis?

The official drafts of laws and transcripts and minutes of legislative proceedings are not made available to the public on a timely basis. The House of Representatives, the Regional Representatives Council and the local House of Representatives do not have an information management system that can provide these documents. Some members of the House and supporting staff unofficially provide draft laws to their constituents and organisations. NGOs provide those documents online without charge, for example: www.parlemen.net. The Secretariat General (the supporting unit) of the House of Representatives and the Regional Representatives Council provide websites to publish their works (www.dpr.go.id and www.dpd.go.id), but the information management system needs further improvement as the information most of the time is not updated.

This situation makes it difficult for the general public to be involved and watch the law-making process. The media and NGOs play an important role to observe and report on and watch the processes.

- c. Are the thresholds for legal standing before courts clearly specified, not discriminatory and not unduly restrictive?

Legal standing before courts is regulated in some specific 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. Further, the Supreme Court issued Regulation No. 1 of 2002 on Class Action Procedure, providing details on the examination, court proceeding

and decision on class action. Legal standing for NGOs is regulated in Law No. 23 of 1997 on Environmental Management based on a landmark decision regarding environmental case (*WALHI vs. five government bodies and PT. Inti Indorayon Utama*, 1988).

For the Constitutional Court, the legal standing requirements are clearly provided in the Law No. 24 of 2003 on the Constitutional Court. Indonesian individuals, community groups espousing customary law, public or a private legal entities, and state institutions may file judicial review petitions to the Constitutional Court, but only on the condition that he/she is able to confirm that his/her constitutional rights are injured by the enactment of a law.

- d. Are judicial hearings and decisions made readily available to affected parties?

Judicial hearings and decisions are not made readily available to affected parties. Based on article 226 of the Criminal Procedural Law, the affected parties will immediately obtain the excerpts of the decision, but not the copy of the complete court decision. Affected parties may obtain decisions upon request. This is also regulated internally by the Supreme Court Circular Letter No. 4 of 2009 regarding the Delivery of the Copy of the Decision.

An important development in this context is the court transparency project at the Supreme Court. There are the 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. Parts of the project are a special website at the Supreme Court website dedicated to publish decisions (putusan.mahkamahagung.go.id) and information desks at court buildings that provide, among other things, information on the trial processes. Although the facilities are available, not all decisions are readily published on the web. This is because before 2007, decisions were not archived systematically.^{bxi} It was, therefore, challenging to set up an information management system, especially with courts at all levels nationwide. The system is now in place, but the promptness of web publication is still a challenge. Moreover, many regions do not have adequate internet access so that requests for the copy of decision are often done manually and there are reports.

Copies of the decisions are often received late. For example, the case of the judicial review of Tangerang's local regulation on prohibiting prostitution. On April 2006 the Supreme Court rejected the judicial review request on the basis that its formulation procedure had been found to sufficiently meet the legal and political requirements, and therefore no review of the substantive content of the this local regulation was considered necessary. The decision was announced to the public in a press conference by the Supreme Court's speaker. However, until the date of National Commission on Violence against Women's report for Indonesia's periodic report to the CEDAW Committee 19 July 2007,^{lviv} the Supreme Court had not provided any documentation fully articulating its decision to the individuals or organisations who initiated the request for judicial review.^{lvv}

- e. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law?

Equality before the law and discrimination is still a big issue in Indonesia, especially in terms of gender and belief.

Although Indonesia is constitutionally a secular country, many districts issued 'sharia-inspired' local regulations that are discriminatory against women. The National Commission on Violence Against Women report for Indonesia's periodic report to the CEDAW Committee 19 July 2007 points out that in 2006, the National Commission identified 25 regulations issued by 16 local governments (in the form of regulations, decrees, official circulars and directives) at provincial, district and village levels which constitute discrimination, particularly against women. They require Muslim women to wear head cover (*jilbab*); encourage sexual segregation in pools; criminalise women who are in close proximity with males who are not their guardians; criminalise women who create the *impression* of being prostitutes and those who are in a public area at night time.^{lvvi} Further in a press release commemorating the First Indonesian Women's Congress in 1928, the Women's Commission noted that by the end of 2010 there are 189 policies that are discriminatory against women.^{lvvii}

Local regulations (*Peraturan Daerah*) can be submitted for judicial review to the Supreme Court. Other forms of policies cannot be brought for judicial review, but certain policies may be brought to the Administrative Court. Court processes on women issues, however, have always been challenging. Another way to review those policies is to make use of the authority of the Ministry of Home Affairs over the local governments. The Ministry may revoke policies that are not in line with national laws and policies.

In the United Nations Universal Periodic Review compiled document dated 31 March 2008, it was noted that in 2007, CEDAW was concerned that not all 21 laws identified as discriminatory have been revised and that some amendments still discriminate against women. CEDAW also expressed their concern about the new draft law on gender equality, discriminatory provisions in the Marriage Act 1974, family and spousal consent requirements in the areas of women's employment and health.^{lvviii}

On discrimination based on belief, the recent cases include the discrimination against the Ahmadiyah sect of Islam and the attack on a group of Christians in Bekasi in August 2010. Ahmadiyah followers, their mosques and orphanage in various regions were attacked and burned by a group of Islamic hardliners. The most recent incident was an attack on a group of Ahmadi in Cikeusik in February 2011 where 3 Ahmadi were killed brutally (the attack was actually video-taped and published on the internet). These incidents are the result of discriminatory policies of the government against Ahmadiyah. This discrimination is also mentioned in the United Nations Universal Periodic Review compiled document dated 31 March 2008.^{lvix}

In 2008, the government issued a Joint Decree of the Minister of Religious Affairs, the Attorney General and the Minister of Home Affairs No.3.2008, KEP-033/A/JA/6/2008, 199 of 2008 (the numbers are for each ministry respectively) on Warning and Instruction to Followers, Members and/or Leaders of the Indonesia Ahmadiyah Community and the General Public (*Peringatan dan Perintah Kepada Penganut, Anggota, dan/atau Anggota Pengurus Jemaat Ahmadiyah Indonesia (JAI) dan Warga Masyarakat*).^{lvx} This Decree has been used as a basis for Islamic hardliner groups to attack Ahmadiyah

followers. In some instances, the discrimination was even conducted by law enforcement officers. In December 2010, an orphanage in Tasikmalaya (West Java) was locked up, with the children and staff still inside, by the sub-district police chief and prosecutor, arguing that the hard-line Islamic Defenders Front (FPI) would otherwise have come to close it down.⁷¹ After the bloody Bekasi attack, three Indonesian provinces issued decrees that prohibit the Ahmadiyah from publicly manifesting their faith.^{lxix}

On 8 August 2010, a group of people chased about 20 members of Batak Christian Protestant Church (*Huria Kristen Batak Protestan* or HKBP) in Pondok Timur Indah, Bekasi (West Java) and beat them with sticks. An elder was stabbed and a priest was beaten with a stick when she came to his aid. This attack is a continuation of debate over the local government policy on the permission to build of a church in an area that has more Moslem inhabitants. This is not the only incident on the basis of permission to build a religious building.^{lxxii} This permission, which is issued by the local government, is based on the Joint Decree of the Minister of Religious Affairs and Minister of Home Affairs No. 8 of 2006 and No. 9 of 2006 regarding the Implementation of the Government Apparatus in Ensuring Order and Smooth Religious Ceremonies (*Pelaksanaan Tugas Aparatur Pemerintahan dalam Menjamin Ketertiban dan Kelancaran Pelaksanaan Pengembangan dan Ibadat Agama oleh Pemeluk-Pemeluknya*). The government still refuses to revoke this Decree as it is believed to have facilitated religious harmony.

- f. Do persons have equal and effective access to judicial institutions without being subjected to unreasonable fees or arbitrary administrative obstacles?

Court case fees vary depending on the type and scope of 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 guideline for determining the court fee is Supreme Court Regulation No. 2 of 2009 regarding Fee for Case Processing and Management at the Supreme Court and courts under it. Down payment fees at district courts vary depending on the court's location and a number of witnesses and other parties summoned in the case, while fee for cassation (Supreme

Court) and appeals (High Court) are fixed. For example, cassation on a civil case costs IDR 500,000 (USD 57.05), cassation on a civil case regarding commercial disputes (from commercial court) costs IDR 10,000,000 (USD 1140.90), and a judicial review case costs IDR 1,000,000 (USD 114.09).

The amount of the fees can be seen at the Information Desk of the court or at the website of the court.⁷⁴ Based on the Supreme Court Circular Letter No. 10/Bua.6/Hs/SP/VII/2010 dated 30 August 2010, the fees may be waived for poor people provided that they provide documentation on their economic condition.

The problem is the unofficial fees that occurred during the pre-trial process, especially during police custody and investigation by prosecutors. This is one of the main barriers in access to justice. It is noted by the UN Special Rapporteur on Torture that there are instances where police officers request money for some 'services,' such as to receive visitors. There were even complaints that some prisoners had to give money in order not to be beaten up by the officials.^{lxxv}

- g. Are the laws effectively, fairly and equally enforced? Are persons seeking access to justice provided proper assistance?

Laws are not always effectively, fairly and equally enforced. There are cases showing how people who have access to power and resources gain privileges while poor people seeking justice are not properly assisted. The cases narrated for questions number 2.2 above (the Ayin Case and Gayus Tambunan Case) exemplify how fair and equal principles are not applied.

- h. Do the laws provide for adequate, effective and prompt reparation to victims of crime or human rights violations for harm suffered? Do these victims have access to relevant information concerning violations and reparation mechanism?

To date, there is no law providing a comprehensive scheme for reparation to victims of crime or human rights violations, but there are forms of reparation in practice. Law No.13 of 2006 on the Protection of Witness and

Victim provides the right to medical assistance and psycho-social rehabilitation to the victim of gross violation of human rights (article 6). The request for compensation on gross violation of human rights cases and restitution for victims of crime may be submitted to Court through the Witness and Victim Protection Agency (article 7). This provision is yet to be further regulated in a Government Regulation.

There is also a scheme of compensation given to victims of decades of conflict between the Indonesian government and Free Aceh Movement managed by the Aceh Reintegration Board (*Badan Reintegrasi-Damai Aceh* or BRA). BRA was established by the Decree of the Aceh Governor No. 330/032/2006 dated 11 February 2006. It was set up to manage programs on reintegration of former members of the Free Aceh Movement to the society; and one of the agreed ways of reintegration is to provide compensation to the victims.

There was a clear scheme for reparation for the victims of past gross violation of human rights in Law No. 27 of 2004 regarding a Commission for Truth and Reconciliation (TRC), but in December 2006 the Constitutional Court annulled the law.^{lxvii} A new TRC Law is being discussed by the government as this report is being written. The Law on Aceh Government also provides a TRC for Aceh past gross human rights violations, but it is arguably structured under the national TRC. Thus, the Aceh TRC is awaiting the making of the new law of TRC.

- i. Do the laws provide for and do prosecutors, judges and judicial officers take measures to minimise the inconvenience to witnesses and victims (and their representatives), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect their interests?

Articles 217, 218 and 219 of the Criminal Procedural Law regulate provisions regarding the security of the Court proceedings. The official responsible for the security of the court session is the chair of the tribunal of judges. Further, article 219 of the Criminal Procedural law provides that

the Court security officials have the right to check anyone attending the session. Article 48 of Law No. 48 of 2009 regarding Judicial Power obligates the police to safeguard the security of judges at all courts and the Constitutional Court.

These provisions provide adequate legal framework to protect victims and witnesses and their families. However, there were cases where victims and witnesses and their families were attacked physically and verbally during trial. An example is violence at the Temanggung District Court (Central Java), on 8 February 2011. It was triggered by the dissatisfaction with the five year verdict of Antonius Richard Bawengan, who was convicted of blasphemy. Before the Temanggung event, another riot also took place at the South Jakarta District Court, during the hearing of the Blowfish Cafe case. According to a recent study from National Law Reformation Consortium (*Konsorsium Reformasi Hukum Nasional* or KRHN), contempt of court from 2005 until this day has occurred both inside and outside the courtroom. KRHN noted that, from September 2005 to 8 February 2011, there have been at least 30 instances of contempt of court.^{lxviii}

In this context, it is important to note the role of the Witness and Victim Protection Agency. 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

4. Justice Is Administered By Competent, Impartial And Independent Judiciary And Justice Institutions

- a. Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

Supreme Court justices are nominated by the Judicial Commission and selected by the House of Representatives. There is a retirement age for Supreme Court Justices, but they can be dismissed based on disciplinary measures conducted by Honorary Council. As for judges at courts under the Supreme Court, their promotion is regulated in Government Regulation No. 41 of 2002. There are three ways of promotion, namely regular promotion, promotion based on merit and promotion based on education. Regular promotion is based on performance and loyalty to the state (article 1 of Government Regulation No. 41 of 2002). The promotion will be expedited if a judge shows excellent performance or obtain higher education. The Supreme Court is now conducting series of activities to have a Competency Based HR Management (CBHRM) as planned in its Reform Blue Print re-launched in 2010.

Since the “one-roof” policy, as explained in the beginning of this report, the government does not have direct involvement in the appointment, promotion, assignment, discipline and dismissal of judges. As for the appointment of Supreme Court Justices, the role of the politicians is balanced by nomination by the Judicial Commission that is based on close scrutiny on the candidates’ background.

The judges’ recruitment, appointment and promotion as well as disciplinary measures must always be checked to ensure accountability. The system may look sound on paper but there are allegations of misconduct that are not dealt with by the Supreme Court. For that matter, the Supreme Court’s effort to publish annual report and to have court transparency must be maintained and promoted.

The Attorney General is appointed by the president and a member of the cabinet. Career path and promotion of prosecutors are generally regulated according the government employee scheme. It is based on achievements and performance, together with the so-called “regular promotion,” which does not necessarily

promote performance. Reform on the human resources management system, which includes appointment and promotion, is underway in the AGO’s bureaucratic reform plan launched in 2008.

The National Police Chief is selected by the president with confirmation from the House of Representatives and is directly responsible to the President. The Police have its own internal regulations on recruitment, promotion and assignment with fixed schedule of assignments.

However, the processes of promotion, assignment, discipline and dismissal in both the National Police and AGO are not transparent and, thus, hinders accountability. There have been cases where disciplinary measures taken by the Attorney General and the National Police were questioned. For example, in the “Ayin Case” in which a taped telephone conversation between Ayin a.k.a. Artalyta Suryani and Prosecutor Urip Tri Gunawan in March 2008 revealed the names of 3 high ranking officials at the AGO who also involved in the corruption scandal to release a big corruptor. The Attorney General only gave one letter of dissatisfaction of performance and two written notices.

Another example is the case of the unusual bank account activities of 23 high ranking officials at the National Police in 2010 that was investigated by journalists. Due to public pressure, the National Police conducted internal investigation on the accounts. In July 2010, the National Police Chief announced that 17 accounts were found normal and 6 manifested unusual activities, but he refused to reveal the names of the accounts’ owners. Indonesia Corruption Watch (ICW), a Jakarta-based NGO, filed a complaint to the Information Commission under the Freedom of Information Act (Law No. 14 of 2008). ICW requested the National Police Chief to reveal all information regarding the investigation as it is regarded as public information in the Freedom of Information Act. On 8 February 2011 the Information Commission announced its decision in favour of ICW so that the National Police is obliged to reveal the information.

In the discussion of the competency, impartiality and the independence of justice institutions, it is important to note the existence of the Public Order Agency (*Satuan Polisi Pamong Praja* or SATPOL PPI), a unit under local

governments tasked with enforcing local regulation. SATPOL PP is formally not a justice institution. SATPOL PP personnel do not have authority under the Penal Code, the Criminal Procedural Law or any other laws on crimes. However, SATPOL PP is often tasked by local governments to directly face a community or a group of people who are considered to have violated local regulations. For example, forced eviction and raids on prostitutes, street hawkers, buskers and other informal works that deemed disturbing public order are usually conducted by SATPOL PP.

The legal basis for SATPOL PP is article 148 of Law No. 32 of 2004 regarding Regional Autonomy. It is said that SATPOL PP is set up to assist the head of local government in enforcing local regulations and in administering public order. This is regulated further in Government Regulation No. 6 of 2010 on SATPOL PP. SATPOL PP members are government employees under the local government, which are administered by the Ministry of Home Affairs. All local governments have SATPOL PP.

SATPOL PP plays a role similar to the role of the police but without proper recruitment, education, training and oversight. Therefore, many incidents occurred when SATPOL PP exercises its authority. There was, for instance, in an incident on 14 April 2010, there was a clash between a SATPOL unit that was tasked to clear a local historic site and some organisations that refused the clearance in Tanjung Priok, North Jakarta. It was a bloody clash, and 2 SATPOL PP members were killed.^{lxviii}

In Aceh, *Wilayahul Hisbah*, a version of SATPOL PP for implementing “*Qanun*” (local regulation of Aceh) on sharia was set up in 2003. Similar issues occurred with regard to *Wilayahul Hisbah*, as they are not well-recruited, trained and overseen.^{lxix} On 8 January 2010, a 20-year old female student was taken into custody for allegedly engaging in an immoral act with her boyfriend, violating the 2003 *Qanun* on Public Indecency. In custody, she was raped by three members of *Wilayahul Hisbah*. The case is now in the trial process in Banda Aceh District Court.^{lxx}

Although SATPOL PP and *Wilayahul Hisbah* are not related to institutions discussed in this report, their existence is closely related to the issue of the administration of justice.

In the context of the rule of law for human rights, the existence of non-judicial institutions exercising judicial or quasi judicial or law enforcement functions raises concerns.

- b. Do prosecutors, judges and judicial officers receive adequate training, resources, and compensation commensurate with their institutional responsibilities? What percentage of the State’s budget is allocated for the judiciary and other principal justice institutions, such as the courts?

Training for candidate judges concerning court procedures is managed by the Centre for Education and Training on Court Technicality at the Research and Development Body and Education and Legal and Judicial Training (Pusat Pendidikan dan Pelatihan Teknis Peradilan Badan Penelitian dan Pengembangan Pendidikan dan Pelatihan Hukum dan Peradilan or BalitbangDiklatkumdil). The training is regulated by The Decree of the Chief Justice No. 169/KMA/SK/X/2010 regarding the Adoption and Implementation of the Integrated Education and Training Program for Candidate Judges. In addition, there is recommendation for a structured continuing legal education for judges in the program.

In the standard curriculum of the newly adopted integrated education and training for candidate judges, there is a subject of general principles of good governance, which include discussions specifically on rule of law. In addition, there are sessions on human rights in relation with the criminal procedural law, human rights court and state administrative court (12 times 45-minute sessions for each topic).

Education and training for prosecutors are regulated in the Decree of the Attorney General No. Kep-004/A/J.A/01/2002. The training is four years in total, which consists of 2 years pre-inauguration training and 2 years post-inauguration training. The pre-inauguration training includes governance system, prosecutorial tasks and organisational culture. The post-inauguration training includes leadership training, functional (on the work of a prosecutor) training, and technical training. Human rights topics are included in the curriculum, especially in relation to the human rights courts.

Education and training for the police is conducted at the Police Academy (*Akademi Kepolisian* or AKPOL). The duration of education is 10 semesters or 3 years and 4 months.^{lxix} Human rights is included in the curriculum of the Police Academy.

The salary of judges is considerably small compared to the average income of lawyers, but special measures to raise the total income of judges have actually been made by the Ministry of Finance by adding allowances, namely "judge's allowance"^{lxxii} and "performance allowance."^{lxxiii} The total monthly payment received by a Supreme Court justice is approximately IDR 32,633,000 (USD 3,728.22) with the 'original' salary only IDR 4,833,000 (USD 552.16), while a judge at the lowest level of court would roughly receive IDR 12,294,000 (USD 1,404.55) per month with the 'original' salary of IDR 4,294,000 (USD 490.58).

Prosecutors and the police, on the other hand, still receive salaries equivalent to ordinary government employees,^{lxxiv} which is augmented with functional allowance to increase the take home salary.

The small salary received by these judicial officials has been pointed out as one of the main reasons for corruption in the respective institutions.^{lxxv}

In the media, responding to allegations that the Constitutional Court receive an unusual honoraria for every court session, the Constitutional Court Chief Justice Mahfud MD states that the total payment per month received by a Constitutional Court judge is approximately IDR 40,000,000 (USD 4,575.08), with the 'original' salary of over IDR 5,000,000 (USD 571.89).

The number of the personnel and the amount of the salary are the main factors in determining the organisation's budget. As seen in the table below, the highest budget allocation for law enforcement agency is for the National Police.

Budget for Law Enforcement Agencies in State Budget 2005-2010

(in billion rupiah)

Organisation	2005*	2006*	2007*	2008*	2009*	2010**	2011***
Supreme Court	1,229,8	1,948,2	2,663,6	4,001,2	3,950,5	5,219,9	6,055,3
AGO	777,7	1,401,1	1,590,8	1,622,0	1,602,1	2,940,0	2,844,8
Constitutional Court	110,7	204,6	149,7	158,1	162,6	189,3	287,7
National Police	11,638,2	16,449,9	19,922,4	21,100,0	25,633,3	27,795,0	29,781,8
Anti-Corruption Commission	-	221,7	163,8	204,3	228,6	458,8	575,7
Judicial Commission	-	34,9	79,1	79,6	89,2	58,5	79,7
Total	13,756,4	20,260,4	24,569,4	27,165,2	31,666,3	36,661,5	39,625,0
Total State Budget	120,823,0	189,361,2	225,014,2	259,701,9	306,999,5	366,134,5	432,779,3

ix. Source: Ministry of Finance, *Principle Data on the State Budget 2005-2011*

Note:

x. * Government Report

xi. ** Revised State Budget of 2010 (the 2010 Government report is yet to be submitted)

xii. *** Current State Budget

- a. Are judicial proceedings conducted in an impartial manner and free of improper influence by public officials or private corporations?

Judicial proceedings are generally conducted in an impartial manner. The issue of improper influence has been a matter of public concern, particularly in recent cases involving so-called “case brokers” or “judicial mafia” by public officials or private corporations. Cases like those mentioned above had been seen as responsible for the low public confidence in the judicial process noted by many national and international studies and reports. There have not been any occasions noted otherwise.

- b. Are lawyers or representatives provided by the court to accused persons, witnesses and victims competent, adequately trained, and of sufficient number?

There is no data as to whether or not lawyers or representatives provided by the court to accused persons, witnesses and victims are competent, adequately trained, and of sufficient number. However, an observation conducted by LeLP in Central Jakarta, South Jakarta and West Jakarta District Courts in 20 September - 14 October 2010 and 5-16 December 2010 revealed that the court-provided advocates were often absent in the trials and not well-prepared.^{lxxxvi}

- c. Do legal procedures and courthouses ensure adequate access, safety and security for accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings? Do they ensure the same for the public and all affected parties during the proceedings?

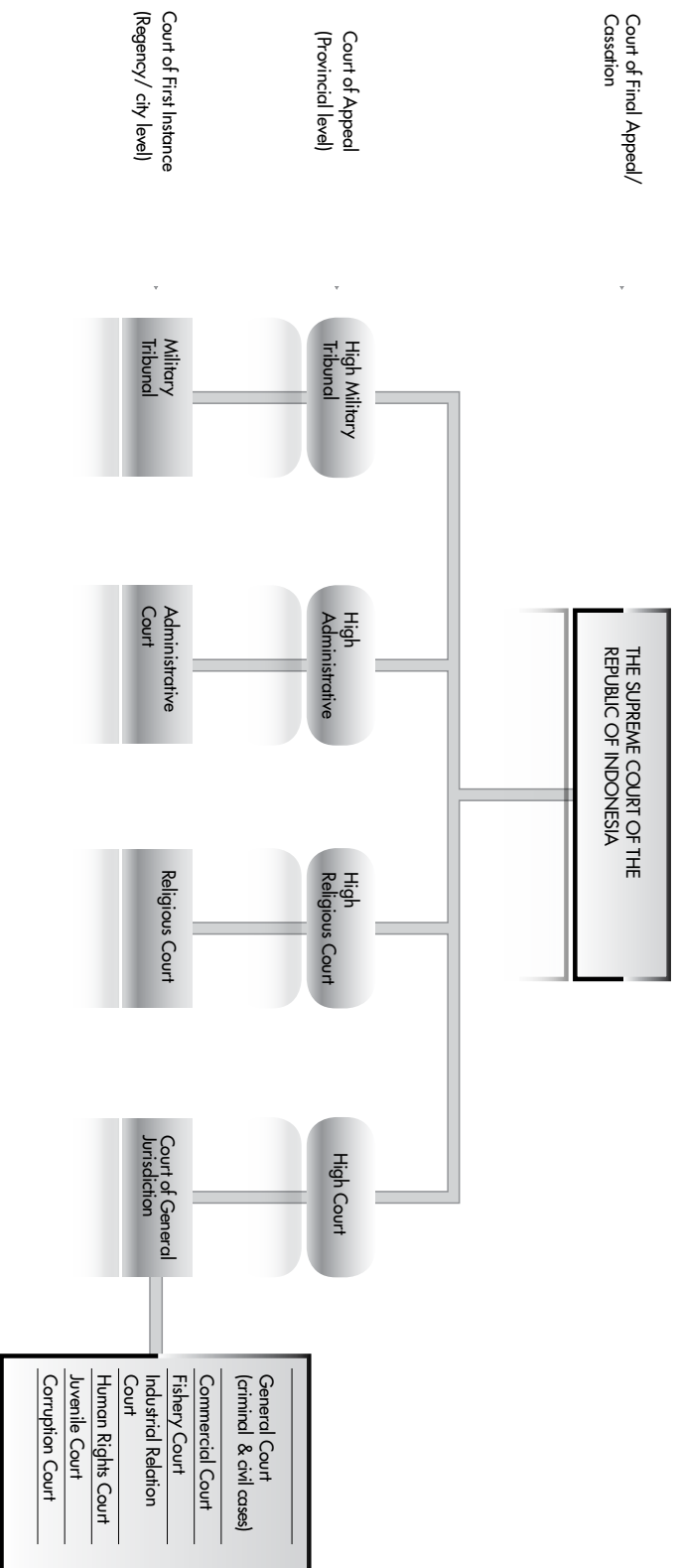
Legal procedures provide adequate safety and security for accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings. This is apparent from a set of provisions regarding contempt of court in the Criminal Procedural

law (articles 217-219) as well as Article 48 of Law No. 48 of 2009 regarding Judicial Power that 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 that is usually very detailed in order to ensure safety and security. However, the courthouses often do not have adequate facilities to enforce those legal procedures. There are not many court houses equipped with metal detectors, for example, although there have been instances where visitors brought weapons and caused incidents in the court.^{lxxxvii} In addition, the security personnel of the courthouses are not well-trained to handle disorder in the court room.

On 24 March 2010, two advocates on the judicial review of blasphemy law were beaten in the Constitutional Court building by Islamic hardliner group FPI. On 22 September 2008, a court session at the Central Jakarta District Court on the “Monas incident” involving an attack of some Islamic hardliner groups to the Alliance for Freedom of Religion rally for Ahmadiyah ended in disorder after a group of people chased and beat the victim.

There is no data on access to courthouses, but general observation shows that the issue of accessibility to courthouses is rarely discussed. It is taken for granted that all parties in the case and other interested parties should make efforts to reach the courthouse. The issue of court accessibility for disabled people is also never discussed.

Appendix 1. Indonesian Supreme Court Structure



Endnotes

- i. The special autonomy was a solution offered by the central government to long term conflict in Aceh. It was provided in Law No. 18 of 2001 regarding Special Autonomy for Aceh. The Law was then replaced by Law No. 11 of 2006 regarding Aceh Government, which was part of the Memorandum of Understanding between the Indonesian government and the Free Aceh Movement signed in Helsinki in 2005.
- ii. Article 4 section (3) of Law No. 5 of 2004 regarding the Supreme Court (second revision to Law No. 14 of 1985) provides that the maximum number of the Supreme Court justices is 60.
- iii. 2009 Annual Report of the Supreme Court, published in 2010, at 176.
- iv. The "hierarchy of law and regulations" is provided in Law No. 10 of 2004 on Law Making, as follows: (1) constitution, (2) Laws (parliamentary act or statute) and Government Regulation in Lieu of Law, (3) Government Regulation, (4) Presidential Regulation and (5) Local Regulation.
- v. Constitutional Court Decision No. 005/PUU-V/2006.
- vi. Data from the Attorney General's Office's Website http://www.kejaksaan.go.id/unit_kejaksaan.php?idu=21&idsu=1&id=2 accessed 18 February 2011.
- vii. United Nations Human Rights Council, Working Group on the Universal Periodic Review, First session, Geneva, 7-18 April 2008, Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(B) Of The Annex To Human Rights Council Resolution 5/1: Indonesia, 31 March 2008 (A/HRC/WG.6/1/IDN/2), para. 24. See also Institute For Policy Research and Advocacy (ELSAM), "Final Report: The Failure of Leipzig Repeated in Jakarta, Monitoring Report on Ad Hoc Human Rights Court Against Gross Human Rights Violations in East Timor, Jakarta, Indonesia," <<http://socrates.berkeley.edu/~warcrime/ET-ELSAM-Reports/ELSAM-Final-Report.pdf>>, accessed 10 January 2011.
- viii. Memorandum of Understanding No. 490/TUA/XII/2009.
- ix. Press Release for the End-of-the-year Press Conference of 2010 (Siaran Pers Kapolri Pada Acara Konferensi Pers Akhir Tahun 2010), 29 December 2010 <<http://www.polri.go.id/berita/4559>>, accessed 20 January 2011.
- x. See Daniel S. Lev, "Between State and Society: Professional Lawyers and Reform in Indonesia," in Daniel S. Lev, *Legal Evolution and Political Authority in Indonesia, Selected Essays*, (The Hague, London, Boston: Kluwer Law International, 2000): 305-320, at 315-316; Binziad Kadafi, et. al., *Advokat Indonesia Mencari Legitimasi: Studi Tentang Tanggung Jawab Profesi Hukum di Indonesia [Indonesian Advocates in Search of Legitimacy: A Study on Legal Professional Responsibility in Indonesia]* (Jakarta: PSHK, 2001).
- xi. As of 30 March 2010. Data from the Legal Aid Center of the Indonesian Bar Association (Pusat Bantuan Hukum Perhimpunan Advokat Indonesia or PBH PERADI).
- xii. Daniel S. Lev, "Social Movements, Constitutionalism, and Human Rights," in Daniel S. Lev, *Legal Evolution and Political Authority in Indonesia, Selected Essays*, (The Hague, London, Boston: Kluwer Law International, 2000): 321-336, at 329.
- xiii. Tim Lindsey, "Indonesia: Devaluing Asian Values, Rewriting Rule of Law," in Randall Peerenboom ed., *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian countries, France and the U.S.*, (London: Routledge, 2004): 286-323, at 295.
- xiv. Todung Mulya Lubis, "The Rechtsstaat and Human Rights," in Tim Lindsey, ed., *Indonesia: Law and Society* (Sydney: The Federation Press, 1999): 171-185, at 172.
- xv. Lindsey, *supra* note xiii, at 295.
- xvi. The other priority areas are (1) development of social, cultural and religious life; (2) economy; (3) knowledge and technology; (4) structure and infrastructure of development; (5) politics; (6) defense and security; (7) area and urban planning; and (8) natural resources and environment. See Presidential Regulation No. 5 of 2010 regarding National Medium Term Development Plan 2010-2014.
- xvii. See Ulma Haryanto, "Bappenas Program to Increase Poor's Access to Legal Assistance Next Year," *Jakarta Globe*, 19 October 2009 <<http://www.thejakartaglobe.com/indonesia/bappenas-program-to-increase-poor-access-to-legal-assistance-next-year/336269>>, accessed 28 February 2011.

- xviii. See : 27 US Congressmen urge RI to annul bans on Ahmadiyah sect," The Jakarta Post, 17 March 2011 <http://www.thejakartapost.com/news/2011/03/17/27-us-congressmen-urge-ri-annul-bans-ahmadiyah-sect.html>, accessed 17 March 2011. See also the letter on <http://www.congress.org/congressorg/bio/userletter/?letter_id=6599238076>, accessed 17 March 2011.
- xix. 2009 Annual Report of the Supreme Court, published in 2010, at 176.
- xx. As of 30 March 2010. Data from the Legal Aid Center of the Indonesian Bar Association (Pusat Bantuan Hukum Perhimpunan Advokat Indonesia or PBH PERADI).
- xxi. PERADI bar intake number. Source: PERADI, as published in [hukumonline.com](http://hukumonline.com/berita/baca/lt4d562a11cdf2f/angka-kelulusan-ujian-advokat-2010-terjun-bebas) <<http://hukumonline.com/berita/baca/lt4d562a11cdf2f/angka-kelulusan-ujian-advokat-2010-terjun-bebas>> accessed 18 February 2011.
- xxii. Source: Komnas HAM website <<http://www.komnasham.go.id/data-pengaduan>>, accessed 18 February 2011. According to the Commission's printed Annual Reports, 1,351 complaints were received in 2006 and 1,430 in 2005. Data between 2006 and 2010 are not available.
- xxiii. Data from the AGO's website <http://www.kejaksaan.go.id/unit_kejaksaan.php?idu=26>, accessed 28 February 2011.
- xxiv. 2009 Annual Report of the Supreme Court, at 176.
- xxv. Press Release for the End-of-the-year Press Conference of 2010 (Siaran Pers Kapolri Pada Acara Konferensi Pers Akhir Tahun 2010), 29 December 2010 < <http://www.polri.go.id/berita/4559>>, accessed 20 January 2011.
- xxvi. Article 24 section (1) Constitution.
- xxvii. Article 220 and 289 of Law No. 27 of 2009 regarding the House of Representatives, the Regional Representatives Council and the local House of Representatives.
- xxviii. Article 340 of Law No. 27 of 2009.
- xxix. Article 391 of Law No. 27 of 2009.
- xxx. Article 36 of Law No. 32 of 2004 on Regional Government.
- xxxi. Constitutional Court Decision No. 005/PUU-HV/2006.
- xxxii. 2009 Annual Report of the Supreme Court, at 87. One judge was dismissed and two were sentenced with suspension and relocation.
- xxxiii. Id., at 96.
- xxxiv. Id., at 100.
- xxxv. Constitutional Court Decision No. 005/PUU-HV/2006.
- xxxvi. Data from the AGO's website <http://www.kejaksaan.go.id/unit_kejaksaan.php?idu=26>, accessed 28 February 2011.
- xxxvii. Press Release for the End-of-the-year Press Conference of 2010 (Siaran Pers Kapolri Pada Acara Konferensi Pers Akhir Tahun 2010), 29 December 2010 < <http://www.polri.go.id/berita/4559>>, accessed 20 January 2011.
- xxxviii. Constitutional Court Decision No. 013/PUU-H/2003.
- xxxix. Constitutional Court Decision No. 6/PUU-V/2007. The articles are article 154 and 155.
- xl. This task force is a special unit under the office of the vice president that was established in January 2010. It was President Susilo Bambang Yudhoyono's response to the many corruption cases by court and court related officials that were revealed recently.
- xli. See "Jailhouse rocks for some inmates in Indonesia," The Strait Times, 12 January 2010, accessed via Asia News Net <<http://www.asianewsnet.net/home/news.php?sec=1&id=9519>> on January 31 2011.
- xlii. See AP, Armando Siahaan & Camelia Pasandaran, "Gayus Tambunan Case Symbolic of Indonesia's Woes," Jakarta Globe, 18 November 2010, <<http://www.thejakartaglobe.com/home/gayus-tambunan-case-symbolic-of-indonesias-woes/407147>>, accessed 31 January 2011.
- xliii. United Nations Human Rights Council, Seventh session, Agenda item 3, Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum, Mission to Indonesia, 10 March 2008 (A/HRC/7/3/Add.7).

- xliv. The Law was revised two times, the last one was by Law No. 52 of 1960. This Law was originally a Government Regulation in Lieu of Law issued by Soekarno to safeguard his power. The state of emergency was declared by Soekarno in 1957 and ended in 1963. An attempt to revise this law was made in 1999 but failed due to massive protests from the civil society. This Law was used to declare state of emergency in East Timor in 1999 and in Aceh in 2003-2004.
- xlv. Chapter VI of the Law No. 8 of 1981, articles 50-68.
- xlvi. Article 77-83 of Law No. 8 of 1981.
- xlvii. A/HRC/7/3/Add.7.
- xlviii. Id., para 21. The UN Committee Against Torture in 2008 issued a series of “principals, subjects, concerns and recommendations” to Indonesia on human rights abuse issues in the country based on this report. The committee asked Indonesia to respond by May 2009, but the government failed to meet this deadline.
- xlix. Id., para. 42.
- l. Id., at 21.
- li. Chapter VI of the Law No. 8 of 1981, articles 69-74.
- lii. LeP, “Monitoring Legal Aid in Indonesia: The Rights of Suspect/Defendant to Access Legal Counsel,” Final report in Monitoring Legal Aid in Indonesia conducted in cooperation between Indonesian Institute for Independent Judiciary, Arab Council for Judicial and Legal Studies, and American Bar Association, 2011.
- liii. Constitutional Case Decision No. 006/PUU-II/2004
- liv. LeP, supra note xlii.
- lv. Id.
- lvi. Article 11 of the SEMA No. 10 of 2010 regulates that the request has to be accompanied by the certificate of incapability of self-finance from the head of sub-regency or village head, certificate of social allowance and a statement of incapability of self-finance.
- lvii. A/HRC/7/3/Add.7, p. 20.
- lviii. Id.
- lix. Article 36 and 37 of Law No. 15 of 2002 regarding Money Laundering Crimes and article 38 of Law No. 31 of 1999 on the Eradication of Corruption.
- lx. “Indonesian Police Accused of Systematic Torture of Prisoners,” <http://www.voanews.com/english/news/Legal-Aid-Group-Accuses-Indonesian-Police-of-Systematic-Torture-of-Prisoners-112796219.html>, accessed 8 January 2011.
- lxi. A/HRC/7/3/Add.7, para. 22.
- lxii. Articles 200, 269, 319 and 370 of Law No. 27 of 2009.
- lxiii. On the decisions archival and the effectiveness of court decisions in Indonesia, see Sebastiaan Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse*, (Ithaca: Cornell University Press, 2005), esp. Chapter VII.
- lxiv. The National Commission on Violence against Women (Komnas Perempuan) was established in 1998 as a national mechanism for the protection and promotion of women’s human rights. It was set up by Presidential Decree No. 181 of 1998, which was renewed in by Presidential Decree No. 65 of 2005. This national mechanism is recognised in the Combined Fourth and Fifth Periodic Reports of the Indonesian Government to the CEDAW Committee.
- lxv. Indonesian National Commission on Violence Against Women, “Crucial Issues Related to the Implementation of the CEDAW Convention in Indonesia,” an independent report prepared by the National Commission on Violence Against Women presented on the occasion of Indonesia’s Combined Fourth and Fifth Periodic Reports to the CEDAW Committee, Jakarta, 19 July 2007, para. 7.
- lxvi. Id., para. 9.
- lxvii. Press release in Indonesian language: “Meneguhkan Perjuangan Kita: Pelaksanaan Mandat Konstitusi Untuk Penghapusan Diskriminasi Terhadap Perempuan,” Siaran Pers Komnas Perempuan, Jakarta, 21 Desember 2010 <<http://www.komnasperempuan.or.id/2010/12/meneguhkan-perjuangan-kitapelaksanaan-mandat-konstitusi-untuk-penghapusan-diskriminasi-terhadap-perempuan/>>, accessed 20 February 2011.

- lxviii. A/HRC/WG.6/1/IDN/2, para. 11.
- lxix. Id., para. 28.
- lxx. See International Crisis Group, Indonesia: Implications of the Ahmadiyah Decree, Asia Briefing Nr. 78, Jakarta/ Brussels, 7 July 2008 <<http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/BO78-indonesia-implications-of-the-ahmadiyah-decree.aspx>>, accessed 28 February 2011.
- lxxi. Elisabeth Oktofani, "Rights Groups Demand Ahmadiyah Orphanage Be Unlocked," The Jakarta Globe, December 28, 2010 <<http://www.thejakartaglobe.com/home/rights-groups-demand-ahmadiyah-orphanage-be-unlocked/413883>>, accessed 28 February 2011.
- lxxii. U.S. Commission on International Religious Freedom (USCIRF), "Indonesia: USCIRF Urges Protection of the Ahmadiyah," Press Release, 7 March 2011 <<http://www.uscifr.gov/news-room/press-releases/3559-3072011-indonesia-uscifr-urges-protection-of-the-ahmadiyah-.html>>, accessed 10 March 2011.
- lxxiii. See International Crisis Group, Indonesia: "Christianisation" and Intolerance, Asia Briefing Nr. 114, Jakarta/Brussels, 24 November 2010 <[http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/B114%20Indonesia%20-%20Christianisation%20and%20Intolerance.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-east-asia/indonesia/B114%20Indonesia%20-%20Christianisation%20and%20Intolerance.ashx)>, accessed 28 February 2011.
- lxxiv. For example: Bandung (West Java) District Court at <http://pn-bandung.go.id/page/biaya-perkara-perdata>, Central Jakarta District Court at <http://pn-jakartapusat.go.id/index.php/layanan/biaya> and Pontianak (West Kalimantan) District Court at http://pn-pontianak.go.id/index.php?option=com_content&task=view&id=125&Itemid=89
- lxxv. A/HRC/7/3/Add.7.
- lxxvi. Constitutional Court Decision No. 006/PUU-HV/2006.
- lxxvii. Detailed list of contempt of court (in Indonesian language) can be seen at <http://www.reformasihukum.org/file/kajian/Tabel%20Data%20Tindak%20Kekerasan%20Di%20Pengadilan.pdf>, accessed 21 February 2011.
- lxxviii. Nivell Rayda, Arientha Primanita & Dimas Siregar, "Anarchy at Tanjung Priok Leaves a Trail of Destruction," The Jakarta Globe, 15 April 2010 <<http://www.thejakartaglobe.com/city/anarchy-attanjung-priok-leaves-a-trail-of-destruction/369567>>, accessed 28 February 2011.
- lxxix. "Discontent Simmers with Aceh's 'Silly' Take on Shariah," The Jakarta Globe, 12 April 2009 <<http://www.thejakartaglobe.com/justAdded/discontent-simmers-with-acehs-sillytake-on-shariah-/272620>>, accessed 28 February 2011.
- lxxx. Nurdin Hasan, "Prosecutors Seek Maximum Sentence In Alleged Aceh Religious Police Rape," Jakarta Globe, June 23, 2010 <<http://www.thejakartaglobe.com/home/prosecutors-seek-maximum-sentence-in-alleged-aceh-religious-police-rape/382072>>, accessed 28 February 2011.
- lxxxi. http://www.akpol.ac.id/baru/index.php?option=com_content&view=article&id=88&Itemid=192
- lxxxii. Regulated in Presidential Decree No. 89 of 2001 regarding Judge's Allowance.
- lxxxiii. Regulated in Presidential Regulation No. 19 of 2008 regarding Special Performance Allowance for Judges and Government Employees at the Supreme Court and all courts under it. This "performance allowance" was indeed a solution from the then Minister of Finance Sri Mulyani on the request to increase the salary of judges without spoiling the salary structure of government employees. This solution also kept financial stability (because increasing the salary means there will be an increase in the pension fund) as the payment of the allowance is made in stages based on performance. At the same time, the Supreme Court was encouraged to show better performance. In the first year, it was only paid 70% with the promise that the performance allowance will be paid in full when the performance reaches certain target.
- lxxxiv. Regulated in Government Regulation No. 25 of 2010 regarding Salary Regulation for Government Employees.
- lxxxv. The World Bank, "Combating Corruption in Indonesia, Enhancing Accountability for Development," World Bank East Asia Poverty Reduction and Economic Management Unit, October 20, 2003.
- lxxxvi. LeIP, supra note xlii.
- lxxxvii. See answer for question no. 3.9. There have been recent cases of violence in courthouses. A detailed list of such incidents is available in Indonesian language at <<http://www.reformasihukum.org/file/kajian/Tabel%20Data%20Tindak%20Kekerasan%20Di%20Pengadilan.pdf>>, accessed 21 February 2011.

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