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#### ABSTRACT

After the fall of Suharto's authoritarian regime, in 1998, human rights have only been formally recognized in Indonesia, both by law and in the Constitution. Yet, civil society in that country has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. In this article, the author describes the challenge of impunity for human rights violations in present Indonesia, the role of civil society organizations at national and international levels to resist the perpetuation of human rights abuses, and finally the author reflects on the role of Indonesia at the international scenario as emerging power and what it means for human rights protection on the ground.

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#### KEYWORDS

Indonesia – Impunity – KontraS – Resistance – Media



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## ESSAY

# THE HUMAN RIGHTS STRUGGLE IN INDONESIA: INTERNATIONAL ADVANCES, DOMESTIC DEADLOCKS

Haris Azhar

Human rights have only been formally recognized in Indonesia, both by law and in the Constitution, after the fall of Suharto's authoritarian regime, in 1998. Civil society has managed to overcome their past fear of authoritarianism, and have been very vocal and vibrant, including the media, in what has been called a democratic opening. Several entities have been outspoken in this situation, from government agencies to NGOs and international actors, including international NGOs that shifted their focus to South cooperation.

The achievements of the government of Indonesia in dealing with human rights are limited to formal respect for, and recognition of, human rights in the national law. This was started during the consolidation process soon after the transition period, in the early years of post-Suharto regime. Human rights have been "re-recognized" in an Amendment to the Constitution of Indonesia in 2000 (INDONESIA, 2000a).<sup>1</sup> This recognition can be seen as in accordance with the international conception of human rights standards where the State has the duty to protect the rights of every citizen. Civil liberties, which had never been respected during the Suharto regime, now became 'constitutional rights'. This constitutional promise has backboned and enriched the setting of human rights protection in Indonesia (SYA'FEI, 2012, p. 687). Indonesia is a State Party to eight core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 2005 (INDONESIA, 2013). At the national level, laws on issues related to human rights started to be enacted, the basic one being Law No. 39/1999 on Human Rights. In the context of criminal law, a law was enacted that created the Human Rights Court, which is considered as *lex specialis* to try genocide and crimes against humanity (INDONESIA, 2000b). These standards led to setting up [new] institutions to carry out human rights policies.

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Notes to this text start on page 234.

The national human rights commission (Komnas HAM) was granted power and authority by Law No. 39/1999, a Constitutional Court was established to protect people's constitutional rights (SYA'FEI, 2012, p. 706), and other auxiliaries bodies known as commissions were created, like the National Police Commission, the National Law Commission, etc.

## 1 Impunity and recurrence of violations

The progress as described above was instrumental to Indonesia's achievements on discussing human rights issues during the reformation era. It was partially an reaction in the early years to the past violations, where hundred of thousands of people suffered and were sacrificed for the sake of 'development' by the military and corrupt regime, since 1965 (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11). However, such achievements do not necessarily provide protection to the people. They confirmed that all repression, injuries, and suffering needed to be repaired. Any violation, harm or abuse of individual rights and social justice should be punished according to the law. However, this seems to be held mostly on paper, not in practice. Many victims of past or current human rights violations have tried to utilize human rights-related laws and institutions. Unfortunately, the victims' efforts have failed to drive the institutions to initiate legal processes for the protection of human rights. During the transition period, laws and institutions failed to deal completely with the past (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 11) and were overridden by other actors in the new political battle dealing with human rights abusers. The legislative reform in the transition period often ignored laws that contradict human rights standards, such as repression of the rights of women.

Currently, civilians do have democratic control in the parliament but are reckless. Indonesia is facing the dilemma of human rights protection in the form of a gap between policy and practice. Although the country has laws on human rights, violations and violence have increased year by year, without remedies. The lack of punishment for perpetrators and land grabbing for business interest is highly widespread. Local residents or indigenous groups were killed and jailed for their resistance and complaints. Minorities are unprotected. Corruption spreads out among local governments. Injustice is the norm in conflict areas such as Aceh, Papua, and East Timor. The UN Human Rights Committee expressed their concern about the aforementioned situations during their session with Indonesian government in July 2013. The Committee concluded, *inter alia*, that Indonesian government and its officers were unable to understand and refer to the International Covenant on Civil and Political Rights (ICCPR) for human rights violations in Indonesia (UNITED NATIONS, 2013). Thus, the problem is not merely impunity being derived from the State's unwillingness, but also from its inability.

## 2 Resistance and deadlock

The government tends to forget many important aspects of human rights protection. The more the State performs unduly and maintains impunity, the more people struggle to find justice for their rights which were violated. When the number of violations – and hence the number of victims – increases, solidarity, resistance and advocacy for compensation are strengthened. The feeling of disappointment toward government officials and judicial decisions is widespread. People resort to legal mechanisms, massive campaigns and strikes, including social media campaigns, rely on international pressure, and can count on a handful of journalists (while big media is at the most indifferent), to no or scarce results. Perpetrators' and the State's contra-advocacy, and government's attitudes lead to deadlocks, which disseminate widespread desperation among people.

The human rights law and other related laws provide complaint mechanisms, which victims use to report their cases or situations. Regrettably, these mechanisms have shortfalls to act appropriately and require a lengthy time.<sup>2</sup> Courts, in many regions, have similar poor performance. On the other hand, NGOs, civil society organizations, and survivors have scarce means to defend themselves and often lack concrete evidence. Satisfactory results are very few. The most successful case was the trial of crime against humanity in East Timor (Timor Leste), but in the end the wrongdoers were acquitted (INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE; COMMISSION FOR THE DISAPPEARED AND VICTIMS OF VIOLENCE, 2011, p. 49-50).

International mechanisms, lobby and pressure are other possibilities to be used (JESTKE, 1999, p. 148-150). With regard to the "Munir case", where a leading human rights activist was killed by poisoning by an Intelligence operation in 2004 on a flight from Indonesia to Amsterdam, Suciwati, Munir's wife, received an enormous support from governments, international organizations, and international NGOs. The European Parliament issued a Declaration [No.98/2007] (EUROPEAN PARLIAMENT, 2008), so did 68 members of U.S. Congress (2005), exerting pressure on the Indonesian president, Susilo Bambang Yudhoyono, to fairly uphold justice in this case.<sup>3</sup>

The United Nations also provides mechanisms that can alternatively be used. During the 2<sup>nd</sup> cycle of the Universal Periodic Review (UPR) session on Indonesia, the country was bombarded with many questions and recommendations from members of the UN Human Rights Council, including on religious intolerance (EVANTY, 2013). The Indonesian government replied and argued selectively at the international fora. Its responses varied in tone and intensity, according to its interests, from active answers on religious intolerance, through proudly presenting the legal and institutional reform in the country, to silence – which usually happened for impunity cases, like in relation to the Munir one.

Public intervention also took the form of symbolic campaigns, massive strikes, land or sea occupation<sup>4</sup> by local or indigenous residents. Artists were involved in solidarity events and art groups voiced social problems and injustice (SARI, 2014). Social media was used as a tool to spread slogans and demand changes. Twitter,

Facebook, Instagram and online petition sites like Avaaz.org and Change.org have offered more options for people to express their concerns. Social media eases the way for people to engage in campaigning; and Jakarta is the world's most active city in terms of posted tweets (LIPMAN, 2012).

Massive demonstrations were used by labour groups or groups of stakeholders in natural resources issues like farmers, indigenous peoples or fishermen (KONSORSIUM PEMBARUAN AGRARIA, 2013), in an attempt to attract the government's attention, in view of poor mediation or negligence by official institutions. Frustration and disrespect have led some to the use of force; some reclaimed a disputed land, blocked big ships of a fish company in the traditional water zone or conducted strikes in many industrial areas. Sadly, in many occasions the police, or security officers, or thugs, or intolerance groups opposed to the manifestations. The leaders or followers of the actions were criminalised and considered provocateurs in the public space. They were arrested and subjected to harmful treatment.

A pacific demonstration, in turn, has been running for more than seven years (YUNIAR, 2014). In an initiative to institutionalize memory, a group of people, wearing black shirts and umbrellas, silently stand facing the presidential palace every Thursday for one hour, from 4-5 pm, in a demonstration known as *Kamisan* (*Kamis* means Thursday). They protest against a range of human rights abuses, such as the mass killings in 1965-66, and the disappearances and murders of activists in 1998, prior to the fall of former president Suharto, in an effort to stop the nation forgetting these past abuses. Some families also attempt to keep alive the memory of human rights abuse: Munir's family has set up a human rights museum related to him and other murdered or disappeared activists (HEARMAN, 2014); the mother of Hafidin Royyan, a student who was shot to death in a big rally at Trisakti University ten days before Suharto resigned in 1998, has kept his room untouched.

Government and Parliament have shown resistance by adopting legislation that limits freedom and demand 'responsibility and respect' for human rights. In addition, to speak of human rights has been named "anti-religious". The use of social media also faces some challenges. Beside the new law on Electronic Information and Transaction (INDONESIA, 2008), the minister of Communication and Information has repeatedly shown his unwillingness in speeding up access to the internet (WAHYUDI, 2014). So, legally and technically, information is free but its access is liable to be infringed.

As far as mainstream media is concerned, it has hardly been attested to play the watchdog role for the public. Nevertheless, many journalists have been harassed or mistreated by police or government agents, as well as by organized crime or businessmen (COMMITTEE TO PROTECT JOURNALISTS, 2014). One way or the other, they succeeded in turning information part of the democratic debate. The media has a key role in promoting human rights. On the other hand, in general it has also distorted the meaning of human rights. There are exceptions but most media outlets operate using the business logics, apparently moved primarily by commercial interest. An increasing number of them belong to very few owners (NUGROHO, 2012, p. 7, 12).

Human rights are not on the headlines, but are still an issue of interest. It's the language and the exercise of many people, especially those who were impacted by extensive and persistent abuses. It is the language of freedom and claims for justice, truth and remedies. Although people at large are aware of their rights, there is skepticism when human rights mechanisms do not present an urgent and quick response to the situation. On the other hand, we can see how many alternatives have been taken by victims to survive and maintain the hope for justice.

On the State side, it is well proven that, as far as standard setting is concerned, although it does use the universal 'human rights' language, in reality it shows lack of sufficient willingness and ability. Therefore, the State's obligations as stipulated in many international conventions become meaningless. Interesting to note, the current government does not have the same grip on society as did the military regime, when so many human rights violations occurred and deprivation of rights was widespread. Now, instead, violations of rights occur less as directed by central government policy and more due to a generalized corrupt, abusive and violent mentality among both the public and high level or security officials, in what can be seen as derived from government's weakness or unwillingness to uphold human rights. Aspinall (2010) underlines a pervasive disenchantment towards "the entrenchment of corrupt and authoritarian actors and practices within the new, formally democratic State".

### 3 Human rights in Indonesia and international relations

It is important to locate the human rights situation in Indonesia in the global human rights scenario. While local processes are weak and slow, foreign contribution is complementary and welcome; Indonesian human rights promoters got much encouragement at this level. However, the country has undergone striking changes, with implications to the way it is internationally seen, to the kind of assistance it receives, and to the internal human rights situation.

In general, changes within Indonesia are internationally seen as a fascinating development of democratic process. Abuse survivors and civil society organizations are highly praised. Millions of dollars, expertise and knowledge have been made available to foster the democratic transition.<sup>5</sup> The world, through technology, is being opened for Indonesia.

For the Indonesian government, this situation makes it more comfortable to talk about human rights, especially with the foreign affair diplomats abroad. International actors, such as the U.S. government and the EU, have pointed to Indonesia as a key player or champion of the biggest Muslim democratic country. Within ASEAN, Indonesia led the accomplishment of two important goals, namely the adoption of the ASEAN Charter and the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR). At the international level in the United Nations, Indonesians get more recognition and some managed to be elected to key posts: Mr. Makarim Wibisono was elected president of the Human Rights Council (2005) with the support of countries that have dubious human rights records, like China and India; other individuals were chosen as special rapporteurs.

Indonesia has taken an advanced position on Myanmar (Burma) and on Middle East issues. The country has been recognised as a great economic power and joined the G20, the extension of G8, along with Mexico, South Africa, Brazil, Argentina, India and other countries. These internationally acclaimed achievements overshadow human rights issues. The government's understanding and dealing with human rights is the same. When the Indonesian president spoke at the United Nations Post-Millennium Development Goals forum, he proposed the idea of an international standard for religious slander. At the ASEAN forum, Indonesia signed the ASEAN Human Rights Declaration, which contains many flawed provisions – on national security, cultural relativity, national interest, consensus principles, non-interference (CIVIL..., 2012). These provisions undermine the Constitution and international human rights conventions.

Due to the country's growing weight in world affairs and to the economic growth — the country made the transition from poor to middle-income status —, the world is looking at Indonesia as a new key player. The pattern of foreign assistance has changed. Big donor agencies shift their assistance from civil society to government offices. Some foreign NGOs operating in Indonesia often produce sophisticated reports without having an influential advocacy inside the country, or with loose collaboration with local entities. They end up by competing with local NGOs to gain support from donors.

Abuse impunity and the government weakness do not drive international attention. In fact, in the case of Indonesia, after 16 years of political transition, some international entities are looking at the Indonesian government as a key player to deal with others' 'worst' situation, like Burma. Imagine that Indonesia —with its unsolved businesses on democratisation— should export the democratic transition experience to another country. They seem to forget the millions of victims and the survivors who still lack compensation. In the case of Indonesia, it is very clear that the rights of people are still ignored and neglected, both internally and internationally.

Can we expect a humanitarian intervention to put an end to steady impunity? Which would be the best way to mitigate the unrecognized, but persisting violations of human rights in Indonesia?

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## NOTES

- Chapter XA is dedicated to human rights.
- For a criticism on Indonesian National Human Rights Commission, see Wiratraman (2014).
- A suspect was brought to trial and convicted, but the conviction was later invalidated. In 2007, a court found that the state-owned airline owed the widow a compensation, but this was never paid.
- Indonesia is an archipelago (13,466 islands) where 2/3 of the jurisdiction are coastal and sea areas. Many people, mostly indigenous residents, access the sea for their daily survival.
- For an interesting description on the assistance for the democratization panorama in Indonesia, see Aspinnal (2010).