

INDONESIA and the RULE of LAW

Twenty Years of 'New Order' Government



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A study prepared by the
INTERNATIONAL COMMISSION OF JURISTS and the
NETHERLANDS INSTITUTE OF HUMAN RIGHTS (SIM)

Edited by
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Preface

In July 1979, the International Commission of Jurists (ICJ) approached the Indonesian government with a view to sending a mission to Indonesia. The purpose of the mission was to undertake an impartial study on human rights in Indonesia including economic, social and cultural rights as well as civil and political rights. The proposed members of the mission were:

- Professor P. Kooijman, former Secretary of State for Foreign Affairs of the Netherlands and a distinguished international lawyer;
- Mr. Rodney Lewis, then Secretary-General of the Australian Section of the ICJ and a well-known human rights lawyer; and
- Mr. J.G.H. Thoolen, then Executive Secretary of the ICJ and former lecturer in Constitutional Law at Leyden State University.

The decision to send a mission was based on the fact that Indonesia is a country of outstanding importance in the region which has had to grapple with serious economic and social problems. However, little is known of its legal system as only a fraction of the laws have been translated from the official Indonesian language. For the International Commission of Jurists, which is concerned with the legal protection of human rights, it was important to understand the process by which the New Order has been established and to evaluate the Indonesian legal system in terms of international human rights norms.

The Indonesian government declined permission for the mission on this first occasion saying that this was not the right moment as the government was involved in important changes in its legal and administrative system.

The government was approached again in September–October 1980, but the same reply was received.

The ICJ prefers to report on countries after full discussions with the government, but will not refrain from reporting on a country simply because the government declines access. Accordingly, the ICJ decided to go ahead and undertake a study on 'Indonesia and the Rule of Law', describing, analysing and commenting on the state of human rights during the last two decades.

As Executive Secretary of the ICJ Mr. Hans Thoolen was responsible for the preparation of this study. After he left our staff to become Director of the Netherlands Institute of Human Rights (SIM) he continued, with the Institute's

agreement, to edit the study as well as being its main contributor. He was greatly assisted by the staff of the SIM Institute, which thereupon became co-sponsors of the study

While the study was being conducted, changes occurred in some of the laws and procedures and the need to revise the relevant chapters of the study imposed delays.

A particular problem arose in preparing a comprehensive review of the system of criminal law as it relates to human rights issues. No up-to-date work on the criminal law exists in any language. The problem was finally resolved when Professor J. 't Hart of the Netherlands, an expert in comparative penal law, kindly agreed to make a prolonged visit to Indonesia and to write the chapter after consultations with academic and practising lawyers in Indonesia. This chapter, which makes a unique contribution, has already been published in Indonesia in the official Indonesian language, Bahasa Indonesia, and already serves as an invaluable guide to the legal practitioner.

As far as possible the complete study was checked with experts both within and outside Indonesia to be sure of its accuracy. It deals fully with the constitutional and legal framework and with basic rights including those of freedom of speech and expression, freedom of association, trade unions, and freedom of the Press. The developments of the last twenty years are measured against the Indonesian Constitution and laws as well as against the international human rights norms to which the New Order government claims adherence without ratifying any specific instruments. It also provides sufficient detail and historical perspective to enable the reader to understand the intrinsic and structural problems encountered by any Indonesian government in guaranteeing fundamental rights to its population. Although the study is written from a legal perspective it does not shrink from describing and evaluating the ways in which the laws are applied in practice.

The study is written in a style aimed at a larger public than the legal profession in the hope that it may raise the level of understanding about the state of legal protection of human rights in Indonesia within and outside the country.

Geneva, September 23, 1986

Niall MacDermot
Secretary-General
International Commission of Jurists

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The International Commission of Jurists wishes to express its deep gratitude to all those who have taken part in the preparation of this study. First and foremost our thanks are due to Hans Thoolen and to Professor 't Hart. Among the many others who have assisted us our thanks are due in particular to several lawyers in Jakarta, including those of Lembaga Bantuan Hukum (the LBH, Legal Aid Bureau); Rodney Lewis, former Secretary-General of the Australian Section of the ICJ; a number of outstanding scholars in this field in Australia, including Dr. Michael van Langenberg, Peter Morris, the late Professor Rex Mortimer, Peter Rodgers, and Justice Peter Nygh; the staff of the Netherlands Institute of Human Rights (SIM) in Utrecht; and Hans Versnel.

We are also greatly indebted to the Indonesia Working Group of the Netherlands Council of Churches, Ford Foundation, and the four leading Dutch funding agencies, CEBEMO, HIVOS, ICCO and NOVIB for their financial support, without which the study could not have been prepared.

The Australian and Netherlands sections of the ICJ have from the start supported the initiative for this study and helped us to organise it.

While acknowledging its indebtedness to these and many other, the International Commission of Jurists wishes to make clear that it alone is responsible for the final text.

Introduction

'a string of emeralds, slung around the equator'
Multatuli, nineteenth-century Dutch novelist

1.1. THE COUNTRY AND ITS HISTORY

The Republic of Indonesia, with a population of almost 160 million (1984), is the fifth largest country in the world. The population is spread out over an archipelago of 13,677 islands of which only 1,000 are permanently inhabited and 6,000 have official names. The total land and sea area is approximately 5 million square kilometres, of which more than 65 per cent is sea.

The island of Java is the most densely populated—with 100 million inhabitants packed into only 7 per cent of the total land area of the Indonesian republic. The island of Sumatra with 22 million inhabitants occupies 30 per cent of the land and produces in value over 60 per cent of the nation's exports.

Other big islands are Kalimantan, of which a large strip of territory belongs to Malaysia, and Sulawesi. Irian Jaya, a former Dutch colony called New Guinea, came into Indonesian hands in 1963, a *de facto* take-over which was confirmed in 1969 by a UN sponsored 'act of free choice'. The eastern half of this enormous island, a former Australian colony, has obtained independence as Papua New Guinea (1975).

The island Timor was also divided into a Dutch half (Timor Barat) and a Portuguese half (Timor Timur). The former became part of Indonesia upon independence, the latter was invaded and occupied by Indonesian troops in late 1975.

The interior of the Indonesian islands outside Java is generally mountainous jungle territory, sparsely inhabited by tribal peoples, or equatorial wasteland. Nowadays some coastal areas have been developed for plantations and in places where oil has been found, oil and related industries have sprung up. Since the islands stretch along the equator there are no appreciable seasonal differences in temperature and all days have the same length. However, the climate seems to be the only monotonous treat in a region full of ethnic, cultural and religious variety and vastly differing landscapes.

2 INTRODUCTION

As is the case with many developing countries, pre-colonial history is still partly unresearched and many aspects of it remain obscure. This is the more so in the case of Indonesia's history in which layers of different cultures have been imposed over each other as different peoples invaded the islands. The resulting ethnic diversity is still testimony to this.

The earliest Indonesians are believed to be Malays from Indochina, bringing with them bronze age techniques and swamp rice cultivation. From approximately 200 BC to AD 1500 there was a continuous Hindu and Buddhist influence brought from the Asian mainland by Indian traders. In addition to religious, cultural, linguistic and scientific influences, some parts of Indonesia, in particular Sumatra and Java, underwent important political and agricultural changes: politically, the Hindu concept of the divine ruler found its way into the fabric of society; and agriculturally, improved irrigation systems in Java made the rice production of this island superior to that of others with similar climate.

Already at the end of the thirteenth century, as Marco Polo testifies, Islam existed in the South-East Asian islands. Arab merchants, who dominated life in the sea ports, brought with them a religion and lifestyle of great attraction to both local traders and peasants. Simplicity in form, common sense prescriptions and, because of its direct relationship between each individual man and God, a liberating force against feudal bondage, proved to be effective carriers of the new religion. By the end of the fifteenth century there were over twenty Muslim kingdoms throughout the archipelago, and the big Islamic empire of mataram was established in Java around 1580.

The main result from this period is that at present approximately 130 of the 160 million Indonesians belong to Islam, making Indonesia the country with the largest Muslim population of the world. Also, the emergence of a common language, Malay, throughout most of the archipelago dates back to this period.

While not wishing to play down the importance of Islam in Indonesia but as an illustration of the intermingling of cultures and religions, it can be noted that the national emblem of this most populated Muslim state is the mythical bird Garuda, the mount of the Hindu God, Visnu.

During the same period the Chinese started to arrive and settle as businessmen. They formed in this way a 'second bourgeoisie', which would be in constant rivalry with the indigenous traders.

This diversified and rich amalgam of religions and cultures was the country which was 'discovered' by the European traders in the sixteenth century. It had cities, temples, irrigation systems, orchestras, shipping, art, literature, etc., and it would be fair to say that compared to Europe of that time Indonesia was not 'underdeveloped'.

In 1511 the Portuguese captured Malacca but soon they lost it to the Dutch, who by the beginning of the sixteenth century were in complete control of the spice-bearing Moluccas. The Dutch had established an important trading centre called Batavia on West Java after having destroyed the existing town of

Djakarta. The Dutch had created their V.O.C. (United East-Indian Company) in 1602 which was given a trading monopoly by the Dutch Staten-General (government) and through the force of arms, repression and the exploitation of existing feudal divisions they compelled the population to sell their crop against fixed and, above all, low prices. Slavery, corruption and forced labour were widely practiced.

In spite of enormous profits the V.O.C. became financially vulnerable at the end of the eighteenth century and in 1799 the State of the Netherlands took over. After a brief intermezzo during which Java was in British hands (1811–16) the Dutch government introduced the notorious ‘cultuurstelsel’, i.e. forced cultivation system. This measure followed the expensive Java war (1825–30) which was caused mainly by feudal resistance against uprooting of traditional power structures. The population was not only forced to cultivate 20 per cent of the land for the government (in practice this was often higher) but also to grow the products the government decided should be grown. This system produced an enormous wealth, although it was accumulated in the Netherlands rather than in the colony, and the indigenous rural production system deteriorated.

In 1870, under pressure from the liberal economist school in the Netherlands, the ‘cultuurstelsel’ was abandoned and the market was left to ‘free enterprise’. This did not improve the life of the indigenous population but led to increased exploitation. Whereas until then Java and the Moluccas had been the main targets for Dutch ‘civilization’, from this date the so-called ‘buitenge-westen’ (outer islands) became an interesting object for the free market advocates. This in turn required the Dutch government to have a presence there to protect its citizens. Several bloody wars ensued, in particular in Aceh, known in the Netherlands by the rather cynical title of the ‘pacification of Aceh’ (1873–1903; thirty long years!).

Estate agriculture and exploitation of mineral resources, such as oil and rubber, were the ‘improvements’ which came to these islands, but the traditional way of life and work of the individual Indonesian cultivator remained unimproved. The growth of the population, caused in part by improved hygiene, had in fact lowered his standard of living. A late ‘ethical’ revival in the Netherlands, which tried to improve the miserable fate of the Indonesian people through ‘uplifting’ education and public services and a gradual involvement in public affairs, resulted in a certain degree of care and also a marked freedom of expression for the Indonesian elites. This development coincided with Muslim revival in the Middle East, the Japanese victory over Russia in 1905, the successful revolutions in Turkey and China, the October Revolution in 1917 and isolated uprisings and rising nationalism in Indonesia itself. The education of a small elite at European Universities and the widespread popular belief in Java that a redeemer (the so-called Ratoe Adil) would come to liberate the country, helped to prepare the ground for the birth of a new nation and new leaders.¹

4 INTRODUCTION

A relatively well-researched area is that of the early days of Indonesian nationalism and independence. However, as the present chapter is only an introduction many interesting details will have to be omitted.

The birth date of the nationalist movement of Indonesia is often accepted as being the creation of the Javanese cultural association, Budi Utomo ('high endeavour'), in 1908. However, it remained very much an elite organization and never received a large following within the population. This was not the case with the organization Sarekat Dagang Islam, which originated as an interest group of Javanese merchants, and which, between 1911 and 1914 jumped in membership from 4,500 to 367,000 persons.

Although these organizations soon lost their appeal, partly due to intriguing by the colonial government, they were followed by other groups which, in the face of Dutch repression, had to organize under religious, cultural or scientific cover, in particular the so-called 'study clubs' in Surabaya, Solo, Jokjakarta, Bandung and elsewhere. The 'study club' of Bandung was organized in 1925 and was to become the nucleus of the nationalistic party, PNI. Sukarno, who later became the first Indonesian president, was a leading member of this group.

After a communist backed uprising in 1926, the repression against all nationalistic organizations and persons intensified and many leaders, including Sukarno, were detained in a concentration camp in Upper Digoel (Irian Barat).

1.2. SECOND WORLD WAR AND INDEPENDENCE

After a quick defeat of the western powers in February—March 1942 Japan took control over the Archipelago. Having demonstrated thus the vulnerability of the Western colonial powers, the occupying force went on to exploit the differences between the 'cooperators' (the civil servants and part of the old nobility), the nationalists (the 'non-cooperators' who were released and given freedom to act) and the Muslims (who were given an opportunity to build up a widespread organization called the Masjumi which at that time included the more rural-based NU, the League of Religious Scholars).

Initially the Japanese army was greeted with open enthusiasm by the population in general, but when exploitation continued and when vague promises about independence were not fulfilled, there was a change in mood. Some leaders, in particular the very popular Sukarno and Hatta, continued to advocate openly collaboration with the Japanese, as this would be the only road to liberate Indonesia from colonialism and Western imperialism. Others, like Syahrir, were more careful in expressing agreement with the Japanese and some were even in favour of organized resistance against the occupying power.

On August 15, 1945 Japan surrendered to the Allies. Exactly one year before this the Indonesian nationalists had been granted permission to build up their

own organization throughout the country for the purpose of mobilizing public opinion against a possible return of the western imperialists (Barisan Pelopor). Of course, the nationalist leaders under Sukarno hoped that such a mobilization would stretch further and would ultimately serve the cause of Indonesian independence and unity. This was all the more true when reluctant permission from the Japanese came through to create and train an armed militia for the purpose of assisting the Japanese in the struggle against the allies. The negative turn which the course of war had taken for Japan brought pressure on Japan to speed up the process of transfer of independence, and also on the nationalist leadership to proclaim independence even against the wishes of Japan. After several days of total confusion and factional strife within the nationalist movement, Sukarno was able to read out on August 17, 1945, a short statement saying that 'we the Indonesian people declare the independence of Indonesia. The formalities for the transfer of power etc. will be regulated in an orderly manner and as soon as possible'. The next day the Committee for the Preparation of Independence elected Sukarno by acclamation as its first president and Hatta as vice-president. A Constitution, drafted in July 1945, was slightly amended and Sukarno was given sole responsibility for six months because the envisaged People's Congress could not yet be convened.

On August 23, in his first radio speech as President, Sukarno announced the formation of a single party: the Partai Nasional Indonesia (P.N.I.). By November 1945, however, more western-oriented nationalists, under the leadership of Syahrir, had succeeded in dominating the government and established a system of multi-party parliamentary democracy.

The Dutch, however, were not yet ready to accept the fact of an independent Indonesia. They staged several military operations against the new Republic between 1946 and 1948, causing great damage and killing thousands of citizens without being able to gain more support from the population. Under continuing attacks from the Indonesian guerrillas and severe pressure from an outraged world opinion, including the United States and the United Nations, the Dutch had to consent to enter into negotiations with the leaders of the new Republic. At the Round Table Conference at The Hague, held between August and November 1949, the Dutch finally agreed to transfer sovereignty to the 'United States of Indonesia'. This was so named, because the Dutch had managed to get agreement that several 'outer islands' and part of Sumatra and Java would only enter into the new nation as parts of a federated state. Only one year later, however, in August 1950, a unitary state was proclaimed after solidarity declarations were received from all the federated states. The spontaneity of some of these declarations has been subject to doubt however. This was the case for example, with the Republic of the Moluccas, some of whose citizens, especially those who had served in the Dutch colonial army in Java, came to the Netherlands with the expectation that the Netherlands would know how to enforce their independent future. It was this frustrated hope which eventually

led a number of young Moluccans in the Netherlands in the mid-1970s to try and wrench from the Dutch government, even by terrorists tactics, the fullfilment of their historical 'obligation' to guarantee a federated state.

Another item which was unresolved was the position of West New Guinea (Irian Jaya). It was agreed that it would remain under Dutch control for another year and in the meantime the political future had to be discussed.

An important feature of this period was the preponderance of the 'people's army' which was to become the basis for the army's claim to national leadership and provide the moral basis of the concept of the 'dwi fungsi' of the armed forces, i.e. that it has a leading role both in military and in civilian matters.

1.3. POST-INDEPENDENCE

When the Dutch left Indonesia between 1950 and 1958, there was little basis in terms of development. About 90 per cent of the people were illiterate and only two million children were attending schools. There were a few thousand high school graduates and only one university, opened in Jakarta as late as 1941, which had produced 250 graduates.

The economy, due to the occupation and war, was in a shambles and secessionist threats sprung up at different places. The constitutional parliamentary democracy in the 1950s turned out to be far from stable with many cabinet crises, religious and regional bickering and 169 political parties and factions to contest 257 seats in the 1955 elections.

After first having dissolved parliament, Sukarno in 1959 abolished the 1950 Constitution and returned to the 1945 Independence Constitution which gave more room for presidential leadership. He established his policy of 'Guided Democracy' and created a 'parliament' appointed by himself and became 'president for life'.²

The outer islands remained unruly, opposing what they claimed was 'Javanese imperialism' and too lenient an attitude towards ungodly communism. In February 1958 the revolt took serious forms in West Sumatra and North Celebes. A war developed and order was restored only after seventy battalions had been mobilised and the army given increased powers.

Sukarno's rule grew more and more repressive, press censorship was introduced, politicians and dissident intellectuals were silenced by detention measures and the independence of the courts was further diminished. At the same time the economic situation worsened. Foreign debts had accumulated to dangerously high levels, the inflation rate ran at 650 per cent annually and most of what the population saw in return were prestigious buildings and statutes. In his foreign policy Sukarno went on the 'konfrontasi' tour, cutting short the stalemate in the Irian-Jaya negotiations with the Dutch through an invasion of the island, initiating a military harassment campaign against the

Malaysian territories on Kalimantan in 1963, aligning himself with mainland Maoist China and even leaving the United Nations in 1964.

On the night of September 30, 1965 the communists, driven by rumours that the army was planning a purge against them, staged a coup and killed six top generals.³ A relatively unknown general, Suharto, who had escaped the attack, found himself in a position of leadership and mobilized the army not only against the conspirators or the leadership of the Communist Party (PKI) but, through fanatical Muslim youth groups, against all Communist organizations, their members, followers and sympathisers. Student unrest, with support of the army, filled the streets of Jakarta and the muslim leadership expressed its fear of a dominant influence by the PKI on the policy of the government, already weakened by Sukarno's failing health. Within a month the combined army and muslim youth factions had moved effectively against the PKI in all forty five major cities and destroyed their organizations if not their buildings. On March 11, 1966 the PKI was officially declared illegal. The purge, however, continued for many more months, in particular in the countryside of Java, and at the end of 1966 Indonesia suffered one of the largest massacres in recent world history: 750,000 to a million people were killed, often in the most atrocious manner, arrested or disappeared.

Although Sukarno, who some believed was involved in plans for the abortive coup, was still in charge during it, the army took over effective control of the machinery of the state following these events. There was an ideological reversal in both internal and external policy, which was given the title 'New Order', Orde Baru. The role of the army in setting out the new course of the nation was given preponderance and, as we will see, repressive practices and the excessive use of state power for ideological reasons, albeit of a totally different colour, were to be continued.

Sukarno died in 1970, but general Suharto had been effectively the leader of Indonesia since 1967. Less flamboyant than his predecessor but not less an expression of the law of the rulers rather than the Rule of Law.

As the period from 1965 onwards is the main subject of this study it is not necessary to continue to present a bird's eye view of the course of events. These will be examined more fully later in the study.

Twenty years of New Order government then, in spite of some strong macro-economic performances, have not brought the kind of social and political justice that many hoped for. Some repressive features of the previous government have been endorsed and even carried through more thoroughly than Sukarno could have hoped to have done. Often this is done slowly through structural and institutionalized moves, but sometimes it is carried out through severe repression of specific instances of challenge to the leadership.

In the latter category fall the 'four waves of repression', of which the phases are not always easily distinguished. The first wave was certainly the most significant in terms of numbers of victims. Hundreds of thousands were killed

during the anti-communist drive following the 1965 coup attempt and hundreds of thousands were arrested. Many of these were released but tens of thousands were held without formal charge or trial for over a decade before being released. Even then, 1,000 or more individuals were tried and sentenced to death or long periods of imprisonment. As recently as 1985 the death penalty was carried out on a number of convicted trade unionist in a display of defiance towards international public opinion.⁴ Ex-detainees may not become teachers, university lecturers, journalists, lawyers, or government employees, and may not be employed in sensitive industries. In 1985 hundreds of workers in Caltex Pacific Oil and Pertamina were dismissed for their alleged involvement in the coup attempts, their alleged membership in suspected unions or merely having family ties to persons suspected of involvement.

The second wave of repression, on a much more modest scale, occurred in the so-called 'Malari Affair' in 1974. Although there were relatively few victims and few trials, the events marked the first large scale resistance against the New Order government since it came to power.⁵

The third wave, also described in some detail in this study started in 1978 with student and muslim activism direct against President Suharto's reelection. The publication of the 'White Book' by students of the Bandung Institute of Technology was followed by a great many arrests and, ultimately, some trials and convictions.

The fourth wave started with the 1984 Tanjung Priok riots, followed by arrests and trials throughout 1985 and 1986 against Muslim activists and members of the so-called 'Group of 50'. Because of its direct focus on the Muslim fundamentalists and their educational networks on the one hand, and trials against the most outspoken and respected critics, such as retired general Dharsono and ex-governor Ali Sadikin, on the other, the current wave of repression is likely to prove one of the most important since the start of the New Order government. One of the underlying issues in the recent events is the government's insistence on making 'Pancasila' the sole ideological foundation of the State and every organization in it. Although this can hardly be called a bread and butter issue for the large majority of the Indonesian population, the question of Pancasila as the sole foundation is likely to ensure for the Tanjung Priok riot and its aftermath, a prominent place in Indonesian history.⁶

1.4. ECONOMIC BACKGROUND

General

In 1982 Indonesia crossed the borderline of low income developing countries to enter the group of middle income countries. Compared to India and Pakistan the level of income is high, but compared to ASEAN countries in the region

such as Malaysia and Singapore Indonesia is still lagging far behind. And though the Indonesian economy has grown fast during the first three five-years plans of the New order government, it cannot be denied that generally speaking the Indonesian people still have a low standard of living. This is apparent from several social indicators, such as a life expectancy of 48 years, a high child mortality rate, lack of access to safe and clean drinking water for the majority of the people and a high level of adult illiteracy.

This section will focus on the development of the economic, social and cultural conditions of the Indonesian people in relation to their aspiration as expressed in the preamble of the 1945 Constitution, in which 'any subjugation in this world' is called 'contrary to humanity and justice' and the establishment of a national Indonesian Government is declared to be for 'nurturing the Indonesian people and their territories'; for 'promoting public welfare' and 'uplifting the standard of living'.⁷ Since independence this preamble has been invoked both by the economic and social policy makers of successive governments and by their critics.

The Indonesian economy was severely disrupted by the Second World War, the Japanese occupation and the struggle for independence which lasted until 1949. While the government gave priority to political issues the general economic conditions deteriorated in the late 1950s and early 1960s.

At the same time there was an increased direct participation of the government in the economy as a consequence of the nationalization of Dutch owned enterprises in 1958, especially in mining, estate agriculture, manufacturing and financial services.

Between 1960 and 1966 there was an average 2 per cent annual growth in real GDP (Gross Domestic Product); investment in public and private sectors went down and the already feeble economic infrastructure declined further. Expenditure of the government, with little return value in the absence of commensurate increases of revenues, led to growing budgetary deficits. As a result of the inflationary financing of these budgetary deficits the rate of inflation accelerated, reaching an annual rate of over 600 per cent in 1966.

So from the beginning the New Order Government of Suharto was confronted with an economy characterised by underutilised production capacity, a runaway inflation and a growing indebtedness. Shortly after the transfer of power to general Suharto in March 1966, which authorized him to restore order in Indonesia, the New Order Government adopted a policy of rehabilitating and stabilizing the economic and financial situation. The main objectives were to slow down inflation, to increase export production and secure an adequate provision of rice.

In order to improve the Indonesian economy the New Order Government started framing five year development plans, based on the three main principles of development: stability, aiming at a healthy and dynamic national stability; growth, aiming at a reasonable high overall growth rate directed towards the

creation of employment and technologies needed for future growth, and equity, aiming at a more even distribution of the benefits of development in order to achieve social justice.

It is the National Planning Board, which has to prepare the plans and coordinate the development programmes, while the annual budget of the Government sets the specific details of the domestic and development revenues and the routine and development expenditures. The fiscal and monetary policies are prepared and implemented by the Ministry of Finance and the Bank of Indonesia.

In the first five year development plan, Repelita I, which covered the period from 1969/70 through to 1973/4, the prime objectives were to obtain stabilization and rehabilitation of the economy. Among the production targets, increased rice production was singled out as the most important but was not fulfilled. Instead of the targeted 47 per cent the increase was 25 per cent. Repelita I wanted to achieve its objectives through increases in government investment. Government development expenditures increased approximately 7 per cent, which was less than planned. Half of the development expenditure was allocated to transport and communication, agriculture and irrigation and subsidies for fertiliser. Repelita I called for large official and private capital inflows. Rescheduling of external debt obligations contracted prior to June 1966 was part of its financing plan.

In Repelita II, which covered the period 1974/5 through to 1978/9, priority was given to raising the standard of living of the people. More specifically this meant provision of better food, clothing and housing, improvement of infrastructure, distribution of social welfare and provision of greater employment opportunities. To education, health and family planning as well as to industrial and mining projects, larger shares of the development expenditures were allocated. These objectives were set against an average growth rate of GDP of 7.5 per cent per annum. During the Repelita II period the internal and external economic environment changed considerably because of increased prices of crude oil exports on one side and a higher rate of inflation, world-wide recession and the Pertamina affair on the other. The level of expenditure during this period was considerably higher than in Repelita I, mostly due to the increased revenue from exports. Thus the implementation of development projects could be accelerated in the first year of the second period. But this acceleration could not be sustained in the following years as the costs of development projects went up and the financial difficulties of Pertamina caused a shortfall in the government's tax revenue from oil.

As stated by president Suharto in his Independence Day speech of August 16, 1978, Repelita III, which covered 1978/9 to 1983/4, put emphasis on the problem of expanding employment opportunities and equitable distribution of income. Due to the rapid growth of the labour force without accompanying

growth of employment opportunities, a fundamental problem in the Indonesian economy was to arise in that five year planning period.

The basic goal of Repelita III was to achieve more distributive justice within the framework of a 6.5 per cent annual growth of GDP. Compared with the target of 7.5 per cent in Repelita II this was rather moderate, but in line with the average annual growth rate of 6.5 per cent actually achieved.

A slow down in the growth of the population from 2.3 per cent per annum to 2.0 per cent was expected in Repelita III, although in the period 1970-80 the annual population growth was 2.34 per cent in spite of 10 years of policies of family planning and transmigration. So the increase in real per capita GDP during Repelita III was expected to be slightly higher than in Repelita II. The government planned to rely heavily on foreign capital inflow to fund the development budget. Although Repelita III puts more stress on social equity than the previous two plans, the plan remained vague with regard to policies for effectively resolving the growing problems of unemployment and poverty.

At the end of Repelita III Indonesia found itself in a difficult situation as both the world and national economies were in a depressed state. This situation was aggravated by a weak international oil market, and an extremely dry mid-year period for a consecutive second year.

By the end of 1982 a number of public statements were made to prepare the Indonesian people for 'belt tightening' policies. In January 1983 an austerity budget was presented to compensate for the decline in oil export earnings and for the second year in succession civil servants did not get an increase in their salaries. On March 30 the currency was devalued by 28 per cent and in May four large public sector projects amounting to \$5 billion were deferred. In view of the reduction in public investment programmes other projects already under way had to be re-phased.

In the current Repelita IV, which started in April 1984, an overall production growth rate of five per cent is planned, while population growth is expected to be less than the two per cent foreseen at the end of the plan period in 1989. This leaves a three per cent real increase in national product to be realized. This target can be considered modest compared with the goals and also actual performance of Repelita's II and III, but even if the economy grows as rapidly as it did in the 1970s, with an average growth of 7.8 per cent per year, employment creation will still be steadily below the increase of the labour force.

Informal Sector

In a society marked by unemployment and underemployment, the 'informal sector' is likely to be large and of crucial importance to the survival of large segments of the population, if not the majority. Beverage vendors, operators of

two-wheel mini-kitchens, parking place distributors, peddlers in buses and trains, all perform economic activities which have in common that they:

- do not proceed in an orderly fashion and generally are not directly regulated by the administration
- require only a minimum of capital and simple equipment
- are generally mobile and
- do not require specific abilities or skills. Accordingly, the informal sector is open to almost everyone—either as the only source of income or to supplement the family income. The existence of this economic sector is not a new phenomenon—either in Indonesia or in other Third World countries. What is new is its ever increasing importance as a means of survival for large population groups as a result of considerable structural disturbances in the labour market. The three main reasons for these structural problems are:
 - the great increase in the number of people of working age;
 - a profit-oriented agricultural policy, primarily in the densely populated rural areas of Java;
 - the capital-intensive structure of the modern industrial sector.⁸

The population growth—in spite of relative successful family planning programmes—is still in the order of 2.3 per cent annually which means that the population will have doubled before the year 2015.

The very success of Indonesia's version of the Green Revolution, through the use of fertiliser and high yield rice varieties, has filled the granaries and even overpopulated Java is registering a surplus of rice. However,

since hybrid varieties require greater financial inputs, the harvesting system had to be made more efficient, and as a result a limited number of migrant farm workers replaced the many local pickers who were paid in produce and who consequently lost most of their former subsistence basis, thereby increasing the army of rural, but mostly urban jobseekers. As a result, the number of people employed in agriculture is not only shrinking in relative terms, but also in absolute numbers.⁹

As described above Repelita IV, the current five year plan, puts emphasis on the creation of employment, but even the most optimistic calculations do not even start to deal with the real size of the problem. On the basis of the 1980 census figures it can be assumed safely that over one-third of the population is at least partly unemployed, this figure being higher in the rural areas of Java and among women.

As the growth of the 'formal' sector is less than the increase in job seekers, the informal sector has to take in more and more 'workers'. Whatever the flexibility of the informal sector may be, it will be obvious that more workers in this sector does not tend to increase production and therefore profit, but rather to reduce the average income of all informal sector workers. In addition, there is also a 'law and order' and 'cleanliness' approach in particular with the authorities of the bigger cities, which results in restricting the potential for the

informal sector. An example is elimination of the famous 'becaks' (rickshaws) from Jakarta and other cities.¹⁰

Therefore the informal sector is under double pressure: 'The growing number of people who depend for their survival on "marginal economic activities" as well as the curtailment of the informal field of activities frequently reduce the modest profits below the minimum existence level so that people in the urban slums often have to rely on the subsistence economy.'¹¹ Also, the informal sector should not be romanticized as a 'people's economy' which does what the formal sector is not able to do. Ignorance about any rights which may exist, exploitation of women and children, corruption and lack of protection in case of accidents are only a few of the commonly known setbacks of the informal sector.

Solutions are not easy to provide as the rise in the importance of the informal sector is part and parcel of the total economic, social and political structure. Although it would obviously not be an answer simply to 'formalize the informal sector', a higher degree of self-organization and availability of 'legal aid' to the informal sector could be beneficial. Rather than simply ordering away the slums and informal sector by mass displacements, policies should be directed at strengthening the labour-intensive small business sector, through bank credits and appropriate regulatory measures.

Land Reform¹²

Land distribution remains a potentially explosive issue in the rural areas.¹³ Throughout the third five year development plan farmers and landless labourers, usually led by teachers, came from different provinces to the parliament's sessions in Jakarta to complain about village heads who misused village land and pressured villagers to sell their land to outsiders, or simply confiscated land as a punishment. Land problems had been reported earlier but received more serious attention from the DPR after a few major incidents which occurred in 1979, including the Jenggawah affair in East Java in which peasants claimed that they received smaller plots of land than before the implementation of land reform. In protest they burnt down some tobacco storehouses.

The widespread poverty in the rural areas, where by far most Indonesians live, is partly due to the uneven distribution of scarce land. Recognizing the importance of land to the average Indonesian household, the Basic Agrarian Law states that 'every Indonesian citizen, both men and women, has equal opportunity to obtain rights over land and to receive its fruits and advantages for him/herself and his/her family.'¹⁴ It states also that all rights to landownership have social functions.

In accordance with this undertaking to guarantee an equitable distribution of land entitlements, the government issued further regulations which put ceilings

on the amount of land that can be owned by one family unit, ranging from twenty hectares dry land or fifteen hectares wet rice land in the low density areas to six or five hectares respectively in the highly populated areas.¹⁵ In order to prevent abuses by large landowners against their tenant farmers who till the land, the government stipulated that 'those who are permitted to till the land under product sharing agreements must be farmers whose land shall not exceed approximately 3 hectares'.¹⁶

The rather progressive land reform ideas of Sukarno's days were laid down in the Basic Agrarian Law, which—as a basic law—contains only the fundamental rules and principles, leaving further elaboration and implementation to others. However, as with many other well-intentioned legislative schemes of the Indonesian lawmakers, the implementation and execution of the Basic Law has been seriously lacking and abuses continue to be reported.¹⁷ A carefully worded example was given by Professor Abas-Manopo from Medan in 1981, after stating that her remarks should not be interpreted as malicious criticism of government policy:

some cases from my law practice can give a picture of how the rules of the Agrarian Law are being misinterpreted, if not abused. For example Art. 2 states that all land in Indonesia at the highest level is under the control of the State. This article is often interpreted as meaning that officials of the government are entitled to dispose of land for their private use as well as for their family and friends, because they are 'the State'.

Twenty years ago, all lands around the harbour of Belawan were swamps. Then people came, who had been farmers, but because of overpopulation had had to leave their original Kampung and started to make that land arable. Ten years later those people could be proud because that land could provide rice, vegetables and fruits for the whole surroundings. But another ten years later, when the harbour authority needed that land for expanding the harbour facilities, some officials of the Agrarian Department with their families suddenly produced certificates of ownership and so they received a rather large sum of money as compensation because they were so-called landowners who had to abandon their land.

According to the law that land was actually 'free State land' and the government did not have to pay a large sum for compensation to people who suddenly (in 1976) showed a certificate of ownership.

The law says that the government should only pay some money as compensation for the crops of (illegal) squatters of free State lands. But the squatters have no proof of their rights and officials who have never tilled that land can easily make certificates for themselves because they are in the office that issues certificates. In this way they are suddenly able to make a lot of money.

From many of my colleagues I heard similar stories about other areas, in Sumatra as well as on the other islands of Indonesia'.¹⁸

According to the 1980 population census 43 per cent of the total farm households in Java has less than 0.25, and 30 per cent between 0.25 and 0.50 hectare, while these figures for the other islands were 21 per cent and 28 per cent respectively. If it is accepted that farms of less than 0.50 ha. generally

cannot provide a peasant family with a reasonable income¹⁹, it means that 25 years after the promulgation of the Basic Law almost two-thirds of the farm households find themselves still below this minimum size.

Admittedly the overpopulation of Java creates an enormous problem for which solutions are not easily at hand, but the 'solution' which the government put forward during August 1984 is an 'upside down' land reform which would take away land from the smallest farmers in order to strengthen the middle farmers. The farmers could be dispossessed without compensation by transmigration, moving to nucleus estates, joining other government-sponsored programmes, amalgamating their plots or other means, but in the end, in the words of the minister for Agriculture, Achmed Affendi, 'farms of less than half an hectare must disappear, also those of less than a hectare'.²⁰

The implementation of such a policy in the immediate future would not only be contrary to the objectives of the Agrarian Law but also put further pressure on the industrial labour market and therefore on the already overburdened 'informal sector'.

1.5. EAST TIMOR

Introduction

To all intents and purposes the question of East Timor has remained outside the scope of this study. This should not be interpreted to mean acquiescence in the present occupation of East Timor by Indonesia. On the contrary, the International Commission of Jurists agrees with the position taken by the United Nations General Assembly, that 'the people of East Timor must be enabled freely to determine their own future, under the auspices of the United Nations'.

Although the efforts by the UN Secretary General to improve the humanitarian situation in East Timor and promote a 'comprehensive settlement of the problem' are welcomed, the basic weakness in his approach, as pointed out by Lord Avebury, chairman of the UK Parliamentary Human Rights Group, is the lack of consultation with the East Timorese. G. A. Resolution 37/30 of 23 November 1982 which asks the Secretary General 'to initiate consultations with all parties directly concerned'. Consultations in a search for a lasting and comprehensive settlement that do not include representatives of the Timorese people are bound to fail.

The basic issues involved in the question of East Timor are set out in the following article reprinted from the June 1984 issue of the *Review of the International Commission of Jurists*.

East Timor and Self-Determination

Since December 1975, the United Nations General Assembly has passed numerous resolutions on East Timor, asserting the right of the people to self-determination and demanding that they be enabled freely to determine their future under UN auspices. Indonesia, on the other hand, claims that the integration of East Timor with Indonesia was the result of an act of self-determination by the representatives of the people. As is frequently the case in such disputes, the historical facts are complex.

East Timor, previously known as Portuguese Timor, is situated at the south-eastern extremity of the sprawling Indonesian archipelago. The people are predominantly Malay or Malanesian in origin with some African, Arab and Chinese influences. The most widely spoken language in the territory is Tetum. Until 1975, it was a colony of Portugal for more than four hundred years.

East Timor's population, approximately 650,000 in 1974, is largely rural. It is economically backward and in the colonial period was heavily dependent on imports and subsidies from Portugal. The majority of the population depend on subsistence farming. Socially, the territory is characterised by the survival of traditional groupings, loyalties and beliefs. Although Catholicism had made some impact and Islam had a few adherents, the local animist beliefs of the people remain the dominant religion.

Prior to the April 1974 coup in Portugal, the political system in East Timor reflected the character of the Portuguese dictatorship. It was considered a province of Portugal under the Organic Law of Portuguese Overseas Territories of 1953. Under Portuguese rule the territory was divided into thirteen administrative divisions, called *Concelhos* or Councils with populations ranging from 25,000 to 84,000. The administration of the *Concelhos* was headed by the administrator do *concelho*, a Portuguese official whose powers were very extensive and varied. Each *Concelho* was further divided into *postos* or sub-districts, administered by an administrator do *posto*. By 1974, there were some 58 *postos* and 60 per cent of their administrators were Timorese. These Timorese became politically active in the territory after the April 1974 coup in Portugal.

The coup brought to power the Armed Forces Movement (MFA) whose objectives were to establish democracy in Portugal and withdrawal from Portugal's colonies. In June of the same year, the new regime in Portugal spelt out three options for the Timorese people. They were: continued association with the metropolitan power, independence, or integration with Indonesia. Interestingly, it was Portugal that offered integration with Indonesia as one of the options, when Indonesia had stated on previous occasions that it had no territorial claims to Portuguese Timor.

Within a few weeks of the coup in Portugal, political groupings emerged in East Timor. The three main political parties that emerged at first represented

the three options offered by the Portuguese government. They were the Timorese Democratic Union or UDT, the Association of Timorese Social Democrats or ASDT, which later became the Revolutionary Front of Independent East Timor (Fretilin), and the Timorese Popular Democratic Association or Apodeti.

The UDT started as a party strongly in favour of continued association with Portugal but later changed its position to federation with Portugal as an intermediary step before achieving complete independence. The ASDT of Fretilin advocated the 'right to independence and the rejection of colonialism and counter measures against neocolonialism'. Though initially the leaders of ASDT envisaged a lengthy time frame for the process of decolonisation, their position changed in September 1974 when ASDT became Fretilin and the leaders demanded an immediate declaration from the Portuguese authorities that they would grant independence to East Timor. The Apodeti, claiming that there were close ethnic and cultural links between the people of East Timor and Indonesia, advocated integration with Indonesia. In contrast with the other two parties, Apodeti never gained large support, but it became a focal point for Indonesian interests in relation to East Timor.

In January 1975, the two main parties, UDT and Fretilin, agreed to form a coalition. On May 7 of the same year the first phase of talks on decolonisation took place between the Portuguese authorities and a joint delegation of UDT and Fretilin members. At the talks Fretilin objected to the inclusion of Apodeti in the future talks to be held in Macau, arguing that a pro-integration party advocating 'recolonisation' should not be allowed to play a role in decolonisation talks.

Fretilin's impatience, combined with its interests in radical agrarian and educational reforms, alienated the UDT which unilaterally withdrew from the coalition at the end of May.

Fretilin boycotted the talks that took place in Macau between June 26 and 28 since Apodeti was a participant. After the conference, the Portuguese government proclaimed a constitutional law based on the conference text agreed to by UDT and Apodeti. The new law provided for a three year interim period before the termination of Portugal sovereignty. It also provided for the setting up of a High Commissioner's Council, comprising a High Commissioner and five Joint Secretaries, two of them to be nominated by Portugal and the other three to come from UDT, Fretilin and Apodeti respectively. There was also to be a consultative government council consisting of two representatives nominated by each of the regional councils. In addition, each of the three political parties was to nominate four members to the government council. The new law stated that elections would be held in October 1976, envisaging the end of Portuguese sovereignty two years later.

It is well-known that in many decolonisation situations opposing political interests have found it difficult to arrive at a consensus and East Timor was no

exception. But the political crisis in Portugal, particularly shifts in the ideological position within the MFA, aggravated the rifts within the parties in East Timor. For example, after the abortive right-wing coup by forces under the leadership of General Spínola, the suspicion of the UDT Leaders increased that the MFA officers were conspiring to place Fretilin in the leading decolonisation role at the expense of the UDT.

This state of flux was effectively used by Indonesia to create further tension among the parties. The Indonesian newspapers frequently alleged Chinese and Vietnamese involvement in Timor, saying in particular, that the members of Fretilin were receiving military training from Vietnamese officers who had entered East Timor clandestinely. These reports created fears among the conservative section of the population.

The state of tension and mistrust between the parties culminated in a coup by the UDT. On August 11, 1975, members of the UDT attacked and seized key installations and gained control of the capital, Dili. This was followed by an outbreak of violence between members of UDT and Fretilin. Already, by August 20 the territory was in the midst of a civil war. On August 26, the Portuguese governor and his staff left Dili for Aturo, an island 30 miles north of Dili. On October 11, Fretilin announced that it was in full control of the territory and had established a transitional administration. However, this was countered by the Indonesian government saying that pro-Indonesian forces had control of large areas of the territory and predicting that by the end of October they would regain control of the whole of it.

Meanwhile, the then Australian Prime Minister, Mr. Gough Whitlam, ruled out any military or political role for Australia in East Timor, stating that 'the future of the territory is a matter for resolution by Portugal and the Timorese people themselves, with Indonesia also occupying an important place because of its predominant interest'.

In the first week of November, the Indonesian Foreign Minister met with his Portuguese counterpart in Rome and they issued jointly a 'memorandum of understanding'. This noted that Portugal represented the legitimate authority in East Timor and was responsible for its decolonisation. The two Ministers agreed on the need to hold a meeting of all political parties of East Timor with a view to ending the fighting.

On November 28, Fretilin declared East Timor an independent 'Democratic Republic' and announced that some fifty Afro-Asian countries had pledged support to the new republic. On December 1, Mozambique announced its recognition of East Timor under Fretilin.

The Portuguese government rejected Fretilin's declaration as well as a statement made on November 29, by UDT, Apodeti and two other parties which said that Fretilin's action had removed the last remains of Portuguese sovereignty and declared East Timor to be part of the Indonesian territory. On the next day, November 30, Portuguese representatives at the

United Nations formally requested the UN to help settle the East Timor question.

On December 7, Indonesia made a full scale invasion of East Timor, seized the capital, Dili, and drove the Fretilin supporters to the hills. The Portuguese government reacted by breaking diplomatic relations with Indonesia and said it would seek the help of the UN to put an end to Indonesia's military intervention. On the other hand, Indonesia reacted by stating that Portugal's sovereignty had ended on November 28 when Fretilin declared independence.

On December 11, the UN Trusteeship Committee called on Indonesia to withdraw and urged it to desist from 'further violation' of East Timor's territorial integrity. The next day the General Assembly, in a resolution passed by 72 votes to 10 with 43 abstentions, called on Indonesia to withdraw from East Timor to enable the people to decide their own future and condemned the military intervention.

According to some sources, by the end of December there were nearly 20,000 Indonesian soldiers in East Timor and reports were smuggled out of the territory indicating that the Indonesian troops were involved in systematic killing of Fretilin supporters including civilians. According to some reports, nearly 10,000 people were alleged to have been killed within the first few weeks of the invasion.

Meanwhile, with the help of the Indonesian authorities, the leaders of the UDT, Apodeti and two other smaller parties established a 'Provisional Government of East Timor' (PGET). In February 1976, the PGET announced that all political parties had 'dissolved themselves' and a new unified party had been created. Another PGET statement said that a 'People's Assembly' had been set up by 'consensus and consent', implying that the members were chosen and not elected. On May 31, the newly convened People's Representative Council of East Timor approved a petition to integrate with Indonesia. The Indonesian government, on June 29, announced its official acceptance of the merger and a bill legalising the annexation of the territory was passed by the Indonesian Parliament on July 15.

Two questions that arise in relation to the invasion by Indonesia and the subsequent annexation of East Timor are whether the armed intervention made by Indonesia was justified in law and whether the people of East Timor participated in a genuine act of self-determination.

Indonesia has argued that basically its interest in the territory of East Timor arises out of the geographic, historic, ethnic and cultural ties which makes East Timor an integral part of the Indonesian archipelago. Further, it has also stated that independence for East Timor was unrealistic in view of the economic backwardness of the territory.

The latter point is not an acceptable justification for denying the people their right to self-determination. Paragraph 3 of the UN Declaration on the

Granting of Independence to Colonial Countries and Peoples, states that: 'Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.'

As for the cultural ties, the East Timorese generally speaking may belong to the South-East Asian family of cultures but there are doubts as to their direct link with the Indonesian culture. According to Professor Shepherd Forman²¹, a leading authority on the anthropology of East Timor, 'It manifests an ethnic heterogeneity which characterises the entire region from the Philippines to Australia and from the islands east of Papua New Guinea to the Malagasy Republic'. He has also noted that it '... did not come under aegis of the early Javanese/Islamic principalities and, historical conjecture notwithstanding, Indo-Javanese and Islamic influences barely can be noted, except insofar as Dutch hegemony later effected the spread of some ideas, particularly in the political domain, to Western Timor. East Timor, under Portuguese rule was largely exempt from those influences'.

Even if one accepts the argument of the Indonesian authorities and looks for factors that unite both cultures and people, integration between them cannot legitimately be imposed by force.

The Indonesian government seeks to justify its armed intervention by saying that it had a moral responsibility to guarantee the peaceful decolonisation of East Timor and the internal strife endangered national security and the stability of the South-East Asian region.

In answer to this it may be said that Indonesia's moral responsibility was to 'promote the realisation of the right of self-determination' in accordance with the provisions of the Charter. These provisions state that, 'members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state'.

Indonesia claims that 'from the outset ... it firmly supported the free and democratic exercise of the right to self-determination by the people of East Timor in accordance with ... the Charter of the United Nations and resolution 1514 (XV) and 1541 (XV) of the General Assembly'²². The latter resolution specifies the conditions for a valid act of self-determination resulting in integration with an independent state in these terms:

- (a) The integrating territory should have attained an advanced state of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;
- (b) The integration should be the result of the freely expressed wishes of the Territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Never before nor since the Indonesian annexation of East Timor have there been any 'informed and democratic processes impartially conducted and based

on universal suffrage', and neither the parties which declared on November 29, 1975 that East Timor was part of Indonesian territory, nor the 'People's Representative Council' which approved it in May 1976 were appointed by any such democratic processes.

As for the threat to the security of Indonesia and the region, it is difficult to understand how a small territory in the midst of civil strife could have been a threat to Indonesia which has a considerable military strength.

Indonesia also claimed that it intervened for humanitarian reasons at the request of the UDT, Apodeti and two other parties, which wanted Indonesia to put an end to the civil strife. The doctrine of humanitarian intervention is not recognised by the UN Charter and is generally considered by international lawyers to be now outdated. In any event, as was said in ICJ *Review* No. 8 of June 1972 on the Indian invasion of East Pakistan, '... unilateral action is likely to be arbitrary and to lack the disinterested character which humanitarian intervention should possess'. Moreover, when Indonesia intervened the matter was already before the UN and the Indonesian intervention by no means stopped the bloodbath. The killings continued with the Indonesian forces themselves taking part.

As to the present state of opinion in East Timor, it is impossible to obtain any reliable and independent account of it as Indonesia refuses to permit independent observers to visit the territory to assess the situation. This ban applies even to Indonesian citizens who are equally in the dark about events there.

Such reports as have come out of East Timor indicate a degree of repression which suggests that the government has little popular support. These include reports of systematic use of torture, arbitrary killings and disappearances. Amnesty International has published extracts from a handbook of military interrogators on the use of torture practices. In 1983 the ICRC suspended its activities in the territory following the refusal of the Indonesian authorities to grant ICRC delegates access to all villages requiring assistance. As long as these reports of massive violations of human rights continue and as long as access to East Timor by visitors is severely restricted, it will be difficult for the Indonesian government to convince the international community that the people of East Timor have freely accepted integration with Indonesia.

1.6. CULTURAL DIVERSITY

The ethnic religious and linguistic diversity of Indonesia—aided by a sprawling archipelago geography—is considerable. However, the degree of national unity which Indonesia has forged in the short period since independence is equally remarkable. Since the separatist movements in the 1950s there have been few public expressions of desire for greater regional autonomy. Of course, this does

not mean that there are no strong regional feelings but the expression of them often does not go beyond general complaints directed against the dominance of the heavily populated island of Java.

Interestingly enough this resentment is not directed against the unitary, official language Bahasa, which is a modernized version of the non-Javanese lingua franca of the island region. Although there are more than 400 languages and district dialects, the acceptance of Bahasa as the sole language in education, official documents and radio, press and television has been surprisingly smooth. About 20 million Indonesians according to the Bureau of Statistics nowadays speak it as their first language and over 65 per cent speak it as their second language.

Ethnic and religious diversity is a more sensitive issue in a society which professes unity to be one of its main goals. The focus of this study is on the present legal system and its shortcomings. The complex regional, ethnic and tribal issues which are at the basis of many of Indonesia's present and future problems cannot be described in detail in this publication. However, there can be no doubt that much of the apparent tranquility is gained at the price of repression both in the political and cultural arena, and at the expense of the long term economic and social welfare of tribal and other minorities. As an example special attention will be paid to the important case of Irian Jaya (or West Papua) and the impact received from transmigration. The position of the Chinese minority is dealt with separately in Chapter 3.6.

Irian Jaya (West Papua)

The island of New Guinea is the second largest island of the world. The eastern half constitutes the republic of Papua New Guinea, which became independent from Australia in 1975. The western half formed part of the Dutch East Indies, as territory of the sultanate of Tidore in the Moluccas, but received relatively little attention from its colonizers. During the independence talks the Dutch insisted on a separate treatment for this part of their colonial empire on grounds which ranged from West Papua's separate ethnic, linguistic and cultural identity to placating domestic resentment over losing all of its South East Indian colonies.

As a compromise it was agreed that West Papua—in Indonesian called Irian Jaya—would be handed over in 1962 to the U.N., which in turn handed it over to Indonesia on May 1, 1963 on the understanding that it would organize a plebiscite in 1969 to determine the definite political status.

The 'Act of Free Choice' was carried out in 1969 and has been criticized by many as a farce²³, as the procedures were totally controlled by the Indonesians, the 'opinions' were sought only from tribal leaders with little understanding of the alternatives and UN observer involvement was judged to be extremely superficial. The problem is that, unlike the case of East Timor, there was UN

sponsorship and acceptance of the results, even if only by 'taking note' rather than 'endorsing' of the results.²⁴

In the absence of more firm rules about how to exercise the right to self-determination in disputed cases, it would seem that a strong claim for an independent West Papua cannot be based solely on international law considerations. This assessment does not do away with the legitimacy of demands for respect for the cultural identity of the Papuan people nor does it lessen the frustration felt by both the OPM (Free Papua Movement), leading the sporadic armed guerrilla in Irian Jaya, and public opinion among the Papua population of Irian Jaya and in the republic of Papua New Guinea. How strong these feelings are over a division based mostly on historical accident can be illustrated by a quotation from a passionate speech by PNG parliamentarian, Mr. Aron Noaio on the question of border crossers

... We must take a stand because I for one think the people on the other side of the border are defending us. What will we do when the Indonesians kill all the West Irianese and come across our border? Indonesia will not abide them because they have long-term plans. ... Indonesia plans to take over Papua New Guinea. I have read this plan in a book. Indonesia is like a snake! She has no land and is looking for space because of its rapidly increasing population. The OPM is like a buffer zone between the Indonesians and us but we are not doing anything about it. ... The people of Papua New Guinea do not want to see the border-crossers repatriated because they will be killed like dogs and pigs if they are returned to their side of the border. We have seen evidence of this already. Indonesia has a cruel military government and she does not care about others. That is why Papua New Guinea must take steps to settle the refugees here. They may be on the other side of the border but they have similar customs and they speak the same languages as our people on the border. ...²⁵

One does not have to be as adamant about Indonesian abuse as Mr. Noaio to regret the negative impact of Indonesian policies on the indigenous people of Irian Jaya.

Transmigration

The most prominent threat stems from the large scale transmigration project which aims at settling large numbers of landless farmers from Java in the thinly populated area of Irian Jaya. Of the present population of 1.2 million approximately 800,000 are Papuans (or Melanesians as they sometimes prefer to be called). With planned influxes in the present five year plan and near future, the original inhabitants risk becoming a minority in their own land. The question of transmigration from the angle of freedom of movement and residence is dealt with elsewhere in this study.²⁶ Here we are concerned with the impact of such measures on the local culture and environment. In an elaborate report, which was accompanied by an open letter to the World Bank signed by a large number of non-governmental environmentalist and human

rights groups and individuals, the transmigration programme of Indonesia is criticized for its negative impact. The report, called *Banking on Disaster*, was published as a special issue of the *Ecologist*²⁷ and what follows is a slightly abridged version of the open letter to the World Bank:

The programme, which involves the mass movement of millions of landless poor from the central Indonesian islands of Java, Madura, Bali and Lombok to the less densely populated outer islands, has been promoted as a humanitarian exercise with the primary goal of improving living standards. The promotion of regional development through the provision of the necessary manpower to the outer islands and the strengthening of national unity through increasing ethnic integration are also given as objectives of the programme.

Yet evidence continues to accumulate that even the major humanitarian rationalisations for the programme are flawed. The widespread failure of transmigration sites and the increasing numbers of settlers engaged in 'second round flows' testify to this.²⁸

Tropical Rainforest Destruction and Transmigration

Of particular concern to us is the impact that this project is having on the forest and peoples of the outer islands. Transmigration, as it is presently being carried out, is leading to the permanent and effectively irreversible destruction of vast areas of tropical forest. Over 3.3 million hectares of tropical forest will be destroyed by transmigration during the present five-year plan. In addition, the destabilised populations from unsuccessful sites are causing further widespread environmental damage, as the settlers abandon their failed cities and lay waste the surrounding vegetation. Moreover, as the recent forest review, carried out by three Indonesian Government Departments and the International Institute for Environment and Development, has emphasised, even where sites are successful, serious environmental problems arise, since these areas serve to draw less fortunate settlers to them, placing an unsustainable burden on the fragile tropical forest environment.²⁹

Current rates of deforestation in Indonesia have become a cause of global concern, estimates placing the overall rate of forest loss at over one million hectares per year. Transmigration exacts a major part of this terrible toll. We would draw your attention to the conclusion of the Forest Review team (which) makes clear that the transmigration programme is entirely incompatible with the World Bank's own environmental policy guidelines.³⁰

Transmigration and Tribal Peoples

Transmigration takes as its starting point the assumption that the outer islands are 'underpopulated' and 'underdeveloped'. Yet, in fact, these areas are the traditional homelands of a large number of viable and vigorous societies which have developed sophisticated systems of resource use subtly adapted to their

prevailing environmental circumstances. Transmigration, by alienating these peoples from their traditional lands and forcing them to participate in development projects, many of which are environmentally and economically inappropriate, is destroying the very basis of their ways of life.

As you will be aware, Indonesian law, while ostensibly recognising traditional (adat) land rights, completely subordinates these rights to State interests. Special legislation relating to Transmigration further weakens these rights. For example, Clause 17 of the Basic Forestry Act, Clarification Act No. 2823 of 1967, states: 'The rights of traditional law communities may not be allowed to stand in the way of the establishment of Transmigration sites.'

The effect of these and other laws is to deny the land rights of tribal peoples practising non-sedentary forms of land use. Compensation payable to these people is limited to payment for the destruction of their standing crops and buildings but not for loss of their hunting, gathering and fishing territories. Instead of respecting the rights of tribal peoples to their traditional lands and resources, government policy obliges these peoples to abandon their traditional ways of life, leaving them with no alternative but to integrate into Transmigration settlements where they find themselves outnumbered by outsiders and despised for their 'primitive' customs. In many provinces, Transmigration is leading tribal peoples to become a minority on their own lands.

The dispossession that is an inevitable part of Transmigration is causing an escalation in inter-ethnic tensions. Particularly in West Papua (Irian Jaya), tribals, who have resisted the takeover of their lands, have been accused of being members of proscribed secessionist movements and have been subjected to security operations by the Indonesian armed forces. These actions are leading to a bloody escalation of the conflict between tribal peoples and the military.

One of the most worrying and evident expressions of the problems Transmigration is causing is the continuing exodus of tribal people from West Papua into neighbouring Papua New Guinea. According to the United Nations High Commission for Refugees, there are at present 10,500 refugees in camps all along the border, including about 500 new arrivals in the last few months. Successive reports from those in direct communication with the refugees have noted that land alienation, resulting primarily from the Transmigration programme, has been a major cause for their flight. Refugees report the bombing of villages, indiscriminate shooting, imprisonment, torture, rape, the burning of settlements and the killing and stealing of livestock.

Taken together, these facts make it abundantly clear that Transmigration as it is being implemented is directly contravening the terms of the World Bank's guidelines for the development of tribal areas.

Moreover, it is clear that these violations of human rights are not just the result of the poor planning and implementation at the local level but are inherent in the legislation and policy of the programme. The intent of

Transmigration was made abundantly clear at the special seminar on Transmigration hosted by the Minister of Transmigration, Martono, on March 20 1985 where he stated:

On 28 October 1928, a youth congress was held concluding that we are one nation, the Indonesian nation; we have one native country, Indonesia; one language, the Indonesian language. By way of Transmigration, we will try to realise what has been pledged, to integrate all the ethnic groups into one nation, the Indonesian nation . . . The different ethnic groups will in the long run disappear because of integration . . . and there will be one kind of man . . .

The Bank, in its policy guidelines, has explicitly rejected such integrationist policies towards tribal peoples instead insisting on an 'intermediate policy' which 'allows the retention of a large measure of tribal autonomy and cultural choice'. This has nowhere been provided for in the Transmigration Programme.

Transmigration and 'National Security'

The Indonesian Government has stated that Transmigration is considered of great importance as an exercise in promoting 'national security'. As General Murdani, the Commander-in-Chief of the Indonesian Armed Forces made clear in March 1958, Transmigration is considered to be: 'The only programme in the economic field that must quite categorically be tied in with defence and security considerations . . . The preparation of sites and the removal of obstacles to land availability need to be given special focus because the choice of locations is related to the concept of territorial management. . .'

In West Papua, these concerns are manifested in the Government's plans to settle a 'cordon sanitaire' of militarised (saptamarga) settlements along the border. In November 1985, the Minister of Transmigration Martono, announced that Transmigration was to be given priority in border areas. [End of abridged material from the open letter.]

Not surprisingly after these serious allegations the signers of the open letter urge that the Bank reviews its present policy of supporting the project and meanwhile halts its funding.

In a reply to the open letter, dated June 11, 1986, the departing President of the World Bank, A. Clausen, restates the position of the Bank which is clearly in support of the government's policy. He points out that 'no large resettlement effort in modern times has been carried out with so little communal tension', but adds that 'this is not to say that there have been no problems. There have been difficulties. But this is to be expected in a program of this scale'. Only at the end of the reply does the President address some of the specific complaints by saying:

Your letter raised specific concerns with respect to the program's impact on forestry resources and on the people of Irian Jaya. Sponsored settlement in the third Five-Year

Plan used less than one percent of the forested land in Sumatra, Kalimantan, and Sulawesi, and a small fraction of one percent in Irian Jaya. Settlement in forests used for production or conservation purposes, which cover about 50 percent of the area in the outer islands, is prohibited. The increased emphasis being given to tree crops in the transmigration program will assure that in the future much of the forest area used for settlement will retain tree cover. Further action is required to gazette, demarcate, and protect environmentally important areas, and plans are underway to do this. In the early years of the third Five-Year Plan, rapid land clearing in receiving provinces without adequate planning led to some conflicts between the interests of the transmigrants and the local people, but the improvements in planning have helped overcome difficulties in this respect.

The World Bank is also concerned about the impact of the program on less-assimilated people. Under the Bank's Fifth Transmigration Project, anthropologists are working with site selection and evaluation teams. Measures have been introduced to identify the local people and their land needs in order that those who wish to do so can continue to pursue their traditional way of life. Their views on benefits and/or compensation are being ascertained. If they do not wish to be included in the resettlement area, the planning requirement calls for benefits through parallel development. About 20,000 families, or 5 percent of the total moved since 1979, were moved to Irian Jaya under the sponsored transmigration program. Under the present Five-Year Plan (1985-89), the Bank estimates that another 25,000 families will be moved. There are no plans to settle migrants in the densely settled highlands, where the majority of the Irianese live.

Economic and social development entails trade-offs and choices have to be made among various options, some of them very difficult. With World Bank assistance, the Government is attempting to choose the options which maximize economic benefits with minimum adverse effects. On balance, the transmigration program is benefitting a large number of poor people in Indonesia. It is promoting sound and sustainable development in the outer islands. It has problems and they are being addressed. It deserves the World Bank's continued support.

Aceh

As the case of Irian Jaya demonstrates the question of cultural rights cannot be separated from the historical context nor from the economic policies of the present. The consequence is that every situation involving tribal peoples or regional autonomy issues should be carefully studied and judged on its own merits. This is true for the forced resettlements and assimilation of the Ngadju Dayaks in Borneo to make space for timber exploitation by foreign companies³¹ as well as for the religiously inspired separatism in Aceh.

The province of Aceh, in the North of the island Sumatra, is a special case as latent regional sentiments are reinforced by the awareness of being a stronghold of traditional Islam and having a historical record of resistance against the Dutch (until 1914) and the central government in Java (1953-62). When also the New Order Government was not willing to let Islam play a more prominent role in the affairs of the state and the exploitation of Aceh's natural resources continued to flow to the metropole rather than Aceh itself, the idea of

an independent Aceh revived in a small circle of religious leaders and radical students. A number of incidents were claimed by the National Liberation Front of Aceh-Sumatra, under the leadership of a certain Hasan Tiro. A strong military reaction resulted in the arrest or death of tens of 'freedom fighters' and in August 1980 the army claimed that only a handful of 'Aceh Merdeka' (Free Aceh) leaders were still at large.³²

Although the case of Aceh is somewhat special the arguments for independence as advanced by Hason Tiro in e.g. 'Indonesia: Bastion of Colonialism?'³³ would have a much wider application and, if applied, have grave repercussions in international relations. For him the liberation struggle continues, not against the Dutch but against their successors the 'Javanese neocolonialists' who impose their will on the non-Javanese peoples. He discerns six major island groups: Aceh-Sumatra; Borneo; Celebes; the Moluccas; West Papua and Java, which contain peoples with different languages and cultures, who could 'govern themselves' as independent states. 'Why', he asks rather rhetorically 'are we, who are fighting a non-European colonialism, now called 'separatists'? Is the assumption that only white races are capable of the crime of colonialism?

In countering the argument that for most, and in particular the African states the colonial boundaries are sacrosanct and separatism therefore taboo, he draws the rather abstruse distinction between 'boundaries before and without decolonialization' (in Indonesia). Although the insistence on an uncompromising and unrestricted application of the principle of self-determination carries its own logic, it is not surprising that the Indonesian government is worried about the possible spreading of such notions. Whether the harsh repression of the past decades is the right answer is a different matter and it may well be that the government is creating its own enemies. In any event, the almost complete control of the government over the means of expression makes it hard to say whether the more radical movements for independence have real backing from the population. The recent military campaign to root out the 'Aceh Merdeka' movement was accompanied by many allegations of cruelty against suspects and their families. These allegations were repeated by some of the accused during their trials, in particular by A. Q. Jaelani Abdullah.³⁴

1.7. CONCLUSIONS AND RECOMMENDATIONS

In a country as vast as Indonesia, with great diversity of population, the question of unity and territorial integrity cannot but be delicate. The New Order Government has made commendable efforts to strengthen the national identity through peaceful means, including the promotion of a national language, Bahasa, although it was not the mother-tongue of one of the dominant groups. It has, however, also had recourse to repressive measures in

dealing with minorities and different movements demanding respect for cultural rights and varying degrees of autonomy. No alternatives to the present unitary, centralized form of government are being developed or tolerated. On the contrary, forced assimilation of (tribal) minorities seems to be a stated goal of government policy and transmigration plans are being pursued with scant regard for the impact they have on the human and ecological environment.

In the light of the above it is difficult to understand why the government saw fit to invade East Timor in 1975 and in this way add to its minorities problem, especially as insistence on keeping to the former colonial boundaries is used as a justification for jealously guarding the unity and integrity of the country, in particular in cases such as the Moluccas, Aceh and Irian Jaya.

The release of the tens of thousands of political prisoners detained following the abortive coup of 1965, must be welcomed as an important step towards reconciliation and respect for human rights. Nevertheless it should not be forgotten that:

- most of the prisoners were totally innocent and never received a fair trial;
- many obstacles still exist for the ex-Tapols and their families; and
- no active and consistent reintegration policy has been established.

It is recommended:

- (a) that the government of Indonesia accept within the present constitutional boundaries a broader margin of free expression on the question of regional autonomy;
- (b) that the cultural rights of tribal peoples in the outer islands be explicitly recognized and their preservation given priority in development and transmigration schemes;
- (c) that the government allow access to all places in East Timor to the International Committee of the Red Cross and other independent observers and that searches for a lasting and comprehensive settlement are undertaken in negotiations which include representatives of the Timorese people and which are conducted under supervision of the United Nations.

The New Order Government took over a weakened economy from its predecessor, and has made considerable progress in the general economic performance of the country, raised the per capita income and made Indonesia self-sufficient in staple food. The price of this success has been paid in a disproportionate way by the already weak sector of small farmers and landless labourers in the rural areas and the growing number of urban poor in the cities. In Indonesia over 75 per cent of the population lives in the rural areas. About 70 per cent of the farm households do not possess sufficient arable land to provide an adequate standard of living. Investment in often capital-intensive industries does not create sufficient new employment opportunities for a still

fast-growing population and the so-called 'informal sector' has difficulty in providing even the barest minimum to its increasing number of participants.

Development planning should therefore, even in the face of falling oil revenues, continue to be directed at the fundamental needs of the majority of the population and the poorest sector within it in particular. A more equitable distribution of income, through strengthening of the labour-intensive smaller industries, should be combined with a fulfilment of the principles of land reform as laid down in the Basic Agrarian Law.

NOTES

1. Bernard Dahm, *Sukarno en de strijd om Indonesie's Onafhankelijkheid*, Boom Meppel, 1964, pp. 19–35.
2. Daniel Lev, *The transition to Guided Democracy 1957–1959*, Ithaca, New York, Cornell University Press, 1966.
3. These events remain disputed: see, *inter alia*, Malcolm Caldwell/Ernst Utrecht, *Indonesia, an alternative history*. APCL, Sydney, 1979, pp. 127–36; Brian May, *Indonesian Tragedy*, London 1978; Rex Mortimer, *Indonesian Communism Under Sukarno*, Ithaca, New York: Cornell University Press 1974, pp. 421–3; Julie Southwood/Patrick Flanagan, *Indonesia: Law, Propaganda and Terror*, London. Zed Press, 1983, pp. 126–34; Peter Dale Scott, 'The United States and the overthrow of Sukarno, 1965–1967', in *Pacific Affairs* 1985, **2**, pp. 239, 264; W. F. Wertheim, 'Whose Plot? New Light on the 1965 Events', *Journal of Contemporary Asia*, IX, **2** (1979), pp. 197–215; and Coen Holtzappel 'The 30 September Movement' *idem*, pp. 216–40. Accounts and opinions more favourable to the government's version are to be found in: CIA, Research Study: *Indonesia—The Coup that Backfired*, 1968.
4. In early October 1986 nine more persons, all of them sentenced to death by military tribunals 20 year ago, were executed (ed. ICJ).
5. See chapter 3.2.3.
6. On pancasila see in particular, chapter 2.3.2. The Dharsono trial is described in, chapter 3.2.3.
7. For the full text of the preamble see Chapter 2.3.2.
8. Hartmut Durste and Manfred Fenner, 'Significance and Prospects of the Informal Sector in Indonesia', in *Development and Cooperation*, No. 3, 1986 p. 16.
9. *Ibidem*.
10. Nurul Fazrie, 'Becaks, out of Jakarta!', in *Inside Indonesia*, 1984, pp. 20–2.
11. *Idem* note 7, p. 17.
12. A U.N. sponsored definition of a land reform is 'an integrated programme of measures designed to eliminate obstacles to economic and social development arising out of defects in the agrarian structure' ECOSOC, Commission for Social Development, E/CN.5/569, of January 15, 1979.
13. Leo Suryadinata, *Indonesia since the New Order: Problems of Growth, Equity and Stability in: Trends in Indonesia II*, Singapore, 1981 p. 4.

14. Basic Agrarian Law, law no. 5 of September 14, 1960, Article 9.
15. Prp 56/1960, Articles 1.1 and 1.2.
16. Law No. 2/1960 Article 2.1.
17. LBH, Human Rights Report 1979, pp. 50–2.
18. A. Abas-Manopo, 'Some Problems of Land Reform in Indonesia', in *Rural Development and Human Rights in South East Asia*, seminar report by International Commission of Jurists and Consumers Association of Penang, Geneva/Penang, 1981, pp. 83–4.
19. Jan van Someren, 'Indonesia's Upside-down land reform', in *Tapol Bulletin* No. 67 (Jan 85) pp. 16–18.
20. *Ibidem*, quoted from *Kompas* August 20, 1980.
21. Quoted in *Timor—A People Betrayed*, by James Dunn, the Jacaranda Press, p. 3.
22. Decolonisation—East Timor, Indonesian Department of Foreign Affairs, p. 42.
23. Donald Fryer and James Jackson, *Indonesia*, London, 1977, p. 106; Brian May, *Indonesian Tragedy*, London 1978; William Henderson, *West New Guinea: the Dispute and its settlement*, set on Hall University Press, 1973, pp. 226 ff.
24. UN General Assembly, Res. 2504 (XXIV) of November 1969, adopted with 30 abstentions and no votes against. See also UN Yearbooks of 1961 (pp. 51–5), 1962 (pp. 124–7), 1963 (pp. 44–5), 1968 (p. 190), 1969 (pp. 175–9).
25. On November 19, 1984 as quoted in Indonesia Reports—Politics Supplement No. 16, June 1986 and reprinted in West Papua Update No. 10 of July 1986, p. 10.
26. See chapter 3.5.4.
27. *The Ecologist*, Vol. 16, No. 2/3, 1986 in cooperation with *Survival International* and *Tapol*.
28. *Ibidem*, pp. 71–7.
29. *Ibidem*, pp. 77–89.
30. Office of Environmental and Scientific Affairs, Environmental Policies and Procedures of the World Bank, May 1, 1984, p. 4.
31. Douglas Miles, *Cutlass and Crescent Moon, a Case Study in Social and Political Change in Outer Indonesia*, Centre for Asian Studies, University of Sydney N.S.W., Australia, 1976.
32. Newspaper *Merdeka* 10.10.1980.
33. Tengu Hasan M. di Tiro, 'Indonesia: Bastion of Colonialism?' in *Freedom at Issue*, July–August 1983 pp. 18–20.
34. Information about human rights in Aceh, including the full text of plea by A. Q. Jaclani Abdullah in Bahasa and Dutch, was published in a special INDOC study.

Constitutional Law and Legal Framework

2.1. INTRODUCTION

Throughout history Indonesia was characterized by a variety of cultural and linguistic groups, each governed by its own laws. During the colonial period and more so since independence, the relation between the state and the law has been cumbersome.

The State of Indonesia is structured as a unitary republic and its present form of government is based on the 1945 Constitution. According to this 1945 Constitution the sovereignty of the state is vested in the People and exercised by the People's Consultative Assembly, the Majelis Permusyawaratan Rakyat (MPR). The 1945 Constitution also provides for establishment of four independent branches of government: the President; the House of People's Representatives (Dewan Perwakilan Rakyat, DPR); the Audit Board (Badan Pemeriksa Keuangan, BPK) and the Supreme Court (Mahkamah Agung MA). The constitutional framework of the Indonesian Republic is placed in the context of customary law, called adat. This adat law puts emphasis on reaching consensus ('mufakat'), through mutual consultation ('musyawarah'). In this chapter some attention is paid to these adat law conditions, the 1945 Constitution and the state ideology Pancasila, followed by a description of the formal legal system and its main actors: the legislature, the political parties, the executive and the judiciary. In addition, separate sections follow on the position of lawyers, legal aid and law-enforcement agencies with particular emphasis on the legal status and role of KOPKAMTIB. Finally, reference is made to Indonesia's commitment to international human rights obligations.

2.2. THE CONTEXT: ADAT LAW

'Adat law' is the term by which that part of custom, adat, is denoted which has consequences in law.¹ Although scholars differ in opinion on the extent to which received Islamic law forms part of adat, the term adat law can now usually be taken to include all the (uncodified) customary law of the non-European population of Indonesia, as opposed to the codified law introduced by the Dutch and continued by the independent Indonesian government.

Adat is characterized by what Koesnoe refers to as the principle of concreteness, i.e. what is observed and accepted in practice, the principle of visibility, which means that there is a visible proof of the practice, and the principle of totality by which is meant that harmony between the community and the universe is required.² The maintenance of adat law at local level is the concern of the community as a whole (through its traditional leaders) and is pursued through 'give and take' in the traditional manner of reaching a consensus through mutual consultation. The purpose of adat is to bring back peace and harmony within the group. Madame Subandrio describes it as follows:-

An Indonesian, complaining to the judge of another's behaviour, is not putting a definite suit, containing a fixed set of fixed claims; no, he is simply asking judgement instead, which in his mind is identical with justice. He does not define his requirement, but simply trusts to the discretion of the judge in which way justice is to be given. In this way the judge is not expected to apply strict law; far from that, he is expected to give a decision which is acceptable to society as being just, fair, equitable, bona fide, *comme il faut*.³

It has to be noted that urbanization and increased communication have induced more individualistic notions of law for many Indonesians. The most important sanction in the maintenance of adat law, being isolated or ostracized, has lost much of its meaning in the present context. Adat and adat law are still flourishing in the small semi-autonomous communities which used to form the basis of social life throughout the whole archipelago, and therefore can change from locality to locality and from clan to clan, although there will be affinity between different areas within a given geographical region. Mistakenly, the Dutch authorities had assumed that this indigenous law was Islamic law with some local varieties and it was only at the end of the nineteenth century that van Vollenhoven and others started to 'discover', collect and study adat law.⁴

Early in the seventeenth century the Dutch colonizers introduced Dutch law for the European population, but left Indonesians subject to their own laws. In 1848 this policy was formalized by introducing some major Dutch laws, such as the Civil Code and the Commercial Code for Europeans, while stipulating that Indonesians would remain subject to their own adat law, enforced by their own local courts.⁵ The population had been divided in 1854 into two main groups: Europeans and those 'equalized' with them on the one hand, and 'indigenous' on the other. For those who wanted to trade with the Europeans, however, there was an opportunity 'voluntarily' to submit themselves to European law. In 1855 a large part of Dutch commercial law had already been declared to apply to 'foreign orientals' (i.e. mainly the Chinese middle class), and in 1917 all the Chinese were formally brought under Dutch civil law, except for civil registration and ceremonies prior to marriage.⁶ Furthermore a special civil registration for Chinese was established and also a separate law regulating adoption for children.

This example of blurring distinctions, which should be kept in mind when we discuss the position of the Chinese minority, illustrates how the colonial authorities suited the dichotomy between European and Indonesian law systems to their own needs. Similar developments occurred with respect to the administration of justice, in both civil and criminal matters. With regard to the latter the distinction between European and indigenous people was abolished with the introduction of a Criminal Code for the entire population in 1915.

It can be left to historians to settle whether the reason the Indonesian people were left with an indigenous legal system at least partially intact was because the Dutch colonial government pursued a policy of '*divide et impera*', or because there was a genuine respect for the existing indigenous institutions. What matters is how Indonesia nowadays will deal with this legacy. It is obvious that Indonesians are subjected to conflicting claims of Islam and Adat because both impose duties which go beyond legal relationships, regulating the totality of the life of its adherents. Islamic law is written, unlike Adat law, and this was done many centuries earlier far from Indonesia under completely different circumstances. In the pre-war period it was often the village-head who resisted strongly the claims of Islam. Despite the opposition of Islam, the traditional matrilineal family-system of the Minangkabau, West Sumatra is maintained. Although the Islamic law of divorce gained general acceptance—no doubt because it gives the men greater facilities—the law of inheritance has remained traditional and largely uninfluenced by Islamic law. But because of the strong communal attitude in Adat law, persons submit themselves to Islamic law viewing it as stressing the individuality of persons.

Article 27 of the 1945 Constitution, which lays down the principle of equality of all citizens before the law and which does not allow differentiation on the basis of the social and legal needs of the various groups of the population, seems to have opted for a unitary system of law. The question, of course, remains whether this unification should be based on the adat law modified to suit modern conditions or whether it should be based on European codes appropriate to local needs. Although both schools of thought have put forward strong arguments, it would seem that the former has influenced legislative policy strongest. The most important examples of this unification process are the Agrarian Law of 1960 and the Basic Act on the Judiciary of 1970. However, the Agrarian Law is not often invoked and in practice adat law is applied to changes in land title and land use.

Generally speaking one can say that those parts of the law which regulate matters closely related to man's cultural and emotional life such as inheritance and marriage—with the exception perhaps of the principle of equality of the sexes in those fields—usually follow adat law or Islamic law. On the other hand, where material progress and commercial activities are directly at stake the tendency of the authorities is to accept modernization on a Western basis.

One should add here a note of caution that many scholars in sociology of law,

folk law and cultural anthropology are convinced that the development towards unification of law in Indonesia is a dangerous road which suppresses cultural and social expressions or, at best, is irrelevant to what is happening in reality. Existing legal pluralism has been described by some of them as 'a form of appropriate technology' which could benefit economic and social development at village level.⁷

2.3. PANCASILA AND THE 1945 CONSTITUTION

2.3.1. Three Constitutions between 1945-59

In March 1945 the Japanese occupation authorities allowed the establishment of an Investigating Committee for Indonesian Independence. This Committee prepared a draft constitution. Within three weeks after the proclamation of independence by Sukarno and Hatta on August 17, 1945 Indonesia had a temporary constitution. In the Preamble are stated the five principles, Pancasila, on which the Indonesian State is based.

According to Article 1 of this 1945 Constitution the Indonesian State shall be unitarian. In 1949 a new, federal constitution was introduced as part of the transfer of sovereignty to the Republic of the United States of Indonesia (R.I.S.) agreed by the Round Table Conference and taking effect on December 27, 1949. However, within a year it was decided to re-establish a unitarian republic of Indonesia. A committee for the preparation of the constitution of this unitary republic was installed under the joint chairmanship of Supomo, the Minister of Justice of the Republic of the United States of Indonesia and Abdul Hakim, deputy Prime Minister. The seven appointed members agreed on a draft constitution. This provisional constitution, ratified on August 14, 1950 by both the parliaments concerned, replaced the federal constitution of 1949 and thus became Indonesia's third constitution.

This constitution made the executive and the cabinet responsible to the Parliament, though it failed by and large to specify by what mechanisms. The President had the power to dissolve the parliament, but the Prime Minister's powers were not specified. On his recommendation the President appointed the ministers. The Parliament had no authority to supervise the President. The Government, President and Cabinet, had the authority to enact emergency legislation. Provision was made for a supreme court with justices to be appointed by the President from a list compiled by the Parliament. Justices were appointed for life. In addition, this provisional constitution contained a relatively extensive catalogue of human rights, such as equality before the law, the right to work, to education, to property etc.

Since 1956 a Constituent Assembly had been meeting, but it failed to agree on the future form of Government. Early in 1959 President Sukarno proposed

to restore the 1945 Constitution and, using martial law powers, the Assembly was dissolved. On July 5, 1959 the Constitution of 1945 was reinstated by a Presidential Decree of Sukarno, Supreme Commander of the Armed Forces.

2.3.2. Pancasila, a State Ideology

The Constitution of 1945 contains a preamble which is printed in full because of its importance:

Since independence is the right of every nation, any subjugation in this world is contrary to humanity and justice, and must therefore be abolished. Our struggle for an independent Indonesia has come to a successful stage and the Indonesian people are on the very threshold of an Indonesian State—independent, united, sovereign, just and prosperous. With God's blessing and moved by the high ideal of a free national life, the Indonesian people thereby declare their Independence. The establishment of a national Indonesian Government is for nurturing the Indonesian people and their territories; for promoting public welfare; for uplifting the standard of living, and for participation in the founding of a world order, based on independence, eternal peace and social justice. Our national Independence is embodied in the Constitution of the Indonesian State, set up as a republic with sovereignty vested in the people. We believe in an all-embracing God; in righteous and moral humanity, in the unity of Indonesia. We believe in democracy, wisely guided and led by close contact with the people through consultation so that there shall result social justice for the whole Indonesian people.⁸

In this preamble five principles are enumerated at the end:

1. Belief in the One Supreme God;
2. Just and civilized Humanity;
3. Unity of Indonesia;
4. 'Deliberative' Democracy; and
5. Social justice.⁹

These five principles, Pancasila, were announced by Sukarno in his remarkable speech of June 1, 1945 to the Investigating Committee for the Indonesian Independence. In fact this body was at that time discussing the territorial boundaries to be claimed by an independent Indonesian State. Introducing the Pancasila Sukarno did not define precisely these boundaries, but provided the ideological framework for the Indonesian State. In drafting the preamble the Committee did not turn for inspiration directly to the June 1 speech of Sukarno but to the 'Jakarta Charter' of June 22, 1945 signed by, *inter alia*, Sukarno, Hatta, H. A. Salim and M. Yamin. This Charter later was invoked by Sukarno in his Presidential Decree of July 5, 1959, reintroducing the 1945 Constitution, with the following words: 'We are convinced that the Jakarta Charter of June 22, 1945 gave inspiration to the 1945 Constitution and contributes one link in a single chain with that Constitution'.¹⁰ Sukarno was in this way in fact returning

to his own speech of June 1, 1945. Biographers of Sukarno are almost unanimously of the opinion that his desire to find an ideological-philosophical basis of his own, rooted in and suited to a genuinely Indonesian society, characterized Sukarno's thinking and action throughout his entire life.¹¹ Kahin commented on the Pancasila as follows: 'Probably in no other exposition of principle can one find a better example of the synthesis of western democracy, modernist, islam, marxism and indigenous village democratic and communalistic ideas which forms the general basis of the social thought of so large a part of the post-war Indonesian political elite'.¹²

In 1946, six months after independence, Sukarno himself declared in a special issue of the newspaper *Merdeka*: 'Pancasila is not a product of recent times. Decades before Japan moved southwards these ideals lived in the Indonesian movement. Now we want to implement those, to become the fundament of the State'.

Turning away from the exploitative western models and atheistic eastern models, many of the founding fathers of the Indonesian State had stressed the autochthonous elements of Indonesian culture and way of life: '*musyawarah*', broad discussions aimed at reaching consensus and '*mufakat*', consensus based on mutual concessions. These traditional values, more strongly embodied perhaps in Javanese culture than in that of some of the other islands, resulted in great importance being put on concepts such as unity, equilibrium, tolerance and compromise, very much in the same way as Java had absorbed over the centuries in a unique syncretism such different religions as Hinduism, Buddhism and Islam. The principle of '*gotong royong*', mutual assistance at all levels is based on the same ideas of unity and tolerance. Although Sukarno's Guided Democracy, put into practice after 1959, was also based, at least in his opinion, on these principles, the New Order Government of Suharto has not abandoned Pancasila. On the contrary, campaigns to elucidate and disseminate its existence have been stepped up with compulsory courses for civil servants and military personnel. Under a programme approved by the People's Consultative Assembly in 1978 more than two million civil servants of all ranks have been obliged to attend courses on the directives for the realization and implementation of Pancasila, commonly known as P 4, a contraction of the four Indonesian title words. Recently youth leaders, moslem scholars, journalists, trade unionists, politicians, and university students have also been included in the P 4 campaign. According to a western scholar who studied the subject closely, it provides a state ideology which both draws out what is already imminent within the Indonesian society and is an aspiration for the future. The emphasis is however clearly on the former, and it presents an overwhelmingly static picture of society. 'The strategy for development', he said 'focuses on economic change without social change and Pancasila provides the encompassing ideological justification which contains rather than stimulates change in the social order'.¹³

On two occasions in 1980, the Army Commanders Meeting of March 27 in Pekanbaru, Sumatra, and the 28th anniversary of the 'Red Berets' (Kopasandha) on April 16 in Cijantung, South of Jakarta, President Suharto made speeches which dealt with the duty of the Armed Forces (ABRI) to choose sides in supporting Pancasila.¹⁴ He suggested that he himself, was the personification of Pancasila. So the state ideology became sacred in such a way that it cannot be questioned and criticized. Suharto's statements concerning Pancasila came under attack not so much from political parties, but from a group of retired generals, former politicians, academics and students gathered in the Group of 50. They signed a Statement of Concern dated May 5, 1980 expressing their deepest disappointment with President Suharto's said speeches, which:

- (a) Make the assumption that within our society, which is in fact developing steadily though under increasingly heavy burdens, there is a polarization between the idea of 'preserving Pancasila' on the one hand, and the idea of 'replacing Pancasila' on the other hand, which it is feared will breed fresh conflicts among social groups.
- (b) Misinterpret Pancasila so that it can be used as a means to threaten political enemies whereas Pancasila was intended by the founders of the Republic of Indonesia as a means of unifying the people.
- (c) Justify the unpraiseworthy acts of the authorities to paralyze the Constitution of 1945 according to plan on the pretext of the Seven Pledges and Soldier's Oath, which cannot possibly be above the Constitution of 1945.
- (d) Invite ABRI to take sides, namely, not to stand above all social groups, but rather to choose friends and enemies on the basis of the arbitrary evaluation of the authorities alone.
- (e) Give the impression that someone considers himself the personification of Pancasila so that every piece of rumor about him is interpreted as (the expression of) an anti-Pancasila attitude.
- (f) Charge that there are attempts at armed preparations, subversion, infiltration and other improper attempts in anticipating the forthcoming general election.¹⁵

This 'Petition of the 50' has met the same stiff reaction as the Malari in January 1974 and the political turbulence from the White Book of 1978 Student's Struggle preceding the reelection of President Suharto in 1978.¹⁶

Recently, the Pancasila as interpreted and promoted by the New Order government has provided the base to a new conceptualization of the economic system, labour relations, the single political party idea and the control over social organizations.

In his Independence Day speech of August 15, 1981, President Suharto announced that in a Pancasila economy the cooperatives should be one of the major elements in addition to the state-owned and private companies, which is already stated in Article 33 of the 1945 Constitution. According to Widjojo Nitisastro, then Coordinating Minister for Economic and Financial Affairs and Chairman of the National Planning Board, the current Indonesian economic system is far from a Pancasila economy.¹⁷ This should not be surprising as no detailed economic scheme emerges from Pancasila.

Within the framework of the Pancasila labour relations are considered to be harmonious. Collective labour agreements are born out of conflicts between employers and employees but, according to the Pancasila Labour Relations, recently changed to Pancasila Industrial Relations (HIP), workers do not have any separate interest of their own. So there is no need for collective labour agreements, because these reflect the liberal way of thinking, according to Sudomo, Minister of Manpower and former Commander of KOPKAMTIB. By critics of the regime it is stated cynically that workers have only one duty: to work hard.¹⁸

Conforming with the values of the Pancasila, Ruslan Abdulgani, chairman of the Advisory Team for the Comprehension and Implementation of the Pancasila (BP7), launched in August 1981 the idea of altering the current political party system by merging the GOLKAR and the two legal political parties, PPP and PDI, into a single party, the Partai Tunggal. Immediate criticism at this suggestion from many circles illustrates how much importance is attached to keeping up the image of democracy¹⁹, although from the PPP and PDI themselves voices were heard urging people not to come with too hasty comments!

In 1985 the House of Representatives adopted, after a long discussion and with widely heard criticism, the law on social organizations, in which the vast array of non-governmental organizations are required to adopt the Pancasila as their 'sole foundation'. Under this law organizations can be subject to government control (Article 12) and even be disbanded by the government (Article 15). Accepting funds from abroad without government consent could lead to 'freezing' of the leadership (Article 13) and an organization persisting in such anti-government behaviour after the leadership is frozen will be dissolved (Article 14).

It can be concluded that under the New Order government of President Suharto, Pancasila is transformed from its origin as state philosophy, expressing national Indonesian thinking, into a compulsory state ideology, with operative value for those who are in power.

2.3.3. The 1945 Constitution

Together with the Pancasila the 1945 Constitution has been maintained by the present New Order government as the political framework for the Indonesian State. This Constitution has only 37 articles. According to the 1945 Constitution the supreme state power is vested in the People's Consultative Assembly (MPR) as the institutional embodiment of the entire Indonesian people. The Assembly amends the Constitution, determines the general outlines of state policy, and elects the President and Vice-President.²⁰ The President is appointed for a period of five years and is answerable to the Assembly. He is the 'mandatory' of the Assembly and he has the obligation of implementing its

decisions. Thus, constitutionally, the position of the President is subordinate to that of the Assembly. In the execution of government policy, power and responsibility are concentrated in the President. However, in the enactment of legislation the President must co-operate with the House of Representatives (DPR). Prior approval of the House must be secured for the passing of statutes, whereas the state budget must be drawn up by the Government with the concurrence of the House. Although the President has to co-operate with the House, he is not answerable to it. In other words, his position is not dependent on the House. The President has the right to appoint and dismiss Ministers, who are his assistants, and their position is dependent on him.

Although the President is not answerable to the House, the constitution does not confer unlimited power on him. As has been already pointed out, he is answerable to the Assembly and must also take into account the views of the House.²¹ The House of Representatives cannot be dissolved by the President, as was the case under the system of parliamentary democracy in the period 1949–59. In addition, the members of the House are automatically members of the Consultative Assembly as well. For this reason the House could exercise constant supervision over the activities of the President. If, in the view of the House, the President has transgressed the principles of the general outline of State policy as stipulated by the Constitution and by the Assembly, a special session of the Assembly could be convened and the president called to account.²²

It should be added that President Suharto has not abandoned the practice established by Sukarno of using Presidential Decrees extensively to regulate in areas which, by stricter interpretation of the Constitution, ought to be the subject of laws proper.

The 1945 Constitution also establishes a Supreme Court (MA), an Audit Board (BPK), and a Supreme Advisory Council (DPA), which gives advice to the president on matters of State policy. Thus, the organization of the State, as emanating from the Constitution, could schematically be depicted as follows:

Pancasila				
1945 Constitution				
People's Consultative Assembly (MPR)				
Articles 2–3				
President				
Audit Board (BPK)	House of Representatives (DPR)	Articles 4–15	Supreme Advisory Council (DPA)	Supreme Court (MA)
Article 23	Articles 19–22	Ministers Article 17	Article 16	Articles 24–25

2.4. THE LEGISLATURE

2.4.1. People's Consultative Assembly (MPR)

The People's Consultative Assembly (MPR) is the highest legislative body in the state. According to Article 1 paragraph 2 of the 1945 Constitution the sovereignty shall be vested in the people and will be exercised by them through this Assembly. As such its powers appear to be almost unlimited with the Presidency, the House of Representatives and the Judiciary subordinated to it. Article 3 of the Constitution stipulates the main functions of the Assembly: to determine the basic outlines of State Policy and to amend the Constitution. Article 6 paragraph 2 provides for the election of the President and the Vice-President by majority vote of the Assembly. Normally, the decrees of the Assembly require a Presidential Decree or law by the House of Representatives for implementation. Some of these decrees are rather fundamental such as Decree No. 15, 1966 banning the Communist Party of Indonesia. Article 2 of the 1945 Constitution provides that the Assembly shall be composed of members of the House of Representatives and delegates of regional territories and other groups in accordance with the provisions prescribed by law. The Assembly shall be held in the capital city at least once in five year. No such meeting was held until 1945. President Sukarno reintroduced the 1945 Constitution through Presidential Decree No. 2 of July 22, 1959, which stated that a Provisional People's Consultative Assembly (MPRS) would be established whose members, other than those from the House of Representatives, were to be appointed by the President. He could also determine the composition of the functional groups. These and other regulations severely limited the independence of this Assembly. By Presidential Regulation No. 12 of December 31, 1959 the composition of the Provisional Assembly was settled at 575 members including the entire House of Representatives consisting of 281 members; 94 delegates of provinces and 200 representatives of functional groups, such as farmers, women, students, intellectuals and military.²³

The New Order government made several changes but retained basically the same structure. In November 1966 the Provisional Assembly was given a statutory basis in accordance with Article 2 of the 1945 Constitution by the enactment of Law No. 10 of 1966. This law repealed the above mentioned Presidential Decree and regulation of 1959 concerning the Provisional Assembly. New guidelines were provided for determining the number of representatives of the political parties, territorial regions and functional groups. It gave the Assembly authority to select its own leadership and to determine its own rules and procedures. Also clarified was the immunity of its members.

In November 1969 the House of Representatives enacted a statute regulating the membership of the Assembly for the 1971 election. This laid down in Law No. 16 that the Assembly should consist of 920 members

including all 460 members of the House (who are partly appointed). In addition to the House members the President would appoint 207 members, of whom were 155 from the Armed Forces and 52 from the GOLKAR. A further 121 were to be appointed from GOLKAR and political parties, according to the proportion of the votes in the general election; 130 representatives of the 26 provinces were automatically appointed and 2 extra seats reserved for parties unsuccessful in the election. As a result the number of appointed Assembly members exceeds the one third of the total number of members as stipulated in Article 1 of Law No. 16, 1969.²⁴ In 1984 a proposal was made to increase the total number of the Assembly to 1,000 of whom 500 would be the new number of representatives in the House. This was accepted and will take effect in 1987.

The Provisional Assembly met three times during Sukarno's rule: in 1959, 1963 and 1965. During the New Order the Provisional Assembly convened in 1966 to ratify the transfer of power from President Sukarno to General Suharto; in 1967 to deprive Sukarno of his last vestiges of Presidential Authority and to appoint Suharto as acting President, and in 1968 for the last time to elect General Suharto as President. As a result of the 1971 general elections the Assembly had its first meeting properly constituted on October 1, 1972, the seventh anniversary of the 1965 coup. In the March 1973 session President Suharto was re-elected with Hamengkobuwono IX, the Sultan of Jogjakarta, as Vice-President. The Assembly's meetings of 1978 and 1983, both following general elections the year before, re-elected the President and elected as Vice-Presidents Adam Malik and Umar Wirahadikusuma respectively. During these sessions, consensus was reached on the Broad Outlines of State Policy (GBHN) for respectively the third and fourth five year development plans.

2.4.2. House of Representatives (DPR)

The House of Representatives (DPR) is the principle legislative body of Indonesia. Though the 1945 Constitution is explicit with regard to its functions, the important question whether the representatives are to be elected is not answered. Article 19 stipulates that the organization of the House itself shall be prescribed by law. Three main functions of the House can be distinguished. In the first place the House is vested with legislative power according to Article 20, paragraph 1 of the 1945 Constitution, which provides that every law shall be enacted in concurrence with the House of Representatives. As Article 5 stipulates, this legislative power is conjoint with the President. Laws enacted jointly by the President and the House rank directly after the Constitution and the Assembly decrees. A number of matters must be prescribed by law, such as the composition of the Assembly and the House, the Supreme Advisory Council and the Audit Board. The division in administrative territories, every form of tax, the organization and the competence of courts, matters affecting defence,

national education, freedom of Assembly, the right to form unions and freedom of speech and the Press shall also be provided for by law.²⁵ In accordance with Article 23 of the 1945 Constitution the second major function is to approve the annual budget. If there is no approval the budget of the previous year shall be followed. Despite the provision for an Audit Board, such an office first came into operation in 1968 presenting a report to the House on the 1967 budget. In 1973 a law on the Audit Board was enacted which regulated the composition and the appointment of the seven members by the President on nomination of the House. Its duty is to check the state finances and the management of the state budget. The third function of the House with regard to declarations of war and peace and treaties with foreign countries provided for by Article 11 is rather weak because modern Presidents no longer issue such formal declarations and rarely enter into formal treaties.

It must be emphasized that the President is not responsible to the House, which means that the President's position does not depend upon the House. And while ministers are assistants to the President they are not responsible to and not dependent for their position upon the House. The House of Representatives can not be dissolved by the President. All members of the House are concurrently members of the Assembly and in that function they can control at all times the acts of the President and participate in his election.

In 1955 the first general elections were held in Indonesia to elect the members of the House of Representatives in accordance with the 1950 Constitution then in force. This House was not explicitly abolished when President Sukarno issued his decree of July 5, 1959 returning to the 1945 Constitution. He asked the House to remain in function anticipating the duties and responsibilities envisioned in the 1945 Constitution newly in force. The House members agreed and Presidential Decree No. 1 issued on July 22, 1959 declared the existing House to be in function as the House of Representatives intended by the 1945 Constitution. A special oath of allegiance was taken of 237 members of the original number of 281.²⁶ But this new House had a very short life. In 1960 it refused to approve the annual budget proposed by Sukarno. He suspended the House without citing any legal powers for his action. A new House was created known as the House of Representatives based on mutual aid and co-operation (DPR-GR) consisting of members appointed by and liable to be dissolved by the President, representing political parties which had not been outlawed; functional groups, such as the Armed Forces, peasants, workers, religious leaders, civil servants and women. This was done by Sukarno in his dislike of western liberal ideas of democracy and to emphasize Indonesian tradition of mutual consultation, *musyawarah*, in order to reach consensus, *mufakat*.

The new House remained in office after the transfer of power to General Suharto in March 1966, but its composition changed fundamentally to reflect the new power structure. Between 1960 and the end of 1966 23 seats were

added to the initial number of 281 members already added bringing the total number to 304. However, 304 seats were never occupied. Due to the suspension in late 1965 of the members of the Communist Party and its sympathizers, the actual membership was reduced to 242 in 1966. In 1967 it was enlarged again to 350 members and in 1968 another enlargement took place bringing the total number to 414.

Pending the general elections of 1971 the House passed a law in 1969 to regulate its own membership. Under this law the House consists of 460 members of whom 360 are elected directly. Of the remaining 100 the President is to appoint 75 from the Armed Forces and 25 from civilian functional groups (GOLKAR). Excluded from the franchise are members of the Armed Forces since they are already represented by appointment, and former members of the outlawed Communist Party and other illegal organizations. The members of the House have parliamentary immunity but they may be questioned by the police in connection with criminal and security matters.²⁷ They can also be 'recalled' by their party or organization in consultation with the House leadership.²⁸

As mentioned before in 1984 a new law was tabled by the Government to increase the total number of members of the House to 500. It provides for an increase of the Presidentially-nominated representatives from the Armed Forces from 75 to 100 nominated members in the new House.

2.4.3. Elections, GOLKAR and Political Parties

Leaders of the Indonesian revolution have always stressed the importance of unity and cooperation among the different political movements, but they have rarely appreciated the degree to which these differences may represent deep-seated cleavages of an ethnic, cultural and religious nature within the people. Under Dutch and Japanese domination political activity had been severely restricted, although under the latter nationalist sentiment was allowed greater outlet. After the outbreak of the nationalist revolution the following four major parties took shape: PNI (Partai Nasionalis Indonesia); Masyumi (Council of Indonesian Moslem Associations); PSI (Partai Sosialis Indonesia) and the PKI (Partai Komunis Indonesia).

1955 Elections

The elections for the Parliament under the 1950 Constitution were deferred until 1955 while the elections bill of 1952 was being elaborated and the parties were building up their constituencies. The Masyumi split between its modern-reformist and its traditional-conservative Islamic wings, with the latter forming a new party, the Nahdatul Ulama, the League of Religious Scholars (NU), based mainly on the rural areas of Java. The modern Masyumi was based more on the towns and areas outside Java.

The elections held later in 1955 were generally considered to be fair and could boast a 91 per cent turnout. Four parties shared 78 per cent of the votes: the PNI with 22.3 per cent, the Masyumi with 20.9 per cent, the NU with 18.4 per cent and the PKI with 16.4 per cent. The remainder was split up between 24 different parties. Although the following of these four big parties showed ethnic and class elements it cannot be explained in class terms solely. The PNI had its support from the Javanese priyayi, members of the official class and from the abangan, the nominal Javanese Moslem. The PKI received its support from the lesser priyayi and from abangan peasants. From devout Moslems came the support for the Masyumi and the NU. The NU was supported mainly by santris, the strict Javanese Moslems, and the commercial elements in Central and East Java; while the Masyumi drew its support from the Outer Islands consisting of landlords, traders, and modern intellectuals.²⁹

Ideological, cultural and geographical splits in Parliament deepened with heavy bidding for small party support leading to increased opportunism. This, and threats of national breakdown and rebellion, strengthened Sukarno's longstanding call to 'bury the parties'. In 1957 he imposed 'martial law', leading to the return to the 1945 Constitution in 1959 and starting the period of 'Guided Democracy'. Sukarno gradually reshaped the political institutions, replacing elected bodies by nominated ones, composed of party stalwarts and representatives of 'functional groups', representing occupational groups ranging from peasants, workers and fishermen to civil servants and women. In 1960 he banned, by Presidential Decree, the Masyumi and the PSI for involvement in the 1958 PRRI-Permesta rebellions and allowed only the ten largest parties to continue subject to stringent controls, including pledges of loyalty to state ideology. Real power increasingly lay in the Presidential palace and the army, while the parties, except the PKI, continued to decline in influence and independence. After the 1965 coup attempt the army led the campaign which wiped out the PKI. The broad presidential powers came into the hands of General Suharto who used them to purge the institutions of leftists. The PKI was officially outlawed on March 12, 1966 and Masyumi and PSI barred from re-forming. Since former Masyumi leaders believed that their supporters had not switched to the NU, they explored ways to find adequate political expression. Due to its association with the rebellion, legalizing the banned Masyumi was not acceptable. However, to provide a political outlet for Moslem forces a new Islamic party, the Partai Muslimin Indonesia (Parmusi) was formed by Presidential Decree No. 70 of February 20, 1968 under close government control.³⁰ No other new parties were allowed to form, but between 1965 and 1967 the authorities made efforts to strengthen GOLKAR through increasing the number of seats in the Gotong Royong House.

GOLKAR

GOLKAR, the dominant political organization at present, is strictly speaking not a political party. It has its origins in Sukarno's dislike of the 'divisive' political parties and his institutionalization of functional groups' representation in his model of Guided Democracy. The army, in particular, seized upon this idea as a means of gaining greater political influence. This in turn led Sukarno to continue the co-existence of appointed members and political parties as a counterweight to the military. When Sukarno's political power waned and the PKI was annihilated, the army expanded the functional groups under its control and filled the seats vacated by their opponents with their own supporters. GOLKAR is an agglomeration of bodies representing at present over 2,000 occupational groupings ranging from civil servants and security personnel to women and fishermen. The name of the parliamentary section was changed to Karya Pembangunan Fractions, but the group is still referred to as GOLKAR. Key posts in the organization are occupied by military officers—President Suharto is Chairman of the Advisory Board—and the main programme of GOLKAR is to support government policies. Between elections the group is rather calm and disinterested in spite of an organizational transformation in 1971 with the aim of strengthening it. The main reasons for this are that it is government policy to discourage political activity and that the group's leadership is controlled by senior military officers who dislike political activity of any kind. Other aspects of this 'functional group' concept will be discussed in Chapter 3.3 on freedom of association.

1971 Elections

In 1971 the second general elections took place under new electoral laws of 1969: Law No. 15 concerning the election of members of representative bodies and Law No. 16 dealing with the composition and position of the Assembly, the House and the Regional Houses of Representatives. In the first of these laws the general framework for the organization of the election was laid down. According to Article 9 all Indonesians over 17 years of age are who were married had the right to vote. Article 16 stipulated that those Indonesians over 21 years old were eligible as candidates for election. However, provisions were made in Articles 2 and 16 that members of the former PKI and other illegal organizations were deprived of the right to vote and the right to stand for election. In accordance with Articles 11 and 14 members of the ABRI, the Armed Forces, were excluded from the right to vote and the right to stand for election since they are already represented by nominated members. These provisions raised the issue whether former members of the Masyumi and the PSI banned in 1960 had electoral rights. They were given the right to vote, but their former leaders could not run for election. Also former members of banned

communist organizations who had been released were given the possibility of regaining their voting rights.³¹

On January 17, 1970 a General Elections Institute and a National Elections Committee were established with the minister of Home Affairs, Amir Mahmud, as common chairman. The Institute was placed administratively within the Department of Home Affairs and its function was to supervise and guide the day-to-day work of the National and Local Committees. Military influences in these committees were remarkable. For example 20 of the 26 first-level committee and 142 of the 281 second-level committees were chaired by members of the armed forces. The whole body of the ABRI was involved in the general elections and its preparation in order to maintain public order. KOPKAMTIB was responsible for screening voters and candidates. An important role in the organization of elections was also played by the late general Ali Murtopo, Suharto's private assistant for special operations, commonly known as OPSUS. The main task of Opsus was to collect political intelligence at home and abroad. By Presidential Decree Ali Murtopo was appointed head of the Supplies Board with the General Elections Institute and made responsible for the recruitment of personnel from the civil service and the military. He was also responsible for the procurement and allocation of election materials, such as transportation, election forms, etc. He had a strong position in the electoral machine consolidated by his role in the General Elections Board of GOLKAR.³² After the 10 participating political organizations submitted their lists of candidates with a total number of 3,789, KOPKAMTIB screened all candidates. Of this initial list 768 candidates were disqualified. It was reported that in practice others besides General Sumitro, deputy commander of KOPKAMTIB, were involved in the selection. Mentioned were Amir Mahmud, minister of Home Affairs; Ali Murtopo, private assistant of Suharto and OPSUS leader and other high ranking military officers. Criteria for screening were involvement in the 1965 coup attempt and a positive attitude towards Pancasila and the unitary 1945 Constitution. The latter refers to the rebellions of 1958, as well as to the Free Papua Movement (OPM) and the South Moluccans Secession Movement (RMS). Disqualified candidates were not only deprived of the right to be elected, but they were prohibited from taking part in the campaign.

In this 1971 election campaign anything was prohibited that might discredit the Pancasila and the 1945 Constitution. Critical remarks, discourteous to the Government and its officials, as well as to foreign countries and their institutions were not allowed. This and other restrictions such as the requirement of an advance permit from the authorities for all kinds of leaflets, posters, slogans, etc., as stipulated by Government Ordinance No. 1 of January 1970, were certainly enough to discourage political parties from criticizing the Suharto Government and its policies.³³

On July 3, 1971 almost 55 million people out of the population of 120 million went to cast their vote, while official records stated that more than 2 million

people were deprived of the right to vote.³⁴ Of the 360 contested seats in the House of Representatives 236 were won by GOLKAR; the PNI, handicapped by a governmental decision that all civil servants, its traditional base, had to pledge 'mono-loyalty' to the government, won only 20 seats and Parmusi captured 24 seats. The NU alone of the older parties retained its strength: 58 seats. The small parties together obtained 22 seats, while two failed to win any seat. In addition to these 360 elected members, President Suharto appointed 100 members of which 75 were from the Armed Forces and 25 from the functional groups. In the Assembly, with similar proportions of appointed members, this result gave GOLKAR 392 representatives out of a total of 920. The second largest group in the Assembly was the armed forces with 230 seats.

After the elections the 'simplification' of the party system—a theme from Sukarno's Guided Democracy—was continued by the New Order government. The House of Representatives installed after the 1971 elections was divided into four 'groupings': GOLKAR, ABRI (Armed Forces), the four Moslem parties united in one grouping, and the five remaining parties of non-Moslem character united in another, group. Constant pressure was brought to bear to formalize this structure and, finally, on January 8, 1973 all Moslem parties were merged into the Development Unity Party (PPP) with Mintaredja as the first general chairman. All other parties such as the PNI, the Catholic and the Christian Party were merged on January 10 into the Indonesian Democratic Party (PDI).

The pre-existing parties were allowed to maintain their separate identities in social and educational activities only. The 1973 mergers were unwanted and imposed from above. This has become evident over the years, particularly in the PDI, which has been plagued by internal rifts. It is also remarkable that the PPP retained in its name no indication of its Islamic orientation.

1977 Elections

In 1975 the government—which had a comfortable majority in parliament of the appointed members and the elected GOLKAR members—introduced two bills which were passed into law, one on political parties and GOLKAR and another on elections.

The first one was Law No. 3., which regulated the position of the two political parties PPP and PDI and the GOLKAR. The most controversial issues in the discussion on this law were the principles to which all parties must subscribe, the 'floating mass' concept and the question of membership in political parties by civil servants. Membership is open to people of 18 years of age or younger if married. Members must be screened by the party leadership. As civil servants are automatically members of the Civil Servants Corps of the Republic of Indonesia, KORPRI, an organization of GOLKAR, they need the written approval of their superiors in the department or branch they belong to, to become a member of a political party.³⁵

On the first question, that of binding parties to the Pancasila and the 1945 Constitution, a compromise was arrived at that the Pancasila and the 1945 Constitution were to constitute the sole framework but, in addition, parties were allowed to refer to principles stated in their existing statutes, i.e. Islam for the PPP and Indonesian Democracy, Nationalism and Social Justice for the PDI.³⁶ The 'floating mass' concept would permit no party to have branches below the regional level, leaving the rural masses to 'float' undisturbed by political conflict between the elections. Stern opposition could not achieve more than a minor adjustment. This permitted one party representative at both district and village levels who would execute party decisions taken at the top but had no right to mobilize and represent the traditional bases of the existing parties.

In the second law, Law No. 4, the government proposed some amendments to the existing Elections Law No. 15 of 1969 but the PPP and PDI, showing some degree of independence, demanded major improvements in the procedures of the 1971 elections, which had all been decreed by the government. The parties wanted safeguards against fraud and undue government influence to be spelt out in the law. The debate did not lead to any major changes and the same issues were raised again during and after the 1977 elections.

The 1977 elections took place in May. Over 1.5 million people were denied the right to vote, to stand for election or otherwise take part in political activities. The general elections gave another landslide victory to GOLKAR, obtaining 62.11 per cent of the votes, 0.69 per cent less than in 1971. The PPP managed to obtain 29.29 per cent, a slightly higher score than the 27.11 per cent at the previous elections. The PDI—still internally torn—polled poorly with 8.6 per cent, against 10.09 per cent at the 1971 elections. In two provinces, Jakarta and Aceh, the PPP defeated GOLKAR. The reason for the victory in Aceh was purely Moslem support, but in Jakarta as in other cities many protest votes from civil servants as well as Moslem votes went to the PPP. An indicator for PPP support was the protest against the draft of the 1973 marriage law. This law would bring state registration of all marriages and the principle of monogamy. It was opposed strongly by the PPP, which was against secularization. The draft was revised in such a way that a pluriform system of marriages, and therefore the possibility of polygamy, was maintained. The PPP further opposed the prohibition of political activities at subdistrict and village level as stipulated in the law on political parties and GOLKAR of 1975. This position was supported by PDI. Another explanation of the PPP's (relative) success could be the use of the Kaabah, the black holy shrine in Mecca, as the party symbol, which the Minister of Home Affairs had reluctantly accepted when the PPP threatened to boycott the elections. GOLKAR votes declined in 15 of the 26 provinces. According to some observers the increase of PPP votes was due to young voters, at the expense of GOLKAR.³⁷

Although violations of human rights relevant to political parties and

elections are dealt with in other chapters of this book, particularly the sections on freedom of expression, association and the Press, something should be said here about electoral malpractices in 1977.

First, there was the system of Freedom from Political Parties, Bebas Parpol, which was practiced during the 1971 and to a lesser extent during the 1977 elections. Army platoons would move into a village with voter registration lists, and, often with the help of village authorities, all adults were induced or forced to indicate that they would vote for GOLKAR. After that the village was closed to all other political parties as there was no further need for campaigning.

Second, the polls were held on a working day and civil servants were required to cast their votes in their offices instead of in public places.

Third, when the PPP or PDI staged campaign activities, the authorities sometimes summoned people to perform community activities within the framework of 'mutual aid and cooperation'.

Fourth, the government facilities, such as transport and duplication facilities, were put at the disposal of GOLKAR and its supporters. In early 1976 the PPP complained of government harassment of its activities, particularly in Central Java. The PPP was involved in the proselytising movement, Dakwah, which the Government saw as having political objectives, although it admitted in this connection that 'tensions' were understandable so long as the implementing regulations were not yet issued. The unresolved issue of how to separate the religious and political activities of an Islamic political party resulted in the usual Government accusation of 'misuse' of religion for political ends and violation of Government Regulation No. 1/1976 limiting the election campaign to 60 days, and the counter-accusation that the Government was prohibiting religious activity. In June 1976 Sudomo confirmed that 'some' PPP activists had been detained for up to 10 days after ignoring three warnings, while in July Drs Zamroni of the PPP executive handed lists of 'dozens' of cases of harassment in Central Java to the Diponegoro Division Commander.

The following Assembly session in 1978, saw a strong surge of dissent, in particular in the 'consensus' tradition, by the casting of negative votes on five points in the Broad Outlines of State Policy (GBHN), including the entrenchment of restrictions on political activities at the village level. President Suharto's re-election with Adam Malik as his Vice-President went through unopposed but only after repressive action against students, newspapers and other critics.³⁸

1982 Elections

In October 1979 the government moved a revision bill in the House which sought to introduce further amendments to the Election Law, mostly adding other restrictive conditions to the existing ones. When Amir Mahmud, Minister of Home Affairs, presented this bill he pointed out the increasing role of political parties and GOLKAR in the elections; the participation of the

province of East Timor since it is the 26th province of Indonesia and various other 'improvements' of the election laws. One of these concerned the use of emblems: Article 18 paragraph 2 stated that the use of an emblem, which might cause conflicts endangering the unity and stability of the Indonesian nation, will be forbidden. From PPP and PDI, the two 'opposition' parties, criticism arose against this new election law. Political parties were not allowed to participate in the General Elections Institute, but the government agreed to establish supervision committees down to subdistrict, level in which the government, political parties, GOLKAR and ABRI would each have three representatives. The demand of the political parties to reduce the number of appointed members in the House was rejected on grounds that this was a prerogative of the President, although the 1945 Constitution did not provide for such appointments. The parties also demanded that the seats of four members of the House representing East Timor should be allocated from the appointed members. After consulting the President, the Minister of Home Affairs agreed to this. The question of the Kaabah emblem of the PPP was a major issues of discussion, because the party representatives urged for a written assurance in the election law that the PPP would be allowed to continue to use the Kaabah. This was rejected and a verbal assurance was given by the Minister. Particularly the NU faction in the PPP was unhappy because of the lack of a written assurance. In general, the NU was dissatisfied with the new election law and the results of the House debates. A boycott was announced but the others in the PPP refused to take part in such an action.

In a remarkably fierce debate between the Minister of the Interior, Amir Machmud, and some representatives of the PPP and the PDI, the bill was called 'a threat to democracy' by the parties and the parties, in turn, were accused of 'phobia' and excessive prejudice against the government. A petition by 26 prominent Indonesian citizens, including retired ABRI officers, was issued in February 1980 stating that fifteen years of the transnational period since 1965 should be long enough to halt abuses. Finally, a compromise was reached and the new bill was carried unanimously. In fact the new Election Law No. 2/1980 brought minor amendments to the 1969 and 1975 laws. The stir caused by the elections debate in the House was followed by two impromptu speeches by President Suharto on March 7 and April 16, 1980 in which he attacked efforts to undermine national unity and stability and said that ABRI had to increase its alertness in order to safeguard Pancasila. In the same period the outspoken Minister of the Interior, Amir Machmud, gave several addresses in which he threw doubt on the good intentions of critics of government policy and their loyalty to Pancasila, calling them hypocrites. These attacks in turn were followed by a statement on May 5, 1980, by fifty prominent Indonesians which was presented to the House of Representatives a few days later. The statement, which came to be known as the 'Petition of the Fifty', criticized Suharto's speeches and called on the House and Assembly to respond to them.³⁹ The

government reaction—with a news blackout and harassment of the petitioners—is described in Chapter 3. It suffices to point out that Minister Amir Machmud continued the tough government line by warning that there were some who wanted to use the House for ‘political manoeuvring’, and stating that although the petitioners had formally acted correctly, their informal aim was to incite discontent. Such remarks go a long way to illustrate the attitude of many government spokesmen to the working of the democratic process.

It should be noted that the parties do not always show themselves capable of carrying through a sustained political programme. The internal fighting, in particular within the forcibly merged PDI faction, cannot be blamed only on government pressure and, in fact, in 1978 and 1980, the level of disagreement was such that government officials, such as of Lieutenant-General Yoga Sugama, Head of BAKIN, and Admiral Sudomo, Commander of KOPKAMTIB, had to mediate in the feuds and act as spokesmen for the PDI. Governmental control over the parties and the election process, as well as the sustaining of a widespread fear of a repetition of the 1965 events, helps to keep most members of parliament in line. They usually refrain from labelling themselves ‘opposition parties’ and prefer to exert ‘corrective control’ as ‘socio-political forces’, even when they are excluded from participation in the cabinet, as is the case since 1978.

The 1982 elections were held on May 4, under conditions which were not basically different from previous elections. Again over three million citizens were not allowed to vote or to stand for election.

The claimed voter turn-out of 91 per cent was slightly higher than in the 1977 elections, but still lower than the 94.02 per cent in the 1971 elections. GOLKAR raised its share to 64.34 per cent resulting in 246 seats (232 in 1977); while the PPP obtained 27.78 per cent with 94 seats (99 in 1977) and the PDI had 7.88 per cent with 24 seats (29 in 1977). Out of the total number of 460 seats 364 were contested by GOLKAR, PPP and PDI. The four seats allotted to East Timor were taken from the 25 appointed GOLKAR members and not from the 75 ABRI seats. Compared to the 1977 elections the PPP won one additional seat in West Sumatra, but it lost seats in four provinces. The party is not represented in four provinces, as was the case after the 1977 elections. In Jakarta the PPP lost its position as the leading party to GOLKAR.⁴⁰ The PDI won two seats in West Java, but it lost in seven other provinces, including Central and East Java the original breeding places of PDI support. The number of provinces in which the party has no representation increased from twelve in 1977 to sixteen currently. GOLKAR won fourteen seats with representation in all provinces. Only in Aceh did the PPP remained the largest political party with 59.08 per cent of the votes (GOLKAR 36.97 per cent).

Complaints and protests were made by the political parties against the violent conduct of GOLKAR supporters during the campaign. They also protested against the figures of the voters turn-out. In some provinces such as

East Timor and Southeast Sulawesi the percentages were above 100 per cent. Pelita, the daily newspaper of the PPP published its own election figures for Jakarta, which were very different from the official ones. Prior to this, incidents had been reported which were supposed not to be published by newspapers, and the editor-in-chief received several warnings. After the publication of the non-official voting results Pelita was banned on May 6, 1982.⁴¹

In conclusion, it can be said that the development of Indonesia's political party system since 1945 has been shaped by the contradictory pressures exerted by the existing diversity of the nation on the one hand, and the centralizing efforts of authoritarian and Java-centric leaders on the other. Except during the very first years, the balance has weighted in favour of the latter. Against twenty-eight political parties represented in parliament in 1955 there were ten in 1971 and only three since 1977 in the House of Representatives. Under Sukarno's Guided Democracy, parties were controlled in the name of political unity and nationalism; under the New Order they are being treated in the same way in the name of security and national development. The role of military leaders has further developed from that of being watchdogs over the 'right course' of the nation's political development to that of becoming active participants through their one-third veto in the House, their entrenched economic interests and their support for a 'civilian' party in the form of GOLKAR. Whether all this has resulted in the reduction of divisive and costly political conflict, or whether it has merely redirected such conflict into other and perhaps more devious and ultimately more damaging channels is one of the unresolved disputes within Indonesian society.

2.5. THE EXECUTIVE

2.5.1. The President

As an independent and equal branch of government, the President's constitutional position is to a large extent comparable to the Presidency of the United States. He is subject to the authority of the People's Consultative Assembly, the MPR, who elect him for a five year term and can discharge him in case he seriously violates state policy or the Constitution.⁴² The House of Representatives also, according to an Assembly Decree, has some say in this process as it is under a duty to submit a warning to the President if it considers that he is violating state policies. If the President disregards this warning the House can ask for a special session of the Assembly which will in turn consider the question.⁴³ This power has been exercised, namely in 1967 when General Suharto was appointed in the place of Sukarno. In view of the generally weak position of the House, this is unlikely to happen often. The President is Head of State and Head of government at the same time, and in the former capacity he

is also Supreme Commander of the Armed Forces and has several other executive powers, such as the power to conclude treaties. The latter is subject to the consent of the House but in practice the President often dispenses with this requirement by concluding 'executive agreements', a practice of ratifying international treaties without formal consent of the legislature borrowed from the U.S.A. The President is co-legislator with the House and therefore can initiate and veto bills in the House. The House of Representatives has no power to overrule his veto.

The President can also enact Regulations for the implementation of laws. These are subordinate to statutes enacted by the President and House together. There are different classes of regulations which include regulations made by ministers under delegated powers.⁴⁴ Article 17 of the 1945 Constitution provides for ministers as assistants to the President, to be appointed by him. These ministers have the authority to exercise executive powers of the government. They are solely and directly responsible to the President, but they have to answer questions in the House.

The President must be an indigenous Indonesian,⁴⁵ believer in God, older than 40 years, and not have been involved in subversive activities⁴⁶. In 1983, for the first time, the vice presidency came in the hands of a military officer, General Umar Wirahadikusuma.

2.5.2. State of Emergency

Special attention needs to be given to this aspect which, throughout the whole constitutional history of Indonesia, has played a crucial role and coloured Indonesia's legal structure today.

Independent Indonesia was born in armed struggle and led to independence by a dominant national leader who was never a supporter of parliamentary democracy. The 1945 Constitution and, even more so, the Transitional Provisions, gave him almost unlimited power. The 'failure' of parliamentary democracy between 1950 and 1959 helped to prepare for the period of Guided Democracy. In this period, President Sukarno's speeches were accepted as if they constituted law. Some of his speeches were also formally promoted by the Assembly and the House to the status of law. Sukarno's famous Decree of July 5, 1959 reintroducing the 1945 Constitution, was according to the Chief Justice in an interview in the newspaper *Suluh Indonesia* of July 11, 1959 an unwritten legal principle, in Dutch 'Staats noodrecht', which would allow deviation from existing procedures in cases of extreme urgency threatening the very existence of the State. Although it can now be accepted that the Indonesian nation as a whole has agreed to the return to the 1945 Constitution, there remains the question why the emergency powers in Article 184 of the 1949 Constitution and in Article 129 of the 1950 Provisional Constitution were not invoked in 1959. The same lack of concern for legality has tainted the New Order

government in its dealings with the 1965 coup and post-coup developments. The command letter of March 11, 1966, the 'Supersemar' in which President Sukarno was forced to delegate to General Suharto the power 'to take all necessary measures to maintain security, order and stability', was not explicitly based on Article 12 of the 1945 Constitution. This reads: 'The President shall declare a State of Emergency. The prerequisite to and results of a state of emergency shall be established by legislation'. Such legislation exists in the form of a 1957 Law concerning the State of Emergency, the validity of which is established through Article II of the Transitional Provisions. It seems that this question was raised in the House by former General Nasution and others but the members in question did not succeed in soliciting support from other representatives or a response from the government. The fact that most decrees pertaining to the post 1965 security situation have been 'ratified' by the Assembly softens but cannot take away the lack of a firm legal basis of security-linked regulations and institutions, including KOPKAMTIB itself.⁴⁷

Sukarno's appointment as President-for-life, in flagrant violation of Article 7 of the 1945 Constitution, was decided by the Provisional Assembly in 1963 and revoked in 1966.

The question of emergency legislation is further complicated by the extensive use of executive (emergency) decrees instead of formal legislation, authorised in yet another way by the Constitution. Article 22 of the 1945 Constitution allows the President 'in case of a crisis' to issue government regulations in lieu of legislation.⁴⁸ The second paragraph of Article 22 stipulates that such regulations must be ratified by the House in the next session and paragraph 3, that without such ratification the regulations must be revoked.⁴⁹ Its relation to Article 12 remains to be clarified. The power of Article 22 was used by Sukarno in an extensive way, and the new government continues to use it from time to time. Again, however, no reference to this constitutional provision was or is made, while the procedural safeguards in the second and third paragraphs are equally disregarded. This tendency is, of course, reinforced by the legislators' habit of using broad, vague wording, giving the Executive wide discretion in implementing regulations.

2.6. THE FORMAL LEGAL SYSTEM

2.6.1. Sources of Law

During 40 years of independence, Indonesia has had three different Constitutions, each affirming the continuing applicability of Dutch colonial law and other existing laws. This, together with the heavy reliance on executive action, which is usually to be found in a developing country, has led to a complicated legislative structure filled out with a bewildering variety of types of laws. Summarizing the sources of law, four periods can be distinguished.⁵⁰

The first period is 1945–9. Article 2 of the transitional provisions of the 1945 Constitution states that all existing regulations and institutions continue in force so long as new ones have not been established in conformity with the Constitution. Later, Government Regulation No. 2 of 1945, retroactive to August 17, interpreted the transitional article to mean that Colonial law survived only to the extent it was not contrary to the 1945 Constitution.

In the second period, 1949–50, the new independent government and the old Colonial government disputed sovereignty and both enacted laws. The 1949 Federal Constitution accepted the law in force at the moment of transfer i.e. irrespective of which regime enacted it, and this included Dutch law which had not been repealed in 1945–9, provided it was neither contrary to state sovereignty nor altered by the new Constitution. The regions, which now became states within the federal structure, were permitted to retain laws functioning as regional laws and enacted by them, provided certain conditions were satisfied.

Thirdly, there is the period 1950–9. Within months after its coming into force the Federal Constitution was replaced by the Provisional Constitution for a unitary state. This provided that all pre- and post-independence legislation passed by the Federal Republic between 1949 and 1950, was valid for the new state. In addition, all legislation of a national character enacted by the republic between 1945 and 1949 remained in force. No principles for resolving conflicts between these various bodies of law were introduced.

The fourth period is from 1959 onwards. With the return to the 1945 Constitution, article 2 of the transitional provisions became revalidated. Thus, Dutch law continues in force, except as subsequently altered or inconsistent with the Constitution. However, nothing was said about the period after 1945. Presumably legislation of the republic, the post-independence colonial government, the federal republic and the unitary state all remain in force.

2.6.2. Types of Law

In 1966, in response to the many forms of executive lawmaking introduced by Sukarno, and in an effort to clarify the types of laws permitted by the 1945 Constitution, the People's Consultative Assembly adopted the following list of forms of law based on a memorandum by the House of Representatives:⁵¹

- (a) The first is the 1945 Constituion, which can be implemented by (b), (c), and (e) below.
- (b) Decrees of the Assembly, These fix the broad outlines of national policy for the legislative and executive spheres of government. Those directed at the legislature must be implemented by 'statute', those at the executive by Presidential Decision.
- (c) Statutes. These are enacted by the House of Representatives and ratified by the President. They are passed for the purpose of implementing either the

Constitution or a decree of the People's Assembly. The President also has emergency power to promulgate 'regulations in lieu of statute', which have the same rank as statutes but must be withdrawn unless approved by the House of Representatives at its next session.

- (d) Government Regulations. These are promulgated by the President for the purpose of implementing a statute. Similar to Regulations are Decisions of the Presidium of the Cabinet, which are currently in use although not mentioned in the Assembly list.
- (e) Presidential Decisions. These are also promulgated by the President to implement the Constitution, a Decision of the Assembly in the executive sphere, or a Government Regulation.
- (f) Other implementing regulations. For the purpose of implementing a higher regulation, other regulations of a lower priority are authorized. Normally, these are promulgated by a Minister. Two examples are mentioned in the Assembly Decree: a Regulation of the Minister and an Instruction of the Minister. More in use are other forms, a Decision of the Minister or, increasingly, a decision issued by several Ministers together.

Also not listed are the circular letters, completely internal regulations issued by, for example, heads of departments, which nevertheless often determine the interpretation of key provisions in law. Under President Sukarno other new kinds of regulations were issued such as the Presidential Decrees for the purpose of implementing the July 5 Decree, and the Presidential Regulations for the purpose of implementing a Presidential Decree.

In 1966, the Provisional Assembly prohibited further issuing of Presidential Regulations and Decrees and directed the House of Representatives to review all such regulations and decrees issued since July 5, 1959, the purpose being to determine which were contrary to the 1945 Constitution. Following this, various individual regulations and decrees were repealed or replaced by new statutes. Then, in late 1968, a great number of Presidential Regulations and Decrees were repealed, and in 1969, various others were promoted to the status of statutes. Several other forms of law, unique to the colonial times or the first post-colonial areas, have survived or play a role in the interpretation of laws, some of them still bearing their Dutch nomenclature.

Although the Assembly list of 1966 indicates that there is a hierarchy in regulations, uncertainty about the exact ranking persists.

2.6.3. The Elucidation

Almost all statutes and government regulations including the Constitution itself, are accompanied by an elucidation or explanatory memorandum, prepared simultaneously with the basic document and 'enacted' or 'promulgated' along with it. Though technically only a clarification of the legislator's intentions, this accompanying document is ordinarily treated as part of the law

itself, and scholars quote from it as freely as from the regulation. Indeed, there is an extreme reluctance to put forward any interpretation of the basic document which runs contrary to the elucidation and the elucidation must always be consulted before assigning any meaning to the language of the law itself.

2.6.4. Law Reform

In these circumstances, it is not surprising that many lawyers and politicians have called for law reform. The tension which exists between the different schools of thought on unification has been mentioned in the section on adat law. The introduction of a new Code of Criminal Procedure, the KUHAP, will be a contribution to law reform but a lot still remains to be done in what one Indonesian lawyer called the 'vast and extensive jungle of law'.⁵²

Reform of the law and the practice of law and, in particular, reform of legal education, can only be accomplished by long-term efforts to improve the infrastructure of institutions comprising the legal system. One of the most basic elements is legal information, as ultimately all other improvements depend on the accessibility and reliability of legal information. An important step forward was made by the Faculty of Law of the University of Indonesia when it established, in 1972, a Legal Documentation Centre⁵³ which has as its aim the collection and cataloguing of all laws and regulations issued by both central and regional authorities. It has collected over 100,000 laws and regulations, mainly in the economic, financial and criminal fields; it publishes a monthly index called 'Informasi', organizes training courses and is involved in setting-up a national information network with the Ministry of Justice.

Also, the government itself has begun to give more attention to streamlining the law producing process and, in particular, the publication of regulations has become more reliable. Within the Ministry of Justice there is a National Law Development Centre where slow but steady progress is being made towards a better structure of the legal system.

It can be concluded, that the legal system is extremely complicated because of its history and the enormous vagueness of the laws, which leave extraordinary discretion to government authorities. Also, Damian and Hornick's warning deserves quoting in full:

Moreover, even within the narrowly circumscribed limits of our enquiry⁵⁴ distortions occur as a result of the general nature of the description. The formal legal system thus seems rather more familiar, more 'Western' than it really is. One does not learn about the low esteem in which litigation is held, or the relatively minor role assigned to courts in the settlement of disputes. Or again, when one reads that the Supreme Court can grant cassation whenever a lower court has wrongly applied or otherwise evaded legal regulations—a seemingly broad mandate for appellate review—one does not learn the more interesting detail that the Supreme Court has interpreted its jurisdiction in the

narrowest possible way, to the point where it is almost powerless to declare invalid executive orders which are contrary to the legislation they are meant to implement.

Some practising lawyers have observed that the very complexity of the Indonesian legal system in itself constitutes an obstacle to achieving a high degree of justice.

2.7. JUDICIARY

2.7.1. The Formal Structure

The 1945 Constitution provides only that the judicial power shall be exercised by a Supreme Court and other Courts; the structure, jurisdiction, appointment and dismissal of judges is to be prescribed by statute. A large number of laws affecting jurisdiction and procedure have been enacted, the most important being the basic laws of October 31, 1964 and December 17, 1970. As usual these basic laws, however, are of a very general nature and one has to look at the implementing regulations to see the true picture. Four different Court systems can be distinguished: General Courts; Military Courts; Religious Courts; and Administrative Courts.

General Courts

There are courts of general jurisdiction in both civil and criminal matters. District Courts, at each second level of the administration, function as courts of first instance, usually composed of a single judge.⁵⁵ High Courts function as appellate courts and supervise the administration of District Courts. The President, Vice-President and Justices of the Supreme Court are nominated by the House of Representatives and appointed by the President. The Supreme Court has exclusive jurisdiction in all jurisdictional disputes between courts of different court systems and between High Courts and District Courts located in different regions. It also has power of cassation, i.e. appellate jurisdiction to annul or quash decisions of the High Courts on points of law but not on facts.⁵⁶ In addition, the Supreme Court can be requested by the government to give an advisory opinion and provide guidance to all lower courts and their personnel. This is done, for example, through issuing 'personal letters' to individual Judges or 'circular letters' to all courts.⁵⁷

Military Courts

The jurisdiction of the Military Courts, structured in a three-layered system analogous to the civilian system, is confined to offences committed by members of the armed forces or persons who are declared to be of similar status. In addition, there is the Extraordinary Military Court, known as Mahmillub, established by Presidential Decree No. 16 of December 24, 1963. It has

authority to try at first and final instance any person, civil or military, nominated by the President. Although this was one of Sukarno's decrees against 'threats' to the security of the people and state during process of revolution to establish a Socialist Society of Indonesia, the New Order government has continued to use it against suspects; after the October 1965 coup attempt, the 1963 Presidential Decree was even promoted to the status of law in 1969. Ironically, Subandrio himself, former minister of Foreign Affairs, has been one of the victims of this special court of doubtful constitutionality. It appears that up to March, 1978, some 894 persons were dealt with by Mahmillub. Sentences were for death or prison terms of over 20 years.⁵⁸

Religious Courts

Traditionally administration of justice and religion have been closely linked. The jurisdiction of the Religious Courts throughout Indonesia is now confined to disputes between spouses of the Islamic faith and to cases involving Islamic law in specific areas, such as dowry, divorce, inheritance, and gifts. The judges are experts in Islamic law and come under the supervision of the Ministry of Religious Affairs. To be enforceable, the decision of a Religious Court needs the fiat of an District Court. Each region also has an appellate court and the Head of the Directorate of Religious Justice within the Ministry of Religious Affairs has been authorized to decide appeals from the appellate courts. The Supreme Court is authorized to grant cassation.

Administrative Courts

There are several courts created by separate pieces of legislation for the handling of disputes of a special nature, such as: The Taxation Review Board; the Labour Tribunals, for settling labour disputes, normally between employers and unions; they fall under the supervision of the Ministry of Labour; Housing Committees and the Land Reform Courts, and an Appellate Court established in 1964 to deal with all disputes (criminal, civil or administrative) under the 1960 Land Reform Act. However, they were all abolished by Law No. 7 of 1970 and jurisdiction over land reform has been transferred to the normal courts.

Other means of settling disputes

Although customary courts, which were first abolished and then reinstated under the Dutch colonial rule, were definitely abolished in 1951 by the independent government of the Republic of Indonesia, peaceful settlement is still practised in many villages. More and more, however, the village authorities who are asked to mediate, look to the state legal system for guidance and adapt their procedures and formulations to those of the normal courts, in this way alienating themselves from their own population. This trend is reinforced by the fact that increasingly village heads are being nominated from above rather than elected by the local population.

2.7.2. Weakness and Possible Remedies

Independence

The Judiciary in Indonesia suffers in the first place from a lack of independence from the Executive. A major problem is that the administration of the courts is under control of the Minister of Justice, including the budget of the courts and the posting, transfer and promotion of court members. The outcome of this is that judges are reluctant to act independently in cases unpopular with the government. This is most obvious in cases with political overtones. The way in which the courts have dutifully accepted indefinite preventive detention of political opponents, and their reluctance to hold executive regulations, which abridge fundamental human rights, against the Constitution and Statutes, demonstrate clearly the subordinate position which the courts have allocated themselves. The colonial past, of course, carries some of the blame as the distinction between Executive and Judicial power was blurred in the interests of the colonisers. The Indonesian government has, however, clearly not been able to remedy this situation. The new Basic Law on the Judiciary No. 14 of 1970 emphasizes the principle of independence much more than before in as much as it prohibits all interference in judicial matters by persons outside the Judiciary, unless authorized by the Constitution itself. As with many other laws the ancillary, implementing legislation has not yet been produced.⁵⁹

However, the continued existence of the *Mahmillub* constitutes such an interference, while the fact that (former) military officers constitute one-third of the 47 member Supreme Court branch does not enhance the credibility of its independence. In addition, Presidential Decision No. 82 of 1971, which establishes the mandatory membership of public officials, including judges, in a functional group, the KORPRI, which is under the Chairmanship of the Minister of Home Affairs, further undermines the independence of the Judiciary.⁶⁰

Corruption

Many observers have called this the worst disease of the Judiciary, although other branches of government and professions are not free from it either. Widespread corruption takes the form of bribes, in both criminal and civil cases, for giving the desired decision or simply speeding up or slowing down the hearing of a case. The low salaries of the judges undoubtedly contribute to the prevalence of this practice. Members of the Judiciary engage frequently in different kinds of informal commercial activities outside their profession, which have adverse effects upon their independence. Corruption in the judiciary is strongly perceived by the common people, but is rarely acted on by the authorities. In 1977 in Bogor a systematic practice by prosecutors, who delayed hearings or ordered releases on payment of solicited bribes, was unravelled and led to the transfer of a large number of them. In early 1980,

public opinion was suprised by the suspension and house arrest of one judge, followed by that of three other judges in Jakarta, by the then Minister of Justice Madjono after investigation by the military anti-corruption agency, Opstib.

Expediency

Dates are officially fixed for hearings and other procedures but are rarely adhered to, and as there are no sanctions for transgressions of the stated limits there is little incentive to change the situation. A simple district court case may take two or three years, while appeal and cassation can easily make it last for up to ten years. This situation is a breeding ground for corruption of court officials who can speed up the procedure if they are promised 'something extra'. Under the new Code of Criminal Procedure this situation has improved by limiting detention in criminal cases to maximum periods.⁶¹

The cultural gulf between the Judiciary and the people is great, in particular as judges tend to be educated in modern law with little knowledge of adat law and local customs. This is aggravated by the well-intentioned rotation system aimed at decreasing corruption opportunities and establishing fairer rotation of 'hardship posts' among judges.

Possible Remedies

Remedies are, of course, not easy to find or at least to put into practice. Improving drastically the salary structure of the judiciary would certainly help in some individual cases but is unlikely to bring all the judges above temptation. Most needed is a 'moral' revolution and a strong government backed drive against judicial corruption. The New Order government, in view of its slogan in favour of the Rule of Law, should move more quickly and forcefully to clean the judiciary. The present action by Opstib and other bodies is encouraging but often does not get to the roots of the problem. Several other suggestions were made by Indonesian sources, such as:

1. upgrading legal training and including 'ethical courses' in the curriculae;
2. giving the Press the freedom to investigate and publish its findings;
3. having the judges elected by parliament rather than appointed by the Executive;
4. instituting a 'judicial service commission' or similar body, of mixed composition, including lawyers;
5. repeal of the KORPRI Presidential Decree;
6. dismissing judges and prosecutors who have been implicated in corruption rather than the present practice of transferring them to remote areas where 'checks' are even less frequent;
7. giving judges who have engaged in corruption a public trial and punishing them rather than just dismissing them.

2.8. THE LEGAL PROFESSION

2.8.1. Lawyers

Some of the problems described in the previous section apply to a certain extent to the practising lawyers. There are equally too few and certainly too few qualified lawyers. The total number of professional legal practitioners in Indonesia is estimated at approximately 2,000, but this number includes a great many unqualified so-called 'bush lawyers' who may not appear before the high court. The official Bar Association, the Persatuan Advokat Indonesia, PERADIN, has at present 900 members in 14 branches, of which the Jakarta Branch is the most important one. Members of PERADIN are fully qualified as lawyers who have sworn a professional oath and subscribe to the PERADIN's Code of Ethics.⁶² Pressure has been placed on Peradin to join with other lawyers organizations and become part of GOLKAR, putting in fact the legal profession under government control. The organization was threatened that it would be banned as a separate organization if the leaders did not co-operate and so, in 1985 a first step in this direction was made when Peradin agreed to become part of IKADIN, a newly-created lawyers' organisation agreed with the government.

It seems that corruption is less widespread among members of the Bar than in the Judiciary although some cases are known, in particular among the non-organized lawyers. The reputation of lawyers with the general public has also profited from the fearless activities of a small number of courageous lawyers in defending political suspects of the 30 September coup, student leaders and dissidents.⁶³ These lawyers, most prominently among them Yap Thiam Hien and Adnan Buyung Nasution, have succeeded in persuading PERADIN to approve a charter on human rights⁶⁴ to support the establishment of legal aid centres, to ask the government to abolish the death penalty and to dissolve KOPKAMTIB, and to urge reinforcement of the position of the accused in the new Criminal Procedure Code.

Several lawyers, who had been active in communist or PKI affiliated organizations, were arrested and detained in 1965. Most of them have been released in the meantime. Other lawyers, who had been acting within the normal exercise of their profession, were also detained for a shorter period of time. The above mentioned lawyers, Adnan Buyung Nasution and Yap Thiam Hien, were arrested and detained without trial for a year in 1974, and released only after strong international pressure. Princen, an Indonesian citizen of Dutch origin who supported the Indonesian independence struggle and is running a small human rights institute was detained on several occasions, both under Sukarno and under Suharto. In addition, Indonesian human rights lawyers try to play a role in the establishment and functioning of regional or sub-regional lawyers' organizations, such as Lawasia.⁶⁵ At a regional seminar organized by the ICJ and the Consumers Association of Penang held from

November 30–December 4, 1981 in Penang, Malaysia, a number of lawyers from the ASEAN region considered the possibility of creating a regional human rights organization, which would be independent and non-governmental and make the legal protection of human rights its main objective. This organization was formally established in Manila on February 18, 1982, under the name Regional Council on Human Rights in Asia. Indonesian human rights activists are supportive of this initiative, and it was at the first General Assembly of this Council held in Jakarta on December 9, 1983, that the Declaration of the Basic Duties of Asian Peoples and Governments was adopted. This Declaration emphasizes the failure of governments to recognize the individual and collective rights of Asian peoples. It deplores also the failure to ratify the International Conventions on Human Rights and the protocol to the Covenant on Civil and Political Rights.⁶⁶

It is observed that harassments and pressures are usually directed at the client rather than the lawyer, but the case of Fatwa, in 1982 is one example of threatening both client and lawyer. The former was even physically assaulted.⁶⁷

2.8.2. Legal Aid

The concepts which underlie legal aid programmes in Indonesia are broadly defined as the rendering of legal services to the poor who, for the most part, are ignorant not only of the law but also of their right to access to legal services and legal aid.⁶⁸

Commenting on the need for legal aid in Indonesia, one prominent legal aid lawyer said:

Almost all the people, especially the poor ones, are ignorant of the law. Their consciousness of the law is very low, in the sense that generally they do not know their rights and obligations under the law. They also do not know and are not aware that in facing and in settling their problems or cases there is an institution known as legal aid to which they are entitled and which is available to them. What is more unfortunate is that if they know their rights and if they know that legal assistance is available to them, yet they refuse to exercise those rights for want of courage. In our opinion, this is the biggest obstructing factor. Until this moment, the reasons for this timidity have never been studied. We can only guess that there are two principal reasons for this. First, due to pressure, intimidation and arbitrary detention of the poor people, who are ignorant of the law, which have been done since the Dutch colonial times and the Japanese occupation until the present by the authorities, be it the police, the prosecutors, or the military. Second, a reason which perhaps we should find at the root of the problems: the social structure of the Indonesian people, particularly that of Java, and established traditional state politics which holds that the state is nothing but the entire society or entire people of Indonesia, as an ordered structure unity. According to the integralistic view of the state, as a nation in its ordered aspect, as a united people in its structural aspect, there is basically no dualism of state and individual, no conflict between the state organization on the one hand, and the legal order of individuals on the other, no dualism of state and society without state.⁶⁹

It should be recognized that legal aid activities only became feasible after the New Order government took over and started campaigning on a return to 'the Rule of Law'. Since 1967, legal consultation bureaus mostly run by students, have started to sprout up, based on or linked to state and private universities, starting with the Law Faculty of Pajajaran University in Bandung. In the same period, PERADIN established in Jakarta Indonesia's first private Legal Aid Institute, the Lembaga Bantuan Hukum, LBH, which, with financial assistance of the progressive Jakarta governor, Ali Sadikin, started to function in 1971. In its first years, it met with massive suspicion from the central government, in particular when it tried to expand its activities into the villages.⁷⁰ Between 1977 and 1980 the hostility between government and LBH lessened, helped by the recognition of the need for strengthening legal aid structures in Pelita III.⁷¹ With the help of grants by United States and Netherlands' donor agencies LBH consolidated its position. It has now over fifteen permanent legal staff and an adequate office in Jakarta. It deals with thousands of individual cases annually and up to March 1981 13,642 cases had been settled in court. Recently the relation between government and LBH has declined again, which was demonstrated by the withdrawal of Jakarta City funding and repeated denial of permission to leave the country to the chairman of LBH.

Other legal aid institutions have been stimulated by this and there are now at least 100 legal aid organizations throughout Indonesia. Most of them, however, are small, understaffed, ill-equipped, and struggling to establish themselves as viable, ongoing institutes. Without outside moral and financial support it is doubtful that many of them can survive serious setbacks, let alone expend and upgrade their operations and move further into the rural areas.

Two other institutions ought to be mentioned in this context. The first is the Institute of Criminology of the University of Indonesia in Jakarta, which is committed to the achievement of a system of criminal justice free from abuse of authority and other excesses. This has led to increasing cooperation with the various legal aid groups. As a consequence of a workshop in 1978 on the Problems of Legal Aid, the Institute has become a clearing house for criminal problems of the poor, and legal aid information in particular. It publishes a bi-monthly periodical called 'BAHANA' containing information on cases, legal aid institutions and literature.

Another supportive organization is the above-mentioned Legal Documentation Centre Jakarta. Its efforts in building, cataloguing and indexing Indonesia's most complete collection of laws, regulations, court decisions, and other legal materials, could be of importance to legal aid groups who often lack the resources to build up their own legal documentation.

The government has an ambivalent attitude towards legal aid which is shown by the provision of financial support on the one hand, and its efforts to discredit and diminish the impact and independence of existing bureaus on the other.⁷² Adnan Buyung Nasution, Chairman of the Indonesian Legal Aid Foundation,

was quoted without reservation in governmental publications when he stated that the legal aid concept had been accepted by the government and included in the Five Year Plan and that the authorities had made available 800 million Rp. (1.2 million US\$) in the years 1981 and 1982; but, in the same period, strong government criticism by the Minister of Information, Ali Murtopo and the Minister of Labour, Harun Zain, was directed at LBH, which was accused of politicizing. This charge seemed to be fuelled by LBH's increasing role in labour disputes and its questioning of the accuracy of the government's claim that political prisoners, radical muslims and regional autonomy rebels had been released.⁷³

Generally the authorities feel more at ease with the traditional legal aid activities, the litigation-oriented service to individuals, than with the more recent surge of a 'structural legal aid' movement which aims to assist the workers and depressed sections of the community to improve their lot by achieving a redistribution of power. How uneasy the government is about this can be illustrated by its withdrawal of approval in October 1981 for a workshop on 'Legal Aid and People's Participation' to be organized jointly by the regional UN body, ESCAP, and the LBH in Jakarta.⁷⁴

2.9. LAW ENFORCEMENT

2.9.1. Police

Indonesia has a national police force. Its administrative structure follows the regional and subregional boundaries, and the smallest village unit is ultimately responsible to the central office. Since the 1967 Presidential Decree No. 132 the national police force is under command of the Minister of Defence and Security and has been made part of the armed forces. In exercising its function to maintain order and guarantee public security as stipulated in the Basic Law on the Police No. 13/1961 the police come further under military command and control. This also carries the consequence that the Police are no longer subject to the law which is applicable to civilians. It is subject to the military criminal law and procedure code. Notwithstanding its status the Police, on the basis of the Code of Criminal Procedure (KUHP) No. 8/1981, are given sole authority to conduct investigation of crimes and violations of the law committed by civilians. In chapters 3 and 4 the practice of prosecution is described in more detail.

2.9.2. Prosecutors

The Office of Prosecution is an autonomous agency of the government with a structure similar to that of the Supreme Court, i.e. a Prosecutor General at the top level with supervisory powers over District Prosecutors and High Court

Prosecutors at the level of District Courts and High Courts respectively. The Prosecutor General is directly responsible to the President. Organization and powers are regulated in the Basic Law on the Prosecution No. 15 of 1961, in which it is stipulated that the main function of the office of prosecution is to prosecute criminal cases and to execute the verdicts and decrees of the criminal judge. In addition they were authorized to carry out further investigations of crimes and violations of law. This latter authority is now abolished with the issuance of the new Criminal Procedure Code No. 8/1981, which gives the sole authority for investigation to the Police. Nevertheless, the Code allows some exceptions under which the Prosecutor General, apart from his ordinary role as prosecutor, retains extraordinary powers to detain suspects for up to one year and to search premises and seize goods without warrant, such as under the Anti-Subversion Law, the Anti-Corruption Law, the Economic Crimes Law and the Narcotics Law. He also retains a discretionary power to forbid publication of any printed matter.

2.9.3. KOPKAMTIB: A Unique Enforcement Agency

Special attention is given to an addition 'law enforcement body', the Operational Command for the Restoration of Security and Order the, KOPKAMTIB, which is by far the most powerful actor in the legal reality of present day Indonesia.

KOPKAMTIB was established on October 10, 1965 by Major General Suharto, as commander of the Army Strategic Reserve, pursuant to the authority given to him by President Sukarno to 'restore order and security' in the immediate aftermath of the so-called 30th September Movement. Formal recognition of KOPKAMTIB was granted by President Sukarno on November 1, 1965.⁷⁵

Since its establishment, KOPKAMTIB has functioned firstly as the 'core' institution around which the 'New Order' government was constructed after October 1965 and, secondly, as the key institution in the exercise of government authority and the maintenance of internal security, public order and social control in Indonesia. With effectively unlimited powers and ultimate control over all the armed services, KOPKAMTIB remains the single most powerful institution in the New Order policy.

On December 6, 1965 Presidential Decree No. 179 expanded the powers of KOPKAMTIB, empowering it 'to restore security and order as a result of the abortive PKI September 30th *coup d'état* attempt and to restore the authority and integrity of the Government through physical military and non-military operations'. Three and a half years later, on March 3, 1969 Presidential Decision No. 19 gave the KOPKAMTIB still further powers. First, to restore security and order as a result of the abortive PKI September 30th *coup d'état* attempt and to surmount other extreme and subversive activities, and second,

to take part in securing the authority and integrity of the Government and its apparatus from the central to the provincial administration in order to safeguard the preservation of the Pancasila and the 1945 Constitution.⁷⁶

A close institutional and operational relationship exists between the KOPKAMTIB and the Department of Defence and Security. Since 1969, when KOPKAMTIB was instrumental in enforcing integration of the Indonesian Armed Forces, KOPKAMTIB and Hankam have been closely linked.⁷⁷ According to an official KOPKAMTIB pamphlet issued in English, specifically for foreign consumption, KOPKAMTIB is essentially an integral part of the Department of Defence and Security, but assigned specifically to handle specific matters. Therefore KOPKAMTIB also utilizes the existing units and organs of the Department of Defence and Security, such as the regional command units, the intelligence apparatus, the Police Force and other units whenever deemed necessary.⁷⁸

Operations of KOPKAMTIB

The original function of KOPKAMTIB when established in late 1965 was 'to purge from the government and the armed forces PKI members and others suspected of complicity with the communists in the attempted coup of 1965'.⁷⁹ Since then the KOPKAMTIB's security function has expanded rapidly. It soon became 'the government's main instrument of political control' dealing with a wide field of dissident activity.⁸⁰

In August 1967 the regional and local army commanders were made Special Executors of the KOPKAMTIB. The KOPKAMTIB organization then reached down through the military structure to the village and small town levels across the country. The regional KOPKAMTIB organizations had ultimate authority for the day to day maintenance of internal security within provincial and local government regions. In 1969 and again in early 1970 KOPKAMTIB banned all public demonstrations. It also banned the dissemination of the teachings and writings of former president Sukarno.⁸¹ By 1970 KOPKAMTIB was playing a major role in the organization and supervision of the general elections planned for the following year. As early as February 1970 the Minister for Home Affairs is reported as saying that KOPKAMTIB had 'exclusive authority' to 'screen all candidates in the elections'.⁸² By 1971 all candidates for the elections had to be specifically 'cleared' by the KOPKAMTIB before they could participate in the election campaign, which was itself conducted under KOPKAMTIB supervision.⁸³ The early 1970s saw a further rapid expansion of KOPKAMTIB activities. New passport regulations gave KOPKAMTIB authority to approve applications for passports by Indonesians wanting to travel abroad.⁸⁴ In October 1972 KOPKAMTIB banned a report by the highest national legislative body, the People's Consultative Assembly, prepared under the guidance of the Assembly chairman General Nasution, which suggested government manipulation of the 1971 general elections to ensure a GOLKAR

victory.⁸⁵ In March 1973 KOPKAMTIB was authorized to provide financial assistance each month to GOLKAR and each of the two new major political party groupings, the PPP and PDI.⁸⁶ In the same year KOPKAMTIB took a leading part in a government campaign against the wearing of long hair by male Indonesian youth.⁸⁷

In January 1974 during the so-called 'Malari' riots KOPKAMTIB dissolved several student organizations and arrested a number of student leaders. Immediately following the riots, the command of KOPKAMTIB was taken over by President Suharto, thereby integrating the organization with the highest institution of civilian government.⁸⁸ In the aftermath of Malari, KOPKAMTIB adopted four principles in carrying out its role, task and authority:

- to provide guidance for the people, but at the same time give them full opportunity to develop their own initiatives;
- to act as protector of the society;
- to take repressive measures only with the intention of preventing the occurrence of an undesired or unstable situation, and
- to use force only as a method of persuasion, and to use persuasion as a means to solve problems.⁸⁹

A number of national newspapers were banned by order of the KOPKAMTIB following the Malari riots, and from early 1974 publishers and editors had to obtain security clearances from KOPKAMTIB prior to applying for publishing permits from the Department of Information.⁹⁰

In January 1978 KOPKAMTIB again carried out a series of arrests of students and other government critics 'suspected of carrying out subversive actions'. In addition, the activities of student councils of all tertiary institutions were frozen by order of KOPKAMTIB and six major national newspapers were temporarily banned.⁹¹ Since 1966, in addition to its activities in the arrest, interrogation and detention of suspected communists or persons alleged to have been involved in the 30 September Movement, KOPKAMTIB has been responsible for the arrest and detention of several prominent critics of the government and unknown numbers of ordinary persons accused of endangering law and order. Apart from alleged communists or dissident intellectuals, the other largest single category of persons affected by such KOPKAMTIB activity has been those accused of being Moslem extremists or terrorists—mostly persons alleged to be associated with the banned Darul Islam movement.

The Legal Basis for KOPKAMTIB

The Indonesian government argues that the legality of the KOPKAMTIB proceeds first from Presidential Decisions of October 10, 1965, December 6, 1965 and March 3, 1969. A second legal basis is found in Assembly Decision No. X/1973: 'To give power to the President as Mandatory of the People's

Consultative Assembly, to take necessary steps in order to safeguard and maintain the unity and integrity of the nation and to prevent the re-occurrence of the threat of the PKI/September 30th Movement and other threats of subversion, in safeguarding national development, the Pancasila Democracy and the 1945 Constitution'. The third legal basis is the Presidential Decision No. 9 of March 2, 1974, whereby 'KOPKAMTIB was entrusted to be the vehicle for carrying out the mandate given by the People's Congress to the President'.⁹²

The government now specifically argues that the KOPKAMTIB was not established under Martial Law. Thus:

KOPKAMTIB does not function under a State of Emergency or Martial Law. It functions under a normal and ordinary condition. However, due to the pressure of internal as well as external events, it is foreseen that subversion may become a threat to the internal security and order, therefore the existence of KOPKAMTIB is needed. Thus, without alarming the entire nation by resorting to the proclamation of a State of Emergency or a state where Martial Law prevails, it is deemed more effective to deal with the subversion and infiltration problems through the establishment of a body that specialises in preventing such problems, namely KOPKAMTIB. . . Thus, KOPKAMTIB is quite unique in Indonesia's national security system. Essentially, its existence makes it possible to tackle a threat or danger in a specific way under normal circumstances, without resorting to a State of Emergency.⁹³

Notwithstanding the government argument, the legal basis of the KOPKAMTIB remains unclear. In December 1973 the KOPKAMTIB commander described it as an 'extra organization structure'.⁹⁴ In 1977 a KOPKAMTIB publication refers to KOPKAMTIB powers being exercised and limited 'by the provisions of the 1945 Constitution and the law as well as the principles of Pancasila'.⁹⁵ But the 1945 Constitution contains no such limiting provisions, nor has any law been passed limiting, or even defining, the activities of KOPKAMTIB, apart from the presidential decisions referred to above.

Assessing KOPKAMTIB

In the 1977 KOPKAMTIB publication the operational command is described as follows: established specifically in order to deal with the aftermath of the PKI abortive *coup d'état* attempt. As the name indicates, it was a special operational command for the restoration of security and order as a result of the instability and disorder created by the abortive PKI *coup d'état* attempt. According to this publication the specific tasks of KOPKAMTIB in terms of its operations are defined as:

1. To perform operations to restore security and order affected by the PKI/September 30th Movement, the communist armed bands (namely Communist guerillas in the border areas of Sarawak), the separatist armed band

OPM/GLP (namely the separatist movement of the so-called Papua Freedom Movement), and the 15th January 1974 Affair.

2. To surmount communist subversive activities and subversive activities by other extreme groups.
3. To safeguard in an indirect manner all of the policies and programmes of the Government, particularly the Five Year National Development Programme, and the authority and integrity of the Government from the central to the regional administration level.
4. To handle in a specific manner the problems of security, as directed, where routine operations cannot function in coping with such problems.

(KOPKAMTIB) has the power to detain or arrest. And it does have access to all Government and non-Government offices at all levels throughout the nation.⁹⁶

A study prepared for the US foreign service makes the assessment that by 1974 KOPKAMTIB was a large and powerful organization which was generally regarded as the government's principal enforcement agency in the field of national security. . . Kopkamtib was increasingly used as an instrument of government control over matters of culture and ideology. . . Its functions extended to broad control over all forms of public expression during the early years of the 1970s. Regional KOPKAMTIB commanders were reported in press accounts as exercising powers in such matters as prohibiting the presentation of plays and motion pictures, banning the discussion of specific subjects within universities, suppressing gambling, and imposing prior censorship over the publication of pamphlets and printed material. KOPKAMTIB's broad control over all forms of media expression was forcefully expressed when it banned the publication of a number of Indonesian newspapers, including some of the most important and influential ones, following the outbreak of disorders that occurred during the visit to Jakarta by Prime Minister Kakuei Tanaka of Japan in mid-January 1974. . . KOPKAMTIB had powers of arrest, interrogation and detention that it exercised throughout all sectors of Indonesian life, including the armed forces.⁹⁷

In January 1974 the Indonesian Minister of Defence stated that KOPKAMTIB: 'gives directions in the social and cultural field' and is called upon at times to 'break through stagnation in state administration and in development efforts'.⁹⁸

Notably, KOPKAMTIB activities range widely across the civil law enforcement, social and cultural regulation and national security functions also carried out by the national police, the legislature, the civilian bureaucracy and the intelligence agencies. The overlap between so-called 'criminal' and 'subversive' activities is well illustrated in the 'opstib' and 'Sapujagat' campaigns launched by the KOPKAMTIB and directed at the elimination of corruption and criminology. Both campaigns asserted the primacy of KOPKAMTIB's authority over the police, bureaucracy and legislature. Exercising 'virtually

unlimited power', KOPKAMTIB has functioned as the 'key instrument' in maintaining the government's authority.⁹⁹

One of the foreign scholars of the Indonesian armed forces assessed the role of the KOPKAMTIB as being to take

care of all internal security aspects in the widest sense and included the powers of assuming control over combat troops if large-scale security operations were necessary, and screening all military organizations, including Hankam, for military men involved in unwarranted political activities. ... it soon emerged as the most oppressive and most feared agency of the regime, interfering in the political activities of every social-political organization and arresting people at will.¹⁰⁰

According to a prominent student dissident

Its power is limitless, [it is] not merely concerned with the problems of PKI political prisoners but affects the 'breath' of every Indonesian: rising prices, registration of schools, occupation of (university) campuses, corruption, etc. In simple language: KOPKAMTIB is the jago, the warrior, and bodyguard of the New Order regime in its dealings with the people.¹⁰¹

2.10. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The Indonesian government has never shown great interest in ratifying international human rights instruments. Inspired by the adoption of the Universal Declaration of Human Rights by the United Nations, the Federal Constitution of 1949 and the Provisional Unitary Constitution of 1950 contained a rather large number of specific human rights provisions, but this is not the case in the 1945 Constitution which is now in force.

Of the principal international conventions on human rights and humanitarian law, Indonesia had ratified on January 1, 1985 only nine.¹⁰² None of the others had been signed or ratified, including the two 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, which entered into force in 1976, or even the widely ratified 1965 International Convention on the Elimination of All Forms of Racial Discrimination. A reply to the request for information by the UN Sub-Commission's working group on universal acceptance of human rights instruments has not been received.

To a similar request by the working group on Slavery of the same Sub-commission, concerning two instruments, the Indonesian government replied in 1977:

1. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949 is still under close consideration by the competent authorities in Indonesia. The final position of Indonesia on this matter will be communicated to the Secretary-General of the United Nations in due course.
2. As regards the Supplementary Convention on the Abolition of Slavery, the Slave

Trade, and Institutions and Practices Similar to Slavery of April 30, 1956, it should be duly noted that the basic aims and the spirit of this Convention are fully in line with the basic State philosophy 'Pancasila' as well as with the 1945 Constitution of Indonesia. However, Indonesia thus far does not accept the principle of compulsory jurisdiction of the International Court of Justice as provided for in Article 10, while Article 9 does not give room to States to make any reservations to this Convention. For those reasons, Indonesia finds herself in difficulties to ratify or accede to said Convention. Within this context it is necessary to mention that Indonesia maintains a similar position concerning the Slavery Convention of 1926.¹⁰³

Of the ILO Conventions, Indonesia had ratified on January 1, 1985 only a few. In particular, the widely ratified 1948 Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, which came into force in 1950, and the 1958 Convention, No. 111 concerning Discrimination in Respect of Employment and Occupation, in force in 1960, are missing. The gap between Asian figures of ratification of ILO Conventions and those of other regions has often been a matter of concern, for example the Sixth Asian Regional Conference at Tokyo, 1968 made an appeal for ratification of Nos. 87 and 98; and the Seventh Asian Regional Conference at Teheran, 1971 concluded that the figures for ratification were capable of substantial improvement, should Governments genuinely desire to do so. ILO Convention No. 87 on Freedom of Association received particular attention in 1971 and that Conference passed a resolution from a Committee, on which Indonesia was represented, that members should ratify No. 87 and arrange for their effective implementation. However, the Indonesian Government was among several which indicated to the 58th Session of the ILO Conference in 1973 that ratification of Convention No. 87 was 'not presently envisaged'.

In the second half of the 1970s the Indonesian Government has been regularly mentioned as one of the Governments which have failed to supply information requested by the ILO on moves to ratify and implement ILO Conventions. The ILO's Committee of Experts on the Application of Conventions and Recommendations solicited from the government in the mid 1970s information about the treatment of political detainees, especially about allegations that they were being subjected to forced labour, as Indonesia has ratified in 1950 the ILO Convention of 1930 concerning Forced Labour. In reply to this body and to the Conference Committee, the government reiterated its plans for the release of prisoners in annual shifts. The ILO continued to follow these developments until the final release of the remaining prisoners in 1979.¹⁰⁴

The 1951 Convention relating to the Status of Refugees with entry into force on April 22, 1954, and its New York Protocol entering into force on October 4, 1967, have also not been ratified and this became evident again when in the years 1978-80 Indonesia came under pressure by mass exoduses of Indo-chinese refugees, many of them of Chinese origin. It should, however, be stated

that with some exceptions UNHCR officials usually have been satisfied with the cooperative attitude of the Indonesian government, in particular in providing provisional assistance to refugees who were to be resettled in other countries later on.

The Australian Section of the International Commission of Jurists, after a mission in September 1984 to Papua New Guinea to investigate the legal and political status of the 'border crossers' from Indonesia's province of Irian Jaya, concluded that a large number of these border crossers are either refugees within the terms of the 1951 Convention and 1967 Protocol, or are people clearly in a refugee-like situation within the mandate of UNHCR. It was recommended that Indonesia and Papua New Guinea ratify both the 1951 Convention and 1967 Protocol.¹⁰⁵ Papua New Guinea did so in 1986.

2.11. CONCLUSIONS AND RECOMMENDATIONS

The functioning of democracy in Indonesia has to be understood in its historical and cultural context. From Hindu feudal systems through colonial exploitation and subjugation to a military dominated oligarchy, the ideal of a government responsible to the people has had little chance to develop. Under the impulse of the New Order government the development towards 'institutional democracy' has been hastened and elections have become more and more ceremonial events, electing those who are already in power. A system has been reinforced which caters foremost to the needs of the military and commercial sectors rather than to the needs of the mass of the people. Where the rights of the people are protected, this seems to be done often more out of a mentality of 'generosity' of the rulers than the recognition of inalienable rights of the people.

The elevation of Pancasila from an indigenous source of inspiration to the 'supreme ideology' of the land, with the sole power of interpretation in the hands of the president and military leaders, is in such a situation a dangerous development. Rather than making the law supreme it makes the laws subject to the wishes and interests of the rulers. The recent promotion of Pancasila as the 'sole foundation' for any political or non-governmental movement and as sole framework for the conduct of labour relations and economic development is either unnecessary, as these principles in their basic meaning are understood and accepted by the people at large, or dangerous if they are used to impose the government's policies on individuals and groups which have different opinions and priorities.

The New Order government, which came to power after the 1965 events on the basis of a programme in favour of the Rule of Law, can not be said generally to have maintained its commitment in the following ways:

- (a) It has not given its emergency measures a legal basis by using existing constitutional provisions and, on the contrary, has maintained and created extra-legal security bodies such as KOPKAMTIB, without basis in law;
- (b) It has not restored political life but further entrenched military control over society by continuing and even legalizing the 'dwi-fungsi' (double role) of the armed forces, by forcing a process of 'simplification' on the civilian political parties, by creating a military-civilian 'party' of its own, and by putting high-ranking military officers in almost every key position in administrative, social and economic institutions. No date or even preliminary time table for withdrawal by the military from power has been set.
- (c) It has moved on several occasions to suppress harshly expressions of discontent or efforts at establishing self-reliant organizations as counter-vailing powers.

The forced reduction of the number of political parties is an illustration of the government's view of democracy. Even more serious is that it does not let the three admitted parties function freely. Golkar, the government controlled party, lacks internal democracy and the other parties are prevented from campaigning and organizing outside the cities.

The overly complicated formal legal structure and ensuing problems are being addressed to some extent by the government but these efforts deserve further strengthening.

Corruption is part of the concentration of power and wealth in the hands of a few people. Although it can be argued that it is found in every country or culture, it has to be admitted that the phenomenon of corruption in Indonesia is so endemic at every level that it is eating away at the foundations of the nation's economy and sense of self-respect. The New Order government came to power with the slogan 'clean and efficient government' but in spite of a number of well-publicized actions, very little has been done to tackle corruption at the highest level.

The legal aid movement has a broad scope in its mandate. In addition to giving assistance in individual cases, it includes efforts aimed at structural strengthening of the people's ability to enforce their rights. This broader scope is not understood by the government as necessary in a society where alternatives for civic education and participation are closed or fully controlled by the government.

The government's commitment to human rights is not obvious from its legal obligations in the following ways:

- (a) The Constitution contains only a few express references to the rights of citizens, and a return to the fuller provisions of the 1949-50 Constitution seems not to have been seriously considered. The attitude of the Judiciary towards non-incorporated international human rights provisions is one of reluctance.

- (b) No international instruments of significance in the field of human rights have been ratified by the New Order government. Adherence to the International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights, the International Covenant on the Elimination of all Forms of Racial Discrimination and the most important ILO Conventions would go a long way to making the Government's claim to be committed to human rights more credible.

The New Order government appears to have lost its initial drive towards re-establishment of the Rule of Law. Although in the long run constitutional changes cannot be evaded, a number of measures could be taken in the short-term, within the present legal system, which could alleviate some of the most pressing problems. The security apparatus, and in particular KOPKAMTIB, should be reviewed and made subject to the law of the land.

Pancasila should be restored to its original status of a preamble to the constitution with a special value in the interpretation of legal provisions. It should not be given more operational value than it can possibly bear on the basis of its general wording.

The 'dwi-fungsi' of the armed forces and its disproportionate allocation of seats in Parliament and in the People's Assembly should be reviewed as soon as possible. A reasonable timetable for complete withdrawal by the military from power has to be set.

Although ultimately freedom to organize in political parties should be fully recognized and restored, the most important and immediate step for the New Order government should be to allow the existing three parties to organize and campaign freely at every level, without any intervention by government officials. Proposals made by the PPP and PDI in parliament since 1975 should be considered seriously as a basis for new legislation in this field.

Law reform to reduce the existing complexity of the legal system should be continued with special attention to the following points:

- (a) The excessive use of regulatory discretion in the implementation of vaguely worded legislation should be reduced. Although it is understood that this is a long-standing practice which cannot be remedied overnight, the practical importance of a more responsible administration for both greater justice and sustained economic development is such that attention to the quality and specificity of the law is warranted.
- (b) The establishment of specialized and independent administrative tribunals should be considered as a means of countering abusive practices and lack of certainty in the distribution of administrative justice.
- (c) At the level of implementation more attention should be paid to the independence of the judiciary, the independent organization of the legal

profession, the elimination of corruption and strengthening legal aid movements.

The independence of the bar, both in its organization and its disciplinary role, should be fully respected. Other forms of legal aid should be welcomed and in particular the existence of independent legal aid institutes, educating the people in their rights, should be encouraged rather than obstructed.

NOTES

1. 'adat' comes from the Arabic 'hadat' which means 'right conduct', social behaviour according to local custom.
2. Koesnoe, M., *Introduction to Indonesian Adat Law*, 1971.
3. See her article 'Adat law in Indonesie', in 50 *The Islamic Review* 18, 1962.
4. C. van Vollenhoven, *Het adatrecht van Nederlandsch-Indië*, 1918.
5. This enforcement through their own court came about gradually, being officially recognized and legalized by decree only in 1932.
6. State Gazette 1917, No. 129. This regulation was applied to the whole of the Indonesian territory as from September 11, 1925.
7. F. Strijbosch, 'Report of a Symposium on Law and Development', Leiden 1981 (published in 36 *NJB* October 1981, p. 965).
8. See *Blaustein's Constitutions of the Countries of the World*: 'Indonesia' by Gerald A. McBeath issued May 1973, New York, p. 5.
9. In the preamble to the 1949 and 1950 Constitutions slightly different wording was used:
 1. Acknowledgement of God the Almighty;
 2. Humanitarianism;
 3. Nationalism;
 4. Democracy ... and;
 5. Social justice.
10. From *Blaustein's Constitutions*, p. 36.
11. Kahin, *Nationalism and Revolution in Indonesia*, Cornell, 1952; Benda, *Tradition und Wandel in Indonesien, Geschichte in Wissenschaft und Unterricht*, 1963 and in *The Crescent and the Rising Sun*, the Hague-Bandung, 1958; B. Dahm, *Sukarnos Kampf um Indonesiens Unabhängigkeit*, thesis Kiel, 1964 (Dutch edition 1964, Boom & Meppel and English edition Yale U.P., New York, 1969).
12. Kahin, *ibid.*, p. 123.
13. *Far Eastern Economic Review*, July 24, 1981, p. 32.
14. *Far Eastern Economic Review*, July 25, 1980, p. 33.
15. Indonesia letter No. 129, Edisi bulan juli 1980.
16. See also Chapters 2.4.3. and 3.1.3
17. *Indonesia Times*, 11.9.1981.
18. *Indonesian Workers and their Right to Organize*, March 1984 Update, published by Indoc, Leiden, 1984, pp. 13-15.
19. *Asia 1982 Yearbook*, Hong Kong 1982, p. 160.
20. The MPR has declared that its powers to amend the Constitution do not include

- the Preamble, as amendment of the latter would mean the dissolution of the State since the Preamble contains the fundamental ideology of the State (Decree No XX /M.P.R.S./ 1966 of July 1966).
21. A discussion on this subject took place in 1980 when on July 5, parliamentarians of the two minority parties forwarded a 'right of inquiry' asking President Suharto for an explanation of his two speeches made earlier that year. Some government circles responded quickly that the President was not obliged to answer. This was stated in the editorial command of the *Indonesian Observer* of August 5, 1980. The case mentioned was related to the Statement of Concern of the Petition of the 50, mentioned in Chapter 2.3.1.
 22. This formal description is based on Oey Hong Lee, *Indonesia, the 1977 Elections*, Oxford University Press, 1974.
 23. *Indonesia's Formal Legal System*, introduction by Eddy Damian S.H. and Robert N. Hornick J.D.; reprinted from *American Journal of Comparative Law* vol. 20, No. 3, Summer 1972, pp. 4-6.
 24. See Brian May, *Indonesian Tragedy*, London 1978, pp. 272-81: Packing the MPR.
 25. *idem*, note 23, p. 9.
 26. *idem*, p. 10.
 27. Article 42, Law No. 16 of the 1969 and Law No. 13 of 1970 concerning police procedures towards members of the MPR and MPR and DPR, LN 73/1970.
 28. Article 43 Law No. 16 of 1969.
 29. This analysis was made by Leo Suryadinata in 'Political Parties and the 1982 General Election in Indonesia', research notes and discussions paper no. 36, Institute of South East Asian Studies, Singapore 1982, pp. 1-3.
 30. A clear picture of these political developments is given by Harold Crouch in 'The Army, the Parties and the Elections', *Indonesia* No. 11, April 1971, pp. 187-8.
 31. See Masashi Nishihara's article 'GOLKAR and the Indonesian Elections of 1971', monograph series of the Modern Indonesian Project of Cornell University, 1972, pp. 11-12. Cf. note 34.
 32. *idem*, pp. 13-15.
 33. This ordinance was further clarified by Presidential Decree No. 68 of October 27, 1970, and by the Home Affairs Minister's Order No. 39 of April 22, 1971. See Masahi Nishihara, quoted above. It was also reported in *Jakarta Times* of April 23, 1971.
 34. Oey Hong Lee, 'The Emasculation of Political Parties', in Malcolm Caldwell, (ed.), *Ten Years Military Terror in Indonesia*, London 1975, p. 64-6.
 35. *idem*, p. 70. See also chapter 3.3.2 of this study.
 36. In 1985 the House passed a law in which the Pancasila as sole principle was prescribed to all political parties. See further Chapter 2.3.2.
 37. See Leo Suryadinata, quoted in note 29, pp. 30-1.
 38. For detailed discussion see chapters 3.1.2. and 3.1.3.
 39. See 2.3.2. for the full text of the Statement of Concern of the Petition of 50.
 40. After the Lapangan Banteng riot of March 18, 1982 GOLKAR changed its strategy stressing national unity in its campaign and condemning violence and exclusivism. The latter charge is directed against the restriction of PPP membership to Moslems only. Implicitly the government blamed the PPP for these riots.

41. For details of the Pelita banning and the weekly Tempo suspending see Chapter 3.2.3.
42. Article 4, MPR Decree VI of 1973.
43. Article 7, MPR Decree VI of 1973.
44. See section 2.6 of this chapter.
45. This requirement does not pertain to the Vice-President. The 1949 and 1950 Constitution does not contain the indigenous requirement at all. Cf. Chapter 3.6 on racial discrimination.
46. Article 6 of the Constitution and MPR Decree No. 11 of 1973.
47. MPR Decree No. X of 1973, re-affirming a 1966 MPR Decree. For KOPKAMTIB details see further Chapter 2.9.3.
48. Similar provisions can be found in the 1949 and 1950 Constitutions which restricted this power to the regulation of matters which fall within the (very broad) 'nature of governmental administration'. These emergency acts and the 'regulations in lieu of statute' issued before January 1, 1961 have been given the status of statutes.
49. Unlike in the 1949 and 1950 Constitutions they do not lose their validity spontaneously and, by want of a specific revocation by Presidential Decree, many of these regulations have carried on with an ambivalent legal status.
50. *Idem*, note 23.
51. MPRS Decree XX of July 5, 1966.
52. T. Mulya Lubis in *Langkah Telah Diayunkan*, LBH, Jakarta, 1981, p. 128. See for detailed description of the Code of Criminal Procedure Chapter 4.
53. The Pusat Dokumentasi Hukum, located in the JL. Cirebon, Jakarta Pusat.
54. The authors had made clear in previous paragraphs that their research and analysis had been confined to a purely descriptive treatment of the formal legal system.
55. Ordinarily a court requires three judges but the law authorises the president to establish 'single judge' courts when necessary. Three-judge panels have become the exception rather than rule.
56. Cassation is a legal notion of French origin and has been introduced through the Dutch legal system.
57. Although these circulars do not contain binding law, some of them affect the law in an important way, e.g. in September 1963 a circular letter was issued declaring that the Dutch Civil Code was no longer part of binding Indonesian law but should be treated merely as an 'authoritative textbook'.
58. TAPOL Bulletin No. 34 of June 1979, p. 16.
59. However, article 23 of Law No. 13 of 1965 concerning General Courts and the Supreme Court seems to authorize such interference.
60. Presidential Decision No. 82/1971. For a more detailed description, see: Tuty Hutagalung, Government, Employees and Political Activity in: *Langkan Telah Diayunkan*, LBH—Jakarta 1981, pp. 118–25, and also Chapter 4.5.4. of the present study.
61. For the new maxima see Chapter 4.4.3.
62. Graduated lawyers are usually denoted by the suffix S.H. (*Sarjana Hukum*). A number of allegations directed at some lawyers that they were violating the Code of Ethics of PERADIN by engaging in 'mafia practices' led to the expulsion of a few lawyers from PERADIN in the beginning of 1979. Their alternative association

- (HPHI) did not attract much attention or 'recognition' by the authorities. Although these allegations did not lead to trials and convictions, they show that PERADIN is taking anti-corruption efforts in its own circles more seriously.
63. For example: Yap defended several alleged leaders of the 30th September coup and also the well-known 'dissident', Sawito Kartowiboho in May 1978; Adnan Buyung Nasution and over 80 others conducted the well-coordinated defence of student leaders in Jakarta, Bandung and Palembang and five other cities in 1978 and 1979.
 64. Adopted at the Fifth Congress of PERADIN, 6-8 October 1977 in Jogjakarta, published *inter alia* in *Tempo* of October 22, 1977.
 65. Lawasia established a standing committee on Human Rights in 1979 (Colombo, Sri Lanka) which publishes a regular bulletin.
 66. This Declaration of Basic Duties of Asean Peoples and Government issued on December 9, 1983 is reprinted by SIM, Netherlands Institute of Human Rights, Utrecht.
 67. The case report on Indonesia in the CIJL Bulletin No. 12, October 1983 pp. 1-4, gives more background information.
 68. See generally a recent publication 'Non formal legal education: reflections on the experience of the legal Aid Institute', written by staff members of YLBHI, Abdul Hakim, Mulyana Kusamak and Mulya Lubis and published by LBH and Friedrich Naumann Stiftung in 1986 in the series 'Studies an Law and Development in Asean'.
 69. Adnan Buyung Nasution in 'Legal Aid in Indonesia, Five Years LBH', Jakarta 1976, p. 40. A ten-year report was published in 1981, in English and Indonesian.
 70. *Ibid.*, in particular pages 10, 41 and 57-61.
 71. TAP, MPR no. IV /MPR/1978. Pelita is the government's Five Year 'development plan.'
 72. This was done, for example, in the Weekly Bulletin, published by the Indonesian Embassy in Berne, Switzerland of September 18, 1981.
 73. *Far Eastern Economic Review*, July 24 1981, pp. 29-30. An example of LBH's role in labour disputes is the case of P.T.Textra, described in *Langkah Telah Diayunkan*, LBH, Jakarta 1981, pp. 101-5.
 74. The Economic and Social Commision for Asia and the Pacific (of the United Nations), based at Bangkok.
 75. Harold Crouch, *The Army and Politics in Indonesia*. Ithaca, Cornell UP (1978), pp. 160 and 233.
 76. 'Role and Function of KOPKAMTIB in the National Security System', Jakarta, KOPKAMTIB, January 1977, pp. 2-3.
 77. *Area Handbook of Indonesia* by Nena Vreeland, 3rd edition, Washington American University (1975), p. 391; UIP Sandhousen, 'Decision-making within the Indonesian Military' in Harold Z. Schiffrin (ed.), *Military and State in Modern Asia*, Jerusalem Academic Press (1976), p. 182, and Sundhaussen, 'The Military Structure, Procedures and effects on Indonesian Society' in Jackson (ed.), *Political Power and Function*, pp. 3-4.
 78. Role and Function, p. 4: KOPKAMTIB 'was essentially only a command structure with regular military officers assigned to it. Below the central headquarters level, KOPKAMTIB officers were regular military commanders who were appointed

concurrently to KOPKAMTIB positions. KOPKAMTIB had no special uniform, independent personnel recruitment, or troop forces, but it did maintain its own communication channels'. *Area Handbook* p. 392.

79. *Area Handbook*, p. 391.
80. Crouch (1978), p. 223.
81. See *Harian Kami* January 16, 1972, cited in Crouch p. 269.
82. *Antara* February 23, 1970, cited in J.M. van der Kroef, *Indonesia Since Sukarno*, Singapore 1971. p. 218.
83. *Area Handbook*, p. 247. 'The KOPKAMTIB commanders of each level were empowered to disqualify any candidate without being obliged to explain precisely why... The powers enjoyed by KOPKAMTIB could be used to restrict campaigning as well as candidature.' Ken Ward, *The 1971 election in Indonesia: an East Java Case Study*, Mohash University (1974), pp. 15-16.
84. *Area Handbook*, p. 392.
85. Crouch, p. 267 n. 32.
86. *Area Handbook*, p. 241.
87. *Ibid.*, p. 392.
88. As of 1981 President Suharto had relinquished the post of KOPKAMTIB commander. Nevertheless, KOPKAMTIB continues to operate directly under presidential control in the President's capacity as Commander-in-Chief of the armed forces.
89. *Role and Functions*, p. 5.
90. *Area Handbook*, p. 392.
91. *Penjelasan Kas KOPKAMTIB*, Jakarta January 23, 1978 (typescript) p. 7.
92. *Role and Function* p. 3.
93. *Ibid.*, pp. 5-6.
94. *Area Handbook*, pp. 392-3.
95. *Role and Function*, p. 6.
96. *Ibid.*, pp. 1, 4 and 6.
97. *Area Handbook*, pp. 391-2.
98. *Ibid.*, p. 393.
99. Crouch (1978), p. 223.
100. Sundhaussen, p. 64.
101. Heri Akhmadi Mendobrak, *Belenggu Penindasa Rakyat Indonesia*, Bandung, (1979) p. 45.
102. In Jean-Bernard Marie, 'International Instruments Relating to Human Rights, Classification and Chart showing ratifications as of 1 January 1985', in *Human Rights Law Journal*, HRLJ, vol. 5, parts 2-4, the following are listed:—ILO Convention no. 29 concerning forced labour;—ILO Convention no. 98 concerning the application of the principles of the right to organize and to bargain collectively;—Convention on the political rights of women;—Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces;—Geneva Convention for the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces at sea;—Geneva Convention relative to the treatment of prisoners of war;—Geneva Convention relative to the protection of civilian persons in time of war;—Convention on the elimination of all forms of discrimination against women (signed, not ratified);—ILO Convention no. 100

concerning equal remuneration for men and woman workers for work of equal value;—UNESCO Convention against discrimination in education.

103. UN Document No. E/CN 4/Sub2/AC2/9/Add. 3.

104. See also Chapter 3.3.3 for Indonesia's attitude towards ILO conventions.

105. The Status of Border Crossers from Irian Jaya to Papua New Guinea, mission report published by the Australian Section of the International Commission of Jurists, January 1985, pp. 58–61.

Civil and Political Rights

3.1. FREEDOM OF SPEECH AND EXPRESSION

3.1.1. Background

Often relationships between individuals in Indonesian society are characterized by the expression *Asal Bapak Senang* (so long as the boss is happy). It has been observed that the Javanese are considered not to be receptive to Western liberal thinking, which stresses individualism through its slogan 'liberty, equality and fraternity'. In Java, the argument runs, peasants will rally behind any leader who gives them adequate subsistence and a feeling of security. 'Serving his master is the religion of the Javanese', wrote Multatuli in 'Max Havelaar', a Dutch classical novel set in the Netherlands East Indies of the nineteenth century.¹

That of course is one view but not all Javanese, let alone all Indonesians, fit conveniently into such an apparently servile mould. As may be demonstrated by some of the personalities and incidents referred to in this study there are countless Indonesians who have expressed their views and articulated their dissent. People from the outer islands tend to be more outspoken than their Javanese brothers and indeed many of the government's critics such as General A. H. Nasution, Mochtar Lubis, Adnan Buyung Nasution and Mulya T. Lubis are Sumatrans. Dissent however has certainly found its articulators also among the thousands of university students in such places as Jakarta, Bandung, Jogjakarta, Surabaya and other centres in Java and elsewhere throughout the country.

It is often said of Indonesian society, and indeed it is a stated objective of Government policy that decisions on matters of importance should be made by way of *musyawarah*, (mutual consultation) and *mufakat*, (consensus). An interesting conjunction of the disparate streams of consensus on the one hand and dissent on the other occurred in Jakarta in February, 1980. On that occasion 'The Government won a victory over the students when parliament rejected a call for the Minister of Education, Dr. Daoed Jusuf, to account for the policy of campus normalisation. The motion was defeated by 279 votes to 101 amid uproar from several hundred students in the gallery. It was the first time for twenty years that the voting procedure had been used in the

Indonesian Parliament'.² That the House of Representatives had not taken a formal vote for so long is probably unique in the world. It is a telling comment on what is either the Indonesian method of 'musyawarah' or the extent to which the parliament is stage-managed and manipulated by the executive power.

In Indonesia the electronic national media are controlled totally by the government. The single national television station, Televisi Republik Indonesia (TVRI) is operated by a government body as is the national radio broadcasting network, Radio Republik Indonesia (RRI). National electronic communication is facilitated over the several thousand Indonesian islands by the government owned and operated satellite, the Palapa. The numerous privately owned radio broadcasting stations, have a much more limited range of transmission.

To complete this necessarily clipped description of the background to freedom of speech in Indonesia it is useful to see the issues from the viewpoint of a non-Indonesian journalist and that of government officials. The correspondent of the Far Eastern Economic Review had this to say in 1979:

Since coming to power 12 years ago the government of President Suharto has arrested many thousands of people (apart from the G/30/S/PKI detainees). The usual procedure is to hold such prisoners for a 'cooling off' period that might be anything from two hours to two years. In a great many cases no charge is ever laid. The list of those detained in this way includes some of the most respected lawyers, academics, editors and poets in the country. Scores of students have been detained as have a great many lower level Muslim party officials. Arrests are made here as much to keep potential dissenters in line as to 'punish' and subdue those alleged to have committed a particular offence. For example, Lurahs (village headmen) who failed to deliver the vote for the government Golkar faction in the general election of 1977 were denied government grants and personal gratuities in the post-election period. Leading academics who were critical of Suharto prior to his re-election in March, 1978, though not punished immediately were informed a month or two later that their vital research grants had been withdrawn.³

In July 1979 President Suharto said that in a developing country such as Indonesia, unrest was unavoidable. It flowed from dissatisfaction when people felt their interests were damaged or had not been met sufficiently. The rise in the level of unrest was also caused by what he called excesses in the implementation of development, a phrase usually taken to mean corruption. According to the President the unrest if channelled properly could assist the country's development; but if it were deliberately exaggerated or if it went uncontrolled it would damage society and damage development too.⁴

Another statement outlining what is presumably the government's viewpoint was made by General Yoga Sugama, then Chief of Staff of KOPKAMTIB and also head of Bakin, in an interview granted to a Dutch television journalist Aad van den Heuvel in September, 1978. To the question 'Can you handle democracy in a country like Indonesia? Is that possible?' he replied:

Yes. We have as a principle, democracy and we are convinced that what we are doing right now is still democracy—[meaning]—everybody will have the freedom to express things, to say things, to do things [at] the right time and the right place, as long as it is not against the law—and that is also our principle of democracy here ... we don't call it liberal democracy—but we have a democracy based on our Pancasila called 'Democracy Pancasila': everything should be done, not for the interest of a certain group, but for the majority and then everybody will benefit.⁵

Against this background a number of incidents will be examined in some detail as '*causes célèbres*' within the context of the legal framework.

3.1.2. Legal framework

The 1945 Constitution does not specifically guarantee freedom of expression but merely declares that it will be regulated by law. However it is submitted that in view of the language of the Preamble it would not be unreasonable to expect that the laws regulating expression would in general be a manifestation of the express desire for democracy and social justice, two parts of the Pancasila to which all sides to the political debate resort for guidance and authority and have done, since 1945. In this paragraph the main laws governing freedom of speech and how those laws have been applied in particular cases, will be discussed. The procedural aspects of the criminal justice system, including some of the special laws, are being dealt with in more detail in chapter 4.

Anti-Subversion Law

Law No. 5/1963 on Anti-Subversion (often called the Subversion Law) has been the authority for many prosecutions in Indonesia and the prescribed penalty for breach of some of its provisions is imprisonment for a maximum of twenty years, imprisonment for life and also includes the possibility of a sentence of death. Presidential Decree No. 11 of 1969 on eradicating subversive activities contains *inter alia* the following description of that who shall be convicted of having engaged in subversive activities:

Anyone who has engaged in an action with the purpose of or clearly with the purpose, which is known to him or can be expected to be known to him that it could distort, undermine or deviate from the ideology of the Pancasila or the Broad Outlines of State Policy, or otherwise destroy or undermine the power of the State or the authority of the lawful government or the machinery of the State, or disseminate feelings of hostility or arouse hostility, disturbances or anxiety among the population or broad sections of society or between the State of the Republic of Indonesia and a friendly state. . .

The 'HAATZAAI' Articles

The criminal code (KUHP) also contains several sections regarding hate sowing, in Dutch 'haatzaai', which were used by the Dutch to suppress the pre-war nationalist movement. For example:

Article 154. Whoever in public expresses hate or insult to the Government of the Republic of Indonesia may be jailed for seven years or fined Rp 300.

Article 155. Whoever spreads, exhibits or posts up letters or pictures which express hatred so as to circulate these contents more widely can be jailed for six months or fined Rp 300.

Article 156. Whoever in public expresses hatred or insult to one or more classes of Indonesia inhabitants can be jailed for four years or fined Rp 300.

The Lese Majesty Articles

It appears that the sections of the Criminal Code commonly called the Lese Majesty Articles underwent only a slight transformation upon Independence. The words 'king' and 'Governor-General' were replaced with 'President' and 'Vice-President' respectively following the change from the former colony of the Kingdom of the Netherlands to the independent Republic of today. It should be clear to any student of government, however, that the former positions as Head of State represented by a King or Governor-General could have no parallel in the executive positions of President or Vice-President in a democratic Republic. Even though the President is Head of State he is under the Indonesian Constitution, also elected head of the Government and this would in the normal course of events, at least in a democratic society, lead to his being the target of popular criticism and scrutiny as well as a focus of dissent.⁶ The articles read:

134. Deliberate disrespect for the President or Vice-President shall be punishable by a term of imprisonment for a maximum of six years or a maximum fine of Rp 4500.

137(1). Anyone who disseminates, displays or posts up writings or photographs which are offensive to the President or the Vice-President with the intention of making these offensive things known to the public shall be sentenced to prison for a maximum of one year and four months or shall be fined a maximum of Rp 4500.

207. Anyone who deliberately in public, orally or in writing, insults any of the authorities in the State of Indonesia or any general Council existing here shall be imprisoned for a maximum period of one year and six months or shall be fined a maximum of Rp 4500.

208. Anyone who prepares, displays or posts up articles or photographs, the contents of which are offensive to one of the authorities or one of the general Councils existing here, with the intention that these offensive things shall be made known to the public, shall be sentenced to prison for a maximum period of four months or shall be fined a maximum of Rp 4500.⁷

3.1.3. Recent History of Dissent

1974 Malari Affair

On January 15, 1974 there occurred violent civil disturbances involving many thousands of students and others, in the capital city Jakarta. This was the climax of a long period of discontent on the part of students, which coincided with the visit to Indonesia of the Japanese Prime Minister Tanaka. Initially, the

protests were concentrated on the government's development strategy which is dependant on large amounts of foreign aid and investments, particularly from Japan. The technocrats came under heavy attack concerning their misdirection of this foreign funding. Later the target of student protest changed to the Presidential Advisors, the Aspri, and the Chinese financiers, the Cukong. The students issued the Three Demands, of 1974 including demands for dissolution of the Aspri, lower prices and eradication of corruption.⁷

The Malari affair, as it became known, sparked a wave of arrests and newspaper closures, eleven in all.⁸ President Suharto immediately announced that the riots had been organized as part of a conspiracy to overthrow his government by the PSI and the Masyumi, two parties already banned fourteen years earlier by Sukarno. Notable critics of the regime were detained for many months without being charged or tried. Among these were Mochtar Lubis a well-known journalist, the lawyers Yap Thiam-Hien and A. Buyung Nasution and former members of the banned PSI, Sarbini Sumawanti and Subadio Sastrosatomo. Some thirteen people were killed, during the disturbances. The Malari affair and its aftermath represented the most serious challenge and manifestation of discontent to confront the 'New Order' regime since it first took office in 1966.

Hariman Siregar, a young medical student from North Sumatra and Syahrir, a university lecturer in economics, were ultimately put on trial in Jakarta for their part in allegedly planning and promoting the Malari affair. Both were members of a group calling itself the University of Indonesia Discussion Group, of which Syahrir was the secretary, and they were charged and tried under the Subversion Law.

Hariman Siregar was also at that time chairman of the Students Council of the University of Indonesia. He was charged with having produced and subscribed to a petition of October 24, 1973, which called for a review of the government's development strategy and a re-examination of the imbalance in the social, economic and political fields. He also called for more effective means of channelling the voice of the people. It was further charged that Siregar had made speeches in which he claimed the government was deviating from its goal and referred to the replacement of President Suharto by General Sumitro and changing the structure of government if necessary.⁹ It was claimed he said that President Suharto should be killed as he was a servant of the Chinese and that he criticised the secret police organization and others. He was also accused of leading a student column to the Trisakti University and that his actions resulted in the burning and destruction of cars and buildings.

Certain parts of the trial of Hariman Siregar were later the subject of a report by Paul Stein and John Dowd of the Bar of New South Wales, who attended them as observers on behalf of the Australian section of the International Commission of Jurists.¹⁰ Although the observers had criticisms of some of the procedural aspects of the trial and of the Subversion Law itself,

they concluded that most of the prosecutor's claims were proved and that the conviction was valid in accordance with Indonesian Law.¹¹

The allegations against Syahrir were that he had engaged in activities, demonstrations, discussions, and dialogues within the discussion group and had aimed at distorting and undermining the State ideology and bringing about the overthrow of the lawful government. Specifically, it was claimed that he 'sought to oppose the existing political culture and replace it by a political elitist culture', that he 'attacked the government's development strategy for paying too much attention to Gross National Product and not enough attention to creating employment opportunities', and further that he had 'instigated students by urging that University campuses must involve themselves in society's affairs' and had 'attacked the Army's dual function.' He was also accused of having drafted the memorandum presented by a delegation of students to Jan Pronk, then Dutch Minister for Development Co-operation and Chairman of the Inter-Governmental Group on Indonesia, the important international consortium financing Indonesia's development.¹² The prosecutor requested a sentence of sixteen years imprisonment in his concluding address on 11 March, 1974.

In his defence plea Syahrir claimed that what he had been trying to do was to warn that problems like corruption, unemployment and the uneven distribution of wealth could not be relegated to second place. He had warned, he said, of the mismanagement and corruption in Pertamina, the state oil monopoly. Syahrir denied that he had tried to change the Broad Outlines of State Policy. 'All I suggested was that certain measurements are extremely important to economists, yet I was arrested and brought to trial for making such suggestions.'¹³ He denied the charge that he had manipulated academic freedom for his own purposes and claimed that the prosecution was incapable of demonstrating the basis for the charge. As for the charge of inciting the students he said 'such terminology does not exist in discussion. All we were engaging in was dialogue, two-way communication, exchange of ideas and critical analysis.' He said it was also unjustifiable to claim that the Broad Outlines of the State Policy are immune from criticism and that to have different opinions should not always be taken as being an enemy of the State, still less an enemy of the nation and people.

In a significant moment the prosecution, in dealing with Syahrir's defence plea, contended that freedom of thought and opinion were upheld in Article 28 of the 1945 Constitution but that 'implementation of that freedom cannot be conducted just as one likes ... every freedom has its bounds and its limits, namely positive law.'¹⁴ Syahrir had apparently trespassed beyond the bounds of that freedom. He was sentenced at first instance to four and a half years imprisonment but this was later reduced on appeal.

1977 Sawito Kartowibowo

Another application of the Subversion Law occurred some three-and-a-half years later when in October, 1977 the trial commenced of Sawito Kartowibowo. Sawito was accused of undermining the authority of the lawful government, spreading feelings of enmity, discord, conflict, disorder, commotion and unrest among the population and of writing and distributing several documents upon which so much of the case against him depended. The case received a great deal of attention because of the involvement of others, including notably prominent religious leaders and the respected co-proclaimer of national independence, Dr. Mohammed Hatta, a former Vice-President of the Republic. Of the documents in question, some were prepared only by Sawito and others were signed by him with Dr. Hatta, Cardinal Darmojuwono, head of the Roman Catholic Church in Indonesia, Dr. Hamka, Chairman of the Indonesian Moslem Scholars Council and Dr. T. Simatupang, Chairman of the Indonesian Council of Churches.

The first document and most important of the series was entitled 'The Road to Salvation'. It claimed that 'the leadership of the Indonesian people is not limited to those who run the State or just those who directly splash anyone who feels himself called. . .'.¹⁵ The second document was dated September 7, 1976 and was entitled simply 'Declaration'. It referred to restlessness in the community leading to discord and a breach in national unity, suggesting that it may result in failure of national development. Consequently, the subscribers, including Sawito, vowed to use the document 'the Road to Salvation' as the basis for the implementation of the Pancasila. The third document was entitled 'To Retreat in Order to Advance More Perfectly'. In it, Sawito claimed that President Suharto had 'failed to set an example and had disobeyed his Oath of Office by providing opportunities to family and friends to enrich themselves.' The President was urged to hand over presidential power to Dr. Hatta. The fourth document was in the form of a letter of transfer of power in favour of Dr. Hatta which was drafted by Sawito and was similar in form to the document by which President Sukarno had transferred his powers to the then General Suharto. The fifth and final document used as the basis for the subversion charges was entitled 'Declaration of Pardon for the late Bung Karno' and was signed by Sawito and Dr. Hatta.¹⁶

The defence relied upon support for the claims made in the documents about maladministration. The defendant Sawito in his two-day defence speech laid stress upon a report which had been published concerning the private company holdings and interests of the President and his family.

Defence Counsel were outspoken in their criticism of the Court for not requiring the attendance of a large number of defence witnesses, including the co-authors of the offending documents themselves. Despite protestations of his innocence and the rectitude of his cause, Sawito was sentenced on July 17, 1978

to a term of eight years imprisonment. It is important to note, in relation to this trial, the complete absence of alleged violence or threats of violence in the charges. Violence is not a necessary element in the charge of subversion, under the Anti-Subversion Law.

The White Book of the 1978 Students' Struggle

In early 1979, in various cities throughout Java more than 30 student leaders were put on trial. They were charged in connection with incidents which resulted from the student protest movement which became politically active in 1977 and 1978. Its climax came with publication of the so-called White Book of the 1978 Students' Struggle on January 14, 1978 which contained a catalogue of criticisms of Suharto's New Order Government. It was the result of the deliberations of the Student Association of the Bandung Institute of Technology and it was signed by Heri Akhmadi, chairman of the Student Council. The data were drawn from daily newspapers, weekly magazines and government publications, which are all freely accessible to the public. The White Book declares that the students do not trust Suharto and do not want him to be President again. Three demands were tabled. First, that all factions in the People's Consultative Assembly nominate prestigious persons, whose integrity is beyond any doubt, as candidates. Secondly, that the Assembly fulfill the demands of the manifesto of October 23, 1977 and thirdly, that the army stand above all interest groups.

This White Book is considered to be the first systematic criticism of the policies of the New Order Government. It represented the thinking of the younger generation of intellectuals. Within a few days after publication, the White Book was banned by the military authorities in order to ensure a smooth re-election of Suharto to his third term as President.

Heri Akhmadi was arrested and jailed in 1978, charged with having insulted the Head of State. What the government considered as an insult was seen by the students as valid criticism. Akhmadi's defence statement, 'Breaking the Chains of Oppression of the Indonesian People', is still regarded as an important insight into the Indonesian situation.¹⁷ The charges which the authorities laid were those contained in Articles 134, 137, 207 and 208 of the KUHP, and in Presidential Decree No. 5/1959. Significantly, the maximum penalty under the latter provision is death and it permits detention of suspects for up to twelve months without the need for reference to the Court. In these respects the Decree No. 5/1959 is similar to the Anti-Subversion Law of 1963.¹⁸

Doddy C. Suriadiredja

Doddy C. Suriadiredja, a fifth year medical student and Deputy Chairman of the Student Council of the University of Indonesia for 1977-8 was charged with deliberately insulting the President both verbally and in writing and both

publicly and privately, by stating that the President had deviated from his sworn duty of implementing the Constitution and the Pancasila; had emasculated the legislature; had been deceptive in the procedure by which members were appointed to the Parliament; had acted in his own personal interests and those of certain groups; and had appointed regional officials without regard for local options. All of these claims were contained in the Indonesian Students' Manifesto of October 23, 1977 and statements of student councils in which Doddy had taken part.

Doddy was further accused of taking part in several student meetings at one of which 'discussions were held about political economic, social and cultural problems which (so it was said by the accused and his colleagues) were failures or unsuccessful measures by President Suharto during his period of office, as a result of which it was decided to hold a meeting with the President and press him to refrain from nominating himself for election at the forthcoming session of the Assembly'.¹⁹ On January 7, 1978, Doddy was also accused, with others, of visiting the National Parliament to submit the Students' Manifesto to the President.

But probably the most serious part of the charge was the claim that Doddy took a leading part in what was a direct and palpable challenge to authority. On September 13, 1977 it was charged that Doddy and others declared the establishment of a provisional parliament in front of the parliament building in Jakarta and in the presence of some journalists. It was to operate during the House change-over recess until the new Assembly and House were sworn on October 1, 1977. In doing so, he and his fellow students made it impossible for the authorities to ignore them.

In preliminary legal argument defence counsel relied heavily on the claim that the laws themselves were legally, philosophically and sociologically out of place in a democratic Indonesia. 'There has been a basic transformation of the State from a colonial and imperialist anti-democratic State into an independent democratic State; but these laws are aimed at protecting and safeguarding the colonial imperialist and anti-democratic powers and at preserving in power dictatorial and authoritarian government.' Needless to say, legal argument was unable to save Doddy from a term of imprisonment.

1981 Soenardi

On December 10, 1981, International Human Rights Day, Soenardi, a Jakarta lawyer, had written to Governors, Military Commanders, Speakers of the House and Assembly presenting an argument for postponing the 1982 elections until certain allegations regarding President Suharto were cleared up.²⁰ Although Soenardi did not make any direct allegations against the President, the letter did raise the sensitive issue, which has simmered for many years, of the role of General Suharto in the 1965 coup attempt. The significance of the matter has to be seen against the 'backdrop' of a decree of the Peoples

Consultative Assembly which prevents any person involved in the 1965 coup being a candidate for the Presidency. Soenardi was arrested in April, 1982 and charged with 'insulting the Head of State.'

1985 Dharsono and Tanjung Priok Riots

On 12 September 1984 a number of Muslim preachers addressed a crowd of approximately 1500 people, in which they demanded the release of four men who had been arrested a few days earlier for assaulting two army security officers.²¹ When their deadline was not met, the crowd moved to the police station where the four men were supposed to be detained. Government troops blocked their way and opened fire, killing, wounding and arresting an unknown number of protesters. The official statement issued the next day by the Commander of the Armed Forces accused the crowd of having started the violence and gave as the death toll the number of nine persons. Many pamphlets and cassettes by Muslim groups and other non-governmental entities started to circulate, which put the arrest at several hundred and death toll at 30 or more. Many of the killed and wounded were said to have been loaded into army trucks and driven away without further explanation. Included in the arrests were several Muslim preachers who had not been present at the rally, but, as was later made known, were thought to have inspired the violence through lectures which sometimes predated the riots by as much as two years.²²

One of the papers presenting an alternative version of the Tanjung Priok riots was issued under the title 'White Paper' by a well known group of formal military officers, scholars and intellectuals closely associated with the 'Petition of 50' group. When on October 4, 1984 bomb explosions took place in Jakarta a new wave of arrests took place, including that of retired Lieutenant-General Dharsono, one of most open and consistent critics of General Suharto's government over the last 10 years.²³

Although the trials of thirty-five others were linked to the Tanjung Priok riots the focus here is on Dharsono's trial, as his trial not only attracted most of the international and national publicity but also demonstrates most clearly the suppression of free speech.

Two accusations in particular were brought against Dharsono. The first accusation concerned his attendance of meetings at the house of former Jakarta governor Ali Sadikin (another leading opposition figure who had been forced to step down as governor in 1977). At these meetings the White Paper was drafted and, according to the prosecution, it contained several passages which undermined the authority of the government, including the following:

- 'The causes of the occurrence of the calamity of 12 September were the trigger to release the tensions that had long been smouldering under the surface of seeming stability.'

- 'The causes for unrest come back to one source, namely the deviations in the execution of authority by the national government from the letter and spirit of the 1945 Constitution, which culminate in the package of five bills concerning the ordering of political life, above all, the concept of the 'sole foundation'. More generally, it can be said that there have occurred deviations by those in power in the practice of (Pancasila).'
- 'The calamity of September 1984 in Tanjung Priok is not an incident which stands on its own. It is a consequence of the existing system.'
- 'For justice for all sides, including the government itself, it is best if an independent commission can be formed for gathering honest statements concerning the September 1984 incident in Tanjung Priok. The report of the Commission should be announced to the public so that all of us can draw lessons from it.'²⁴

The second accusation was that Dharsono had been spreading hatred and ill-feeling in such a way as to create intergroup hostility or social unrest by his statements at the meeting mentioned above. These statements were alleged to have contributed to mass agitation and fired the emotions with the result that three people at the meeting suggested bombing or 'mental terror'. Subsidiary charges stated that his statements had inspired the October 4, 1984 bombings in Jakarta.

However, during the trial witnesses, both those presented by the defence and those presented by the government, denied this and even stated that General Dharsono tried to calm the mood. Still, the prosecution asked for fifteen years imprisonment and on January 8, 1986, after a trial which received a large amount of press attention, the judge found Dharsono guilty of inciting at least one person to take part in the October 1984 bombing and of being a 'co-producer' of the White Paper. He was sentenced to ten years imprisonment.²⁵

It is important to note here the ominous application of the broad wording of the Anti-Subversion law. It was not necessary to prove the effects of Dharsono's action because, under the Anti-Subversion law, acts which might undermine the state were subversive, regardless of their ultimate impact.

Another well-known opposition figure tried and sentenced under the Anti-Subversion law for incitement in the case of the Tanjung Priok riots was Haji Fatwa, an aide to former Governor Sadikin and a Muslim preacher with a record of outspoken criticism of the government and subsequent harassment and arrest. He was arrested a week after the riots and, unlike Dharsono, before the White Paper had reached the prosecutor's office. In open court Fatwa declared that he had been tortured and ill-treated during the first weeks of his detention. He was found guilty of subversion and sentenced to eighteen years in prison.²⁶ Several other preachers including Yayan Hendraya, Salim Qadar, Ahmad Ratono, Abdul Q. Djaelani, Mawardi Noor, Tony Ardie and Usman al-Hamidi received prison sentences ranging from seven to twenty years. In

addition, many other people were arrested and usually sentenced to shorter terms of imprisonment for taking part in the riots or distributing pamphlets offering versions of the Tanjung Priok riots different to that of the government.

Most of the men involved in the latter two activities were charged under the normal Criminal Code, while Dharsono and most of the preachers were charged under the Anti-Subversion law. Also tried for subversion and sentenced to long-term imprisonment were those accused of having been directly involved in the October 1984 and other bombings.

Although the suppression of dissent in the handling of the Tanjung Priok riots and aftermath takes a prominent place, it should be stressed that in many respects the arrest and trials of the Muslim preachers, students and political dissenters are to be seen as a reflection of diverging trends in criticism of the government's effort to impose a single ideology, the Pancasila, on the nation. The reasons behind the different protests may range from genuine concern for democratic pluralism to more radical demands for the establishment of an Islamic state; the means may range from non-violent demands for constitutional change to the use of explosives. Even if the coincidence of the different forms of protest is not of the government's making, it certainly has made little or no effort to distinguish between the two and conveniently applies broad-ranging security laws to suppress both constitutional and unconstitutional forms of dissent.

3.1.4. Bans and Censorship of Films and Books

A film based upon the novel 'Max Havelaar' and dealing with life under Dutch colonial rule was banned by the Censorship Board in late 1977. The Board declared that the ban was imposed because the film created the impression that 'colonialism was good and the (local) people... were exploited not by the Dutch but by the local aristocracy.'²⁷ Fons Rademakers, the Dutch film director, reacted by saying 'I wanted to show injustice; to portray the cries of protest which are still heard everywhere today. It is still very topical.'²⁸

In July, 1980 it was reported that the non-government radio station operators in the East Moluccas Wards were warned that they could be closed if they relayed foreign news reports.²⁹ The Information Department Chief for the area also warned that they must not broadcast news that could cause unrest in the community.

It was probably no coincidence that at about the same time sensational reports were being published abroad of the hearing in Singapore of a legal action, involving the estate of a deceased former top executive of Indonesia's State Oil Company, Pertamina. It was claimed that the official, Haji Ahmad Tahir, whose funds in one bank alone amounted to US \$35 million, had amassed his fortune through bribery and corruption on a massive scale.

In September, 1980 the Film Censorship Board banned the showing of the

film 'All the President's Men' for 'political reasons'. The well-known events portrayed in the film were, of course, the uncovering of a scandal that led to the resignation of the President of the United States.³⁰

In a widely publicised incident the poet W.S. Rendra was arrested a few days after a poetry reading in Jakarta during which smoke bombs were thrown in an attempt at disruption. A spokesman for the Jakarta Military Command indicated that the poetry reading and general content of his work were the reasons for his arrest. Lieutenant Colonel Anas Malik was quoted in *Tempo* of May 13, 1978 as saying of Rendra's work 'Such stuff can lead to unrest and social conflicts. It gives people the wrong picture of the results of development.'³¹

Probably the most notorious banning of a literary work in recent times has been the restriction on publication of the novels of Pramoedya Ananta Toer. He had been interned on the island of Buru for ten of his fourteen years as a political prisoner and during that time had written novels and other works.

The novels 'Earth of Mankind', and 'Child of All Nations', were banned on order of the Attorney General in May 1981. Later, many hundred, some claim as many as 10,000, copies of both novels were burnt by the authorities.

3.1.5. Other Means of Dissent

There have been several occasions in the recent past when public attention has been drawn to issues through the presentation of petitions to the House of Representatives, or the circulation of statements such as the 'Statement of Intellectuals and Men of the Arts' in January 1978. This statement, in the form of a letter, was authorised by some prominent lawyers, writers and academics in support of student rights and banned newspapers. There followed the so-called 'Petition of 50' which was supported by an even broader based group including former military.³² Petitions have been presented by disaffected worker groups and an attempt was made by two members of the Regional House of Representatives of the 27th province of East Timor to use the petition procedure to appeal directly to the President about alleged abuses by the military. The two presenters came for consultation to the Legal Aid Institute, (LBH) and presented the petition. They were arrested upon return to East Timor and released after some months.

Less subtle, but very effective intimidation is allegedly used against those who are publicly critical of the government and who subscribe to some of the Petitions. KOPKAMTIB has restricted the freedom of a number of people, for example, through prohibitions against lectures, going abroad, giving sermons and in one particular case, through brutal ill-treatment. Pressure and coercion in business through withdrawal of licences and credit restrictions also reportedly occur.³³

3.2. FREEDOM OF THE PRESS

3.2.1. The Context

Guarantees and restrictions on freedom of the Press in Indonesia are codified in a number of documents adopted over the past century. However certain practices conflict with, impinge on or over-ride such legal provisions. Under the Constitution adopted in 1945 freedom of the Press is recognized in Article 28: 'Freedom of assembly and the right to form unions, freedom of speech and of the Press and similar freedoms shall be provided by law'.³⁴ To place the current status of freedom of the Press in Indonesia in a more useful context, it may be instructive to look briefly at the legal situation pertaining to the Press in the past.

The Netherlands East-Indies

During the Dutch administration of the East Indies three major laws were issued. From 1856 a Regulation on Publications (Reglement op de drukwerken in Nederlandsch-Indie) prescribed a system of pre-censorship. As the volume of publications grew, this procedure proved too cumbersome. A Royal Decree of 1906 changed the pre-censorship system to one where all publications had to be submitted to the censor within twenty-four hours of publication and could be banned. In 1931 the Pers Ordonnantie (Press Ordinance) was introduced to try and restrict on the increasingly vocal and visible nationalist movement. The Governor-General was given the right to ban publications for a period of time in the interest of public order. By 1936 some twenty-seven nationalist periodicals and newspapers had been banned under this ordinance. Certain sections of the criminal code relating to matters like sedition, libel and the so-called 'hate-sowing' were invoked against journalists and publishers alike during the colonial period.

Japanese Occupation

In 1942 the Japanese occupying government issued Law No. 16 on 'The control of organs of publication and information and the censorship of publication and information'. This law introduced into Indonesia the practice of issuing permits or licenses without which publication was forbidden. It also restored the earlier Dutch system of pre-censorship, and imposed severe penalties on violators.

1945–1959

In discussions during the process of drafting of the 1945 Constitution the western notion of 'rights' was specifically, rejected but by way of compromise certain 'freedoms' were enshrined in the Constitution, including those already mentioned in Article 28. It was President Sukarno who objected to the inclusion of this article on the grounds that it was too individualistic. Hatta and Yamin

strongly supported the inclusion of these basic freedoms in order to prevent the possibility of an authoritarian state.³⁵ During the revolutionary period (1945–9) the 1945 Constitution was deemed to be in operation in the Republican areas of Indonesia. An extremely wide range of opinions was expressed in the vigorous and widely distributed press that flourished in this period. Even when groups were banned and individuals placed in jail, as happened to the Persatuan Perjuangan (Union of Struggle) and Tan Malaka, their ideas were allowed to appear in print. The Plenary Session of the Central National Committee on December 15, 1949 passed a motion supporting press freedom.

In the early 1950s the 1931 Press Ordinance was used to muzzle various papers in opposition to the government of the day. This practice was followed up to the revocation of the 1931 Press Ordinance in 1954. As political tensions grew within Indonesia, so did the application of laws and regulations curbing press freedom. Under martial law in 1957 severe limitations were imposed, some newspapers banned and journalists restricted; the system of restrictions on coverage of certain issues was begun and some Indonesian journalists arrested and foreign correspondents expelled. In April 1958 a blanket ban was placed on all Chinese character publications. This ban was lifted in the following month but then the Surat Izin Terbit (S.I.T., Licence to Publish), was instituted. All newspapers published in Jakarta were required to register with the Regional Martial Law Commander before October 1, 1958 and all publishers of newspapers or magazines were required to apply for a licence. The newspaper, *Indonesia Raya*, edited by Mochtar Lubis, was refused a licence and thereafter ceased publication until it was resumed in 1968. In 1959 this licencing practice was extended throughout Indonesia by the Martial Law Command. In 1958 alone some forty-two cases of press restrictions occurred, including banning of publications, detention and intimidation of journalists.

Guided Democracy

The 1945 Constitution was reactivated by Sukarno in 1959. The philosophy of guided democracy was soon applied to the press world with the introduction of MPRS Edict No. 11/1959. This edict maintained that the mass media should support government strategy, a notion to be revived in the 1966 and 1982 Press Laws. In 1962 Antara, the national press agency, was expanded and given a monopoly as a government instrument. Various presidential decrees were issued clamping down on the opposition and Chinese language press and a number of publications were banned. Presidential Decree 19/1960 extended the application of licences to publish and Presidential Decree 2/1961 extended this to apply to printing enterprises. To secure such a licence, newspapers or magazines had to be affiliated to a legal political party or mass organization, and all regional publications had to bear the same name and masthead as the central organ, with the regional edition added.

The New Order

With the Press, as in so many other areas, the New Order imposed itself through a wholesale overhaul of what went before. In 1965 Surato, the Editor-in-Chief of *Antara*, and more than one hundred editorial and non-editorial staff members were arrested in the turbulent days following an abortive coup by the 30 September Movement of 1965 and the seizure of power by General Suharto.³⁶ Forty-six out of the 163 existing newspapers were banned. The Chairman and Secretary General of the Indonesian Journalists Association, the Persatuan Wartawan Indonesia (PWI), Abdul Karim Daeng Patombong and Satya Graha were arrested, and the 'cleansed' PWI voted to exclude 304 of its members.³⁷ The wide-ranging Press Law was then drafted and put into operation at the end of 1966.

Freedom of the Press is, like many other areas in this study, affected to one degree or another by decisions and practices of the Komando Pemulihan Keamanan dan Ketertiban (KOPKAMTIB), the Operational Command for the Restoration of Security and Order, the main internal security organ of the armed forces. One impingement on press freedom by KOPKAMTIB was the imposition of the requirement for a Printing Licence, the Surat Izin Cetak (S.I.C.) from the Department of Information in addition to the publishing licence (S.I.T.). On May 3, 1977 the regulation of KOPKAMTIB was formally revoked after considerable protest at this extension of the licensing provisions. However, as described further in this chapter and other parts of this study, KOPKAMTIB and other military and civil authorities have continued to enforce the officially promoted concept of 'free but responsible' journalism.

3.2.2. The Legal Status of the Press

The Press Law

In 1966 the New Order government adopted a basic Press Law intended to amplify and clarify the brief mention of freedom of the Press embodied in the Constitution. In November the draft was passed by the Dewan Perwakilan Rakyat (DPR), People's Representative Council, i.e. the national parliament, and became law when signed on December 12, 1966 by Sukarno, then still President, although in name only.³⁸ Sixteen years later this Press Law No. 11/1966 was amended and revised by Press Law No. 21 of September 7, 1982.³⁹

The new Press Law contains twenty-two sections against twenty-one of the old law covering the status, duties and obligations, functions and rights of the Press, the rights of the readers, the role and constitution of the Press Council, provisions relating to ownership of the Press, to journalists, to foreign representatives and to criminal implications of violations of the law.

Political jargon of the former Sukarno era, such as 'instrument of revolution', 'instrument of the driving force of the masses,' 'guard of

revolution' and 'counter revolution' has been replaced by the new but basically similar slogans of the New Order era such as, 'instrument of the national struggle', 'instrument of the driving force for national development', 'guard of Pancasila ideology' and 'against Pancasila'.

By substituting the words 'national struggle' and 'constructive and progressive' for 'revolution' and 'progressive', the new law states that 'The National Press is an instrument of national struggle constituting an active, dynamic and creative, educative, informative mass medium with the social function of stimulating and encouraging critical and constructive and progressive thinking, covering all manifestations of the life of Indonesian society'.

There are, however, also some substantive changes in the new Press Law No. 21/1982 which are not necessarily to the advantage of press freedom. Press organizations, according to the old Press Law No. 11/1966, could only be organizations of journalists and of press enterprises, but the new law includes also organizations of press graphics and of advertising media, provided they are 'agreed to by the Government'.

The duties and obligations of the Press are now defined as 'stimulating the spirit of dedication for national struggle, strengthening national unity and cohesion, deepening national responsibility and discipline, helping to raise the intelligence of the nation and invigorating people's participation in development.' This paragraph is substituted for that of the old law defining the obligation as 'developing unity and progressive revolutionary strength in the struggle against imperialism, colonialism, neo-colonialism, feudalism, liberalism, communism and fascist dictatorship.'

Another obligation of the Press is to 'struggle for the realization of a new international order in the field of information and communication, based on the national interest and confidence in its own strength in exercising regional, interregional and international cooperation, in particular in the field of the press'. This replaces the obligation under the old law which stated that the Press should 'become a channel of constructive, progressive and revolutionary public opinion'.

The new clause concerning membership of the Press Council has made even stronger the Government's position in controlling the Council, and thereby the Press. Members of the Council will consist not only of representatives of Press organizations and experts in the field of the press, as stated in the old law, but also of government representatives as well as 'experts in other fields'. As in the past, the Council will be chaired by the Minister of Information.

Some of the specific articles in the new law are considered below.

Article 13 The most controversial clause of the new Press Law is in additional paragraph 5 of Article 13 concerning the issuance by the Government of a Licence for Press Publications Enterprise, Surat Izin Usaha Penerbitan Pers

(S.I.U.P.P.). It states 'Every press publication which is run by a press enterprise will need a S.I.U.P.P. issued by the Government'. It says further that 'A detailed regulation concerning the S.I.U.P.P. will be administered by the Government after considering the opinion of the Press Council.' This new paragraph is a substitution for the old paragraph 1 of Article 20 which provided for the 'necessity to obtain a Licence to Publish (S.I.T.)' Such a provision would have contradicted Article 8, paragraph 2 of the new law which states that a press publication 'does not need a Licence to Publish.'

Despite the abolition of the contradictory stipulation, it is to be feared that the new requirement for a S.I.U.P.P., as stated in the new law, could be applied not only to the enterprise but also extend to influencing commercial and professional aspirations. If that is the case, then the S.I.U.P.P. will have the same effect as the S.I.T. had in the past. This political connotation of the S.I.U.P.P. is clearly expressed in the clarification of Article 13, paragraph 5, describing it as 'a vehicle for developing a healthy, free and responsible press.' Therefore, political considerations may influence the Government's decision in issuing a S.I.U.P.P. to a press publication.

Information Minister Harmoko, in an interview published on April 2, 1983, hinted at the possibility of muzzling the Press. He said: 'There will be a ban only if a paper is clearly spreading, or poisoning people with, marxist/communist ideology—in short, when the press is not in line with the philosophy of the nation and the state'.⁴⁰

The S.I.U.P.P., according to the clarification of Article 13, paragraph 5, is also meant 'to guarantee the participation of journalists and other press workers in the ownership of press publications.'

Since the enactment of Press Law No. 21/1982, on September 20, 1982, the Government has not yet issued the detailed regulation concerning the S.I.U.P.P. envisaged by the law.

Article 19 Meanwhile, it is stated in Article 19, paragraph 2, of the Law that anyone who publishes without an S.I.U.P.P. can be sentenced to up to three months imprisonment and/or a maximum fine of ten million rupiahs (about US \$10,000). It is also stated in Article 19, paragraph 1, that anyone who 'intentionally and illegally makes use of a press publication for personal interest or for that of a group of people causing deviation or obstruction in fulfilling the duty, function, rights and obligation of the press', can be sentenced to up to four years imprisonment and/or a maximum fine of forty million rupiahs (about US \$40,000). No such sentences were mentioned in the Press Law of 1966. Article 20 of the old law merely stated, in paragraph 1: 'a. During the transitional period the obligation of having a Licence to Publish (S.I.T.) is still valid until a decision to revoke it is issued by the Government and the Parliament' and, 'b. Provisions concerning the Licence to Publish during the transitional period are to be regulated jointly by the Government and the Press

Council.' A detailed regulation issued later in a chapter entitled 'On Press Publication without S.I.T.', stipulated that 'A press publication which has no S.I.T. from the Minister of Information is subject to a ban on publishing, printing and distributing.'

Article 15 Indonesian journalists, according to the additional paragraphs 6 and 7 of Article 15, have the privilege of refusing to disclose information about their sources' name, position, address and other identifications. It is stated in the clarification of the two paragraphs that even under the Code of Criminal Procedure, 'its validity covers hearings both inside and outside the court.' However, the same code limits the validity of the privilege 'in a case related in, particular, to the order and safety of the state.' It is for the court to decide whether a case is so related.

Article 15a The readers, whether they are individuals, organizations or official bodies, are protected by the Press Law through the inclusion of a new Article 15a. The article provides a 'the right to reply' for those who suffer from a damaging news report, and their explanation must be printed in the press publication concerned. Such a stipulation is also mentioned in the code of ethics of the Indonesian Journalists Association, which morally binds all members of the organization.

Amendments

In short, amendments and revisions notwithstanding, the new Press Law still contains a manifest and fundamental conflict between Articles 4, 5 (paragraph 1) and 8 (paragraph 2) on the one hand and Articles 11, 13 (paragraph 5), 17 (paragraphs 2 and 3) and 19 (paragraph 2) on the other:

Article 4: 'The National Press will not be subject to censorship or muzzling'.

Article 5 paragraph 1: 'Freedom of the press accords with the basic guaranteed human rights of citizens.'

Article 8 paragraph 2: 'A press publication does not need a Licence to Publish (S.I.T.).'

Article 11: 'Publications conflicting with Pancasila, such as those inspired by Communism/Marxism-Leninism are forbidden.'

Article 13 paragraph 5: requirement for an S.I.U.P.P. quoted above.

Article 17 paragraph 2: 'With a Government permit foreign press publications may circulate in Indonesia', and paragraph 3: 'The Government forbids the entry and circulation of foreign press publications which harm or endanger the people, the state and the national struggle of Indonesia'.

Article 19 paragraph 2: offences and penalties relating to press publications quoted above.

As in many other areas discussed in this study, the area of freedom of the Press contains, besides Indonesian law enacted since independence, the residual legal force of Dutch law, particularly in the criminal code. The sections of the criminal law with special bearing on the Press are the so-called 'hate-sowing' articles 154 and 155, which have been discussed in chapter 3.1.

3.2.3. Present Situation Regarding Press Freedom

Licences

As stated above, the S.I.T. licence to publish was first introduced in Indonesia on October 1, 1958. The Press Council had expressed unease over the inclusion of the provision for S.I.T.'s in the Press Law and asked the Government to 'perfect' the law by removing the inherent conflict between press freedom and the S.I.T. In late 1978 the Chairman of the Journalists Association, which is subject to strict government control, appealed to members of the Parliament for the repeal of the S.I.T. provision. He said it obstructed the realization of a free and responsible press, noting that there was a contradiction in the 1966 law between the need for the S.I.T. and the guarantee that censorship and bans would not be applied to the Indonesian press.

Early in 1979, however, the then Minister of Information, General Ali Murtopo, stated that the question of the S.I.T. provision should not be further discussed. He claimed that this licence was aimed at ensuring a balance in the development of the national press and was not intended as a muzzle. Criteria used by the Minister of Information in issuing or withdrawing S.I.T.'s were spelt out in more detail in Ministerial Regulation 03/Per/Menpen/1969 which proscribed articles or news inspired by Communism or Marxism Leninism as well as those containing pornographic, sadistic, anti-Pancasila, immoral, anti-religious or anti-social justice elements.⁴¹

While the S.I.T. provision has now been abolished, the new Press Law No. 21/1982 requires all press publishers to obtain from the Government a S.I.U.P.P. Ali Murtopo, when explaining the draft law to the Parliament in May 1982, said that 'after the press publications begin to become stable the press may encounter danger which will ruin them, especially from the competition of irresponsible elements entering the newspaper publication business, from those who have large capital or from alien elements using disguised methods.' He maintained that the S.I.U.P.P. is aimed 'at protecting the growth of the national press from alien elements or adventurers in press publications that can hamper the growth of a healthy national press.'⁴²

Restrictions on size and advertising

In February 1980 the Press Council formally adopted a government-promoted idea to limit the size and advertising content of newspapers. From March 1, 1980 newspapers were restricted to a maximum of 12 pages of which no more

than 30 per cent could be advertising. In March 1981 a new decision of the Press Council changed the percentage of advertising space for all types of press publications to 35 per cent, effective from April 1. The Council also announced that besides the restriction of 12 pages for daily newspapers, other press publications were to be restricted to a maximum of, respectively, 24 pages for tabloid weekly newspapers, 112 pages for weekly magazines of 22×29 cm format, 132 pages for bi-weekly magazines of 22×29 cm, and 224 pages for monthly magazines of $15 \frac{1}{2} \times 21$ cm. In addition, 'for the time being' they would not be allowed to shorten the frequencies of their publications, for instance from bi-weekly to weekly.

Officials claimed that the regulation was intended to assist smaller newspapers, which often faced severe financial difficulties. However, the move was widely interpreted as aiming to curb the influence and financial well-being of several independent dailies of mass circulation, such as *Kompas* and *Sinar Harapan*.

This was not the first time the Indonesian press has been restricted in its advertising size. In 1958, prior to the guided democracy era, the Martial Law Command restricted advertising to a maximum of one-third of the normally four-page newspapers. The purpose of the regulation was to cut back the advertising dominance of those journals managed by ethnic Chinese, such as the dailies *Bin Pa* and *Keng Po*.

Government as Publisher

Instruction 06/1979 of the Minister of Information dated July 6, 1978 provided for the distribution in Indonesian villages of 36,000 copies of two pro-Government newspapers, *Anghkatan Bersenjata* (the title now uses its initials, AB) and *Berita Yudha*, starting mid-August 1979. In April 1982 the combined circulation increased to 51,000 by adding to the project one other pro-Government daily, *Suara Karya*, an organ of the largest political group Golongan Karya (Golkar). The programme, funded by the Department of Information, has been subject to some domestic criticism on the grounds that it discriminates against more independent newspapers.

Six months after the start of the programme, the Decision of the Minister of Information of December 30, 1979 opened up a new project popularly known as the *Koran Masuk Desa*, (K.M.D.), 'Newspapers to the Villages', which started in the beginning of 1980. During the year the Government subsidized 27 new weekly newspapers and magazines specifically designed for village-level readership, to be printed by regional press publishers, each with a projected circulation of at least 5,000 copies. By early 1982 the number of the K.M.D. subsidized papers increased to over 40, published in 22 out of the 27 Indonesian provinces.

While it is financially dependent upon the government's mercy, the K.M.D. scheme likewise has no freedom in its editorial policy. For the editorial

contents, the appendix to the Information Minister's Decision defines a multi-interpretable criterion: 'The K.M.D. should avoid the inclusion of articles and pictures which may arouse negative excesses as regards the village community, such as cynicism and apathy concerning development, frustrations about current conditions, taking the negative urban life as an example, abandoning positive traditional behavior and stimulating urbanization.'

Bans

Whether as a result of formal withdrawal of licenses, decrees or simple decisions of KOPKAMTIB, many publications have been banned since the introduction of the Press Law.

On August 14, 1969 the Sunday edition of *Warta Berita* had its S.I.T. revoked following its publication of a speech by North Korean leader Kim Il Sung. The Editor-in-Chief, Junus Lubis, was brought to trial for violation of the Press Law, and for 'involvement in a subversive movement'. He was sentenced to five months imprisonment in February 1970.

In 1971 the impending elections provided the impetus for larger-scale bans and restrictions. On April 22, 1971, Minister for Home Affairs and Chairman of the General Elections Institute, then General Amir Machmud, announced what became known as the 'Twelve Commandments' — rules of conduct during the election campaign. Candidates, and by extension the newspapers of the parties supporting those candidates, were forbidden to criticize the Pancasila, the 1945 Constitution, the Government's program and its implementation, Government officials, the President, Heads of State of friendly countries, or to incite religious, ethnic or racial antagonisms or to exploit associations with ex-President Sukarno, or to support the return of the Old Order or the Partai Komunis Indonesia (PKI), Communist Party of Indonesia.

Further to these general restrictions during the whole of the election period, the week preceding the elections themselves was declared 'Tranquil Week' in which further curbs on freedom of expression were implemented. Temporary bans were placed on both the daily newspapers *Harian Kami* and *Duta Masyarakat*.

The mass student upsurge of January 1974 was the occasion of a wholesale assault on the Press. Eleven newspapers and one magazine were banned in the wake of the huge demonstrations and riots following Japanese Prime Minister Tanaka's visit to Jakarta. These newspapers, which included some of the country's most popular ones like *Harian Nusantara*, *Abadi*, *Harian Kami*, *Pedoman* and *Indonesia Raya*, have to this day not been allowed to reappear.

This banning of publications was accompanied by detention of journalists. *Indonesia Raya*'s editor Mochtar Lubis, who had spent 9 years under detention in Sukarno's time, now spent two-and-a-half months in jail. He was released

after an international campaign. His deputy Enggak Bahau'ddin was also detained and spent ten-and-a-half months in a military prison.⁴³

Student criticism of the Government heightened considerably during the election campaign of May 1977 and the ensuing period leading up to the re-election of President Suharto in April 1978. The publication of the White Book by the Student Council of the I.T.B. (Bandung Institute of Technology) provided the flash-point for government moves against the Press.⁴⁴ As well as student publications, seven newspapers published in Jakarta were banned, including two of the biggest circulation dailies *Kompas* and *Sinar Harapan*. This was done on the ground that by exaggerating the strength of the student movement they had been reporting and so 'sharpening' tensions. After two weeks under suspension in January and February 1978 the papers were allowed to reappear on the editors signing statements pledging 'to recognize their responsibility for the protection of national stability, security and order' and undertaking not 'to slander or humiliate the national leader or members of his family'. Further, they were specifically instructed to withhold certain news items.⁴⁵

In February 1978 the local military command of Yogyakarta, Central Java, placed a ban on the Islamic newspaper *Masa Kini* for reporting continued I.T.B. student resistance to military occupation of their campus. On June 25, 1979 the Jakarta news magazine *Matahari* had its S.I.T. withdrawn for 'slandering the Government, inciting groups against each other and tending to induce a feeling of animosity among readers against the state and the leader of the Government' for its criticism of the political role of the technocrats, the so-called Berkeley Mafia, and the cukongs, the largely Chinese financial sponsors of the Government and Presidency. This was echoed in the ban by the Rector of the Gajah Mada University of Yogyakarta on the student publication *Gelora Mahasiswa* from September 27, 1978. The Rector called his decision 'a temporary ban', but the bi-weekly newspaper has never re-appeared. On September 28, 1979 the S.I.T. of the daily *Lensa Generasi* was withdrawn on the grounds that it had moved its editorial office and business operations from Tanjung Karang, southern Sumatra, to Jakarta.

In 1980 bans continued to be applied, particularly on the student press, with the I.T.B. monthly newspaper *Kampus* being banned in April and the University of Indonesia bi-weekly newspaper *Salemba* in the following months. The S.I.T.'s of the two student publications were withdrawn by the Department of Information. This was the second, fatal ban for *Salemba* after the first one imposed on the instructions of the local KOPKAMTIB of Jakarta from February to August 1978. *Kampus* re-appeared for a short period early in 1982, but without an official permit, and was again banned by the Department of Information.

During 1980 a variety of publications, ranging from the sensation-seeking *Sinar Pagi* to the widely respected *Kompas*, received 'strong warnings' from

senior officials because of alleged breaches of the press ethical code on matters ranging from politics to pornography.

In 1981 and following years, practically no possibility was left for student initiatives to run an independent press. The former staff of the now-banned *Salemba* could only come out with one issue of their new publication. Soon after publishing the first edition of the newspaper *Makara*, on April 25, 1981, the students were ordered to discontinue the publication by the Rector of the University at the request of the Minister of Education and Culture.

During 1981 no press ban resulted from news reporting in the general press. There were, however, bans on specific news reports, sometimes followed by tensions and news blackouts, which will be discussed in the next section. But 1982, the year of the third general elections of the New Order, has seen the reappearance of press muzzling in the midst of political tensions during the campaign and after the voting in January 1982, the first and only issue of *Komunikasi Massa*, a monthly tabloid run by both lecturers and students of the University of Indonesia's Department of Mass Communication Science, became the first victim of the 1982 ban. The Department of Information revoked the Registration Letter, the S.T.T. (Surat Tanda Terdaftar) issued by this department authorizing the publication of a non-commercial publication at the request of the Department of Education and Culture on the grounds that it 'has not supported the implementation of the normalization of campus environments'.⁴⁶

Tempo, the largest news magazine, had its first experience of being banned, temporarily, on April 12, 1982 after publishing articles on riots in Jakarta and incidents in Solo and Yogyakarta, Central Java, during the election campaign.⁴⁷

The magazine was also blamed for printing a picture of the strike of the students of the University of Indonesia protesting against the dismissal of their Student Council's chairman by the Rector. The ban was lifted on June 7, 1982 only when the magazine, according to the Department of Information, was 'prepared consciously and sincerely to have regrets over and apologize for all its mistakes' and had 'written a statement expressing willingness to share the responsibility of maintaining national stability, security, order and the public interest, not to aggravate the situation and even to ease tensions if they occurred in the society'.⁴⁸ On June 12, *Tempo* reappeared.

The only Muslim daily, with a nation-wide circulation *Pelita*, was banned for a longer period, from May 7 until September 6, 1982, for printing reports of riots and incidents during the election campaigns and for publishing unofficial election results that contradicted those released by the General Elections Institute. The newspaper also had to undergo an editorial board reshuffle in which four of its editors, including the Editor-in-Chief and his deputy, respectively Barlianta Harahap and Said Budairi, were dropped before it was allowed to re-appear. Prior to the closing down, *Pelita* had received two 'strong warnings' from the KOPKAMTIB and another four warnings from the Department of Information in March and April. Accused of violating the

journalistic code of ethics, the paper was also 'strongly warned' by the KOPKAMTIB in January for reporting a raid by the authorities on a commissioner of the Partai Persatuan Pembangunan (PPP), the Muslim-backed United Development Party, at Bondowoso, East Java. *Pelita* was among seven newspapers banned for two weeks in January–February 1978. In September, *Pelita* was allowed to resume publication on condition that it ceased to be the official organ of the PPP.⁴⁹

On December 6, 1982 the Department of Information withdrew the S.I.T. of *Muhibah*, a monthly student magazine of the Islamic University of Indonesia in Yogyakarta, for printing articles that 'tend to engage in politics'. This was the second ban since early 1978 when *Muhibah* and at least six other student publications and seven daily newspapers were closed down by the Government in its efforts to suppress the news of student demonstrations in several cities.

On March 14, 1983 *Jurnal Ekuin*, the only business daily in the country, was banned by the commander of KOPKAMTIB who objected to the publication of a report in its March 9 edition that Indonesia had made a decision to cut its oil price by \$4.50. The story had reportedly embarrassed the Indonesian delegation attending the conference of the Organization of Petroleum Exporting Countries (OPEC) in London, which was still negotiating a price-cut compromise. The authorities at the same time barred other papers from reporting the ban on *Jurnal Ekuin*.⁵⁰ Until now the paper has not been allowed to reappear. An Islamic monthly bulletin, *Al-Risalah*, published by a group of young Muslims in Yogyakarta, was banned by the Attorney General on October 19, 1983 following a raid on its office by the local military command to confiscate the publication. The bulletin was said to have printed articles that 'can disturb public order' and 'dubbed the Government an infidel'. Three of its leaders were detained and interrogated by the command. The military also found during the raid a stock of *Yaum al-Quds*, an official publication of the Iranian 'revolutionary concepts' of Ayatollah Khomeini that reportedly had been quoted by *Al-Risalah*.^{51, 52, 53} The Department of Foreign Affairs lodged a 'strong warning' to the Iranian Chargé d' Affaires and asked the Embassy to stop publishing and distributing *Yaum al-Quds*.⁵⁴

On February 21, 1984 the authorities suspended the news weekly *Topik* because of its cover-story 'Looking for a hundred kinds of poor people'. The month before, on January 10, the bi-monthly *Expo* had been banned for publishing articles on Indonesia's one hundred richest persons. According to Sukarno, director-general of the Department of Information, the articles in both the magazines reported on the widening gap between the rich and the poor was promoting class struggle and communist doctrines. The Legal Aid Institute in Jakarta, (LBH) called upon the government to lift the ban, emphasizing the need for a more precise definition of a responsible press. The publisher of *Topik*, B. M. Diah, former Information Minister immediately wrote a letter of apology.⁵⁵

An announcement of the Department of Information on January 14, 1985 revealed that three months before twenty-six publications had been banned in a number of cities. The publications affected include a wide range of in-house school or faculty journals, and Muslim journals.⁵⁶

In October 1986 one of most influential and largest daily newspapers, *Sinar Harapan*, was banned permanently. This ban was lifted in February 1987, after a replacement of the editorial Board.

Instructions Not to Publish News Items

Apart from formal bans on publications, withdrawals of S.I.T.'s, or charges against individual journalists, the Indonesian Government follows the practice of issuing instructions to editors not to publish reports on certain events, or give publicity or coverage to certain individuals.⁵⁷

As already mentioned, in the approach to the 1971 elections restrictions were issued over and above those laid down in the Press Law and Regulations as to what was permissible copy. This practice has continued with instructions to editors of papers banned temporarily in 1978 not to publish any 'political' statements by a number of people including Adnan Buyung Nasution of LBH (the Legal Aid Institute) and Rendra, the leading Indonesian poet.

Such bans, conveyed in official briefing sessions or in personal or telephone communication from governmental departments and military authorities, continue to this day. In May 1980 a ban was placed on the publication of reports on petitions presented to the Parliament by 50 leading Indonesian citizens—the 'Group of 50'—in protest against President Suharto's equating criticism of himself to criticism of the State, and on General Jasjin's protest against corruption by the President and his family.

Other events banned from Indonesian newspapers during 1980 included student unrest in South Korea, ostensibly to preserve good relations between Indonesia and South Korea, and details of a case in the Singapore High Court in which Pertamina, the Indonesian State Oil Company, was attempting to recover more than US \$30 million which it alleged was obtained in illegal commissions by a former senior company official. The wife of the now deceased official has defended her claim to the money by alleging that her late husband obtained it in a manner known to, approved of and shared in by President Suharto. A denial of these allegations issued on behalf of the President was given widespread coverage in the Indonesian press (and some coverage abroad). However, several newspapers which used the issuing of the denial as a basis for detailed coverage of the case, were severely reprimanded by Indonesian authorities. An item in the official Antara news agency, quoting the Speaker of the Parliament to the effect that if the allegations could be proved the President would have broken his oath of office, was quickly followed by a 'rectification' stating that the said item 'should be considered non-existent'.

Also banned from the newspapers in 1980 were the riots in Central Java in November and December, but reports and photographs were published of the then Minister of Defence and Security Yusuf visiting markets which were 'operating smoothly'. In 1981 no single month passed without 'appeals' from government officials or military leaders urging newspapers to postpone or cancel the publication of information on certain events. Altogether there were forty-eight such 'appeals' received by the Indonesian media during the year, according to a newspaper account, four times a month on average. No newspaper, for example, reported the details of three political petitions signed by respectively 26, 61 and 360 citizens, the latter including almost all members of the 'Group of 50'. Discussing general elections, legal matters and state policies, the petitions were sent to the Parliament and the the People's Consultative Assembly.⁵⁸

The respected *Tempo*, in its February 28, 1981 issue, had to blackout a two-page report from its correspondent on a lynching of twenty-seven suspected criminals and witch-doctors by the people of Jember, a district to East Java. The publication of the report was considered by government officials 'too early' and the magazine was able to reveal the information only in the following week after a joint statement about the event had been made in the capital by both the Jakarta and East Java military and police authorities.

Krisna Harahap, the Editor-in-Chief of the Bandung daily, *Mandala*, and Ronny Bulton and Kantor Torong, two Jakarta correspondents of the Medan daily *Sinar Indonesia Baru*, were detained by military authorities in mid-March 1981. They were accused of violating a 'consensus' between the authorities and the Press not to publicize 'off the record' information about the attack on the Cicendo police station in Bandung, the capital city of the province of West Java, by fifteen Muslim militants in which three policemen were killed and one was seriously wounded. They spent between four and eight days in military detention, while the two newspapers received 'the last, strong warning' from the Department of Information, one step removed from being banned.

Similarly, most papers had to follow a request from authorities not to report any details of the hijacking to Bangkok, Thailand, of a DC-9 plane of the national airline Garuda on March 28 to 31, 1981, other than those based on official statements. The daily *Merkedea* had to cancel parts of its editorial discussing the event and left the column partly blank. Its sister publication the *Indonesian Observer* did the same thing after cancelling, 'due to national security measures', its entire story based on non-government sources. Originally the article was to fill six columns of its front page. But the evening daily *Terbit*, which may not have understood the exact limits of the coverage allowed by the authorities, printed an independent report that resulted in the detention of five of its journalists by the Capital City Garrison. The paper's Editor-in-Chief H.R.S. Hadikamadajaja, together with his three managing editors, Iadin Wahab, E. Subekti and Dahlan Rafiie, and the

reporter who wrote the story, Jon Marjono, spent almost three days in military detention.

In 1982, between February and December, five analytical articles, either on communist and left-wing historical figures or written by former leftist political prisoners appeared in the intellectual monthly magazine *Prisma* which later spurred the Department of Information to send a 'written warning' to its publisher and Editor-in-Chief. The letter, dated March 2, 1983, said that publishing such articles was 'as if to aim at advancing the communist political struggle so that society could again accept the presence of the PKI, the Indonesian Communist Party'. It said further that 'if related to Press Law No.21/1982 the articles can be interpreted as having a tendency to propagate communist teaching that can result in the closure of your publication'.⁵⁹

In 1983 there were at least two major issues on which Indonesian authorities refused to allow public discussion. The first concerned a campaign of executions without trial, carried out by military death squads against members of criminal gangs in some regions of the Indonesian islands, particularly on Java, and in the capital city of Jakarta. Between May, when the action began, and the first week of August, when the press accounts were brought to an abrupt halt, about 300 criminals were reported to have fallen victim to the 'mysterious shootings', the *Penembak Misterius* (PETRUS). This was a phrase being used widely by the Press because no-one took responsibility for the killings.

This ban was lifted during the visit of the Dutch Foreign Minister van den Broek, to Jakarta in January 1984. He inquired about the killings during his talks with his colleague, Mochtar Kusumaatmadja, and Benny Murdani, Commander-in-Chief of the Armed Forces. The press reports were forbidden to use the word 'mysterious' and stress was laid on the issue of foreign interference in internal affairs. But in fact English language newspapers such as the *Indonesian Observer* and the newly established *Jakarta Post*, as well as the well-known dailies *Kompas* and *Sinar Harapan*, took the opportunity to abandon their earlier reservations about the banned subject of the killings.

The second issue concerned restrictions imposed on discussion in the media of the concept promoted by President Suharto of the Pancasila as the Azas Tunggal, the 'single philosophical basis', and of the fact that the President wanted all socio-political organizations to adopt the Pancasila and mention it explicitly in their constitutions. Nevertheless there were some discussions on the subject in the Press and these caused some influential youth and extra-university student organizations to follow suit.

In March 1984 the daily newspaper *Sinar Harapan* received a strong warning from the Minister of Information for reporting on the arrest of Arnold Ap, the respected anthropologist and defender of Melanesian culture in Irian Jaya. He was reported to have been killed by the arresting authorities on April 26. *Sinar Harapan's* editor was told to fly to distant Irian's capital, Jayapura, to hear the 'true' story of Ap's death from senior officials there.

New Order Perceptions of the Press

Statements by senior Indonesian officials on the Press give a valuable insight into their perceptions of its rights and functions. While such statements often appear to be little more than an indulgence in semantics, they frequently give a more accurate indication of the parameters of press freedom than those laid down in formal regulations. Perhaps the most popular official definition of freedom press is that it is 'free but responsible—where freedom includes the right not to publish'. Following the bans in mid-1980 on stories about unrest in South Korea and the activities of the 'Group of 50', the then Information Minister, General Ali Murtopo, denied that such bans amounted to a 'press blackout'. When 'certain events' failed to appear in the local press, it was because of the media's sense of responsibility, he claimed, adding that the government's role was to remind chief editors of the national interest. Taboo areas for the Indonesian media are often expressed in terms of the 'BARA' formula, whereby the press are expected to avoid reporting on matters which may produce ethnic, religious, racial or intergroup tensions.

Specific high level official pronouncements on the Press have included:

- (a) A statement by General Yoga Sugama, the Head of the State Intelligence Coordinating Agency, BAKIN, that the Press should act as a bridge between the Government and the people, telling the community about the government's achievements and in turn informing it of community aspirations.
- (b) A call was made by President Suharto for the Press to make constructive criticism in keeping with its function as an element of social control. Shortly afterwards the President said that the Press should not hesitate to expose irregularities whether they be committed by officials or non-officials. Some time later the President complained that the domestic press lacked balance and objectivity.
- (c) A statement by Admiral Sudomo in late 1979 said that the Government had a vital interest in an advanced and highly developed national press which would stimulate the community to develop proper attitudes and views. This was made shortly after his controversial remarks about the need for journalists to avoid mixing fact and opinion.
- (d) A suggestion by the Central Java military commander that the Press should act as a regulator of the public temperature. If the situation was troubled and uncertain, the Press should publish positive reports. If the situation was 'freezing cold' the press should warm it up.
- (e) A statement by the Chairman of the Indonesian Journalist Association, PWI, that apart from Pancasila the Indonesian press could not be connected with other ideologies or ideals. The Indonesian press was not a 'liberal' one which coveted freedom for its own sake and which gave rise to indiscriminate criticisms.

- (f) In late 1980 a book entitled *Aspects of the Historical Development of the Press in Indonesia*, went on sale for a brief period. The book was produced by the Department of Information in cooperation with LEKNAS, the National Economic and Social Institute of LIPI, the Indonesian Institute for Sciences. The book has now been withdrawn from sale on the instructions of the senior officials of the Department of Information, who objected to a chapter of the book on 'Press Muzzling in Indonesian History', which included a detailed account of the closure of *Indonesia Raya* by both the Old and the New Order Governments. As noted above, both the 1966 and the 1982 Press Laws state specifically that the press will not be muzzled.
- (g) In September 1984 General Murdani stated that the duty of a journalist is to select information which could create national unity and stability. Journalists must not stir up public opinion with their information.

The Position of Journalists

The Indonesian Journalists Association, PWI was completely overhauled in the early days of the New Order. The entire leadership was replaced and 304 PWI members were expelled. Those expelled were placed on a blacklist. Press Law No.21/1982 (Article 16) prescribes the qualifications necessary to be a journalist in Indonesia. These are:

- (a) Indonesian citizenship;
- (b) a full understanding of the position, function and obligations of the press as laid out in Articles 2 and 3 of this Law;
- (c) a spirit of Pancasila and never having betrayed the national struggle; and
- (d) ability, experience, education, a fine character and a sense of responsibility.

Individual journalists have borne the brunt of the Government's muzzling of the press throughout the New Order period. The Junus Lubis trial and detention (1969-70) and Mochter Lubis' detention (1974) have been mentioned above. It had been stated by the late Mohammed Roem, former Deputy Prime Minister in the Old Order period, that journalists in the regions had faced even more frequent detention and intimidation. In 1971 T.D. Hafas, Editor-in-Chief of *Harian Nusantara*, was tried under the hate-sowing articles for news items, articles and cartoons published in 1970-1. Hafas was sentenced to one year's imprisonment in September 1971. The outrage provoked by this move led the PWI to establish an Institute for the Defence of Jakarta Journalists to defend anyone brought to trial for violation of the hate-sowing articles. Mahbuh Djunsidi, the Chairman of the PWI's Council of Honour, was arrested on April 11, 1978 and detained until April 9, 1979 for unclear reasons, except that his columns in various newspapers and magazines and his political speeches when speaking as a leader of the PPP were known to be critical of government policies.

Two other journalists, former *Tempo* reporters Syahrir Wahab and Munsur Amin, were released in 1979 after periods of detention without trial. The detainment of Syahrir Wahab, from April 1977 until February 1979, seemed to have been based on the suspicion that he had possessed confidential documents related to specific Muslim activists. The detention of Munsur Amin, from October 1978 until June 1979, was reportedly triggered by his interviews with Muslim leaders of the 'Free Aceh' rebellion in northern Sumatra. In December 1979 three journalists of the papers banned after the abortive coup of the 30 September (1965) Movement were also released after detention without trial for fifteen years. They were: former Editor-in-Chief Abdul Karim Daeng Patombong, known as A. Karim DP, of the leftist daily *Warta Bhakti*, who was concurrently Chairman of PWI when arrested, former Editor-in-Chief Naibaho of the Communist Party organ *Harian Rakjat*, and former publisher Hasjim Rachman of the other leftist daily, *Bintang Timur*.

On March 3, 1980 the trial began in Jakarta of Soemarsono, who was detained on March 21, 1978. He was on trial for subversion and was accused of receiving secret state documents, material of which he made use in Abadi and other publications. He was also accused of association with Muslim activists opposed to the Suharto Government. At one stage the trial was adjourned for several months, apparently because of his serious illness, until his death on March 20, 1981.

In May 1980 members of a Committee to Defend Press Freedom briefed Indonesian parliamentarians on the formation of their organization. Press publicity at the time reported committee members as calling on the Indonesian Government to respect provisions of the 1945 Constitution, the 1966 Press Law and the basic outlines of state policy dealing with the rights of the Press. On December 13, 1982 the Managing Editor of the *Indonesia Times*, Thayeb Ibnu Sabil was dismissed by his publisher, who held him responsible for the insertion early that month of a misquoted statement of Admiral Sudomo, then Commander of the powerful KOPKAMTIB. Sudomo had attacked the so-called 'political sponsors' and labelled them 'troublemakers' without naming them, but a reporter's account of his statement which appeared in the *Indonesia Times* of December 7 referred to them as members of the 'Group of 50'. The newspaper received a 'strong warning' from the Department of Information. The publisher, presumably in an effort to placate the authorities and thus to avoid a ban, not only fired the managing editor but also sent out copies of his letter announcing the dismissal to various government officials including the Minister of Information, the Minister Coordinator for Political and Security Affairs and the Commander of KOPKAMTIB. During 1983 there was at least one case of a reporter being detained by local military authorities in West Java for his news reporting. Possibly for fear of further action by the authorities against him or his paper, the journalist and his editor apparently preferred to accept the decision without much protest or publicity.

Foreign Press

Limitations on the operation of the foreign press in Indonesia are found in the Press Law No.21/1982, in particular on news collection and distribution by the foreign press.⁶⁰ Article 17 contains as its initial clause the unequivocal statement, 'Foreign press enterprises are not permitted to be established within the territory of the Republic of Indonesia' and goes on to state that the Government may allow the circulation of foreign press publications provided they do not 'harm or endanger the Indonesian society, state or national struggle'. Further regulations on foreign press publications in Indonesia were to be made by the Government in conjunction with the Press Council. It is also stated that representatives of foreign news agencies and press publications must register with the Government and the Press Council. In 1972 regulations issued for foreign correspondents included the stipulation that all copy be despatched through the official Indonesian news agency. However, this was not pursued. Since their survival in Indonesia is at the Government's discretion, foreign journalists are in a difficult position. In recent years many foreign correspondents have incurred Government displeasure for reporting events in the 'not-for-publication' category outlined above. A case of expulsion of a foreign correspondent occurred in June 1980 when Radio Australia's representative, Warwick Beutler had his normally routine request for a visa renewal denied. The Government specifically cited the reason as Radio Australia's broadcasting of events 'not to be published'. The matter in question was a shortage of food in East Timor, caused by an Indonesian military campaign to move farmers from their lands. In fact the report attributed to Beutler emanated from the Reuter representative. Beutler was out of Indonesia, on leave! A second Australian journalist, Peter Rogers of *The Sydney Morning Herald*, had his visa renewal denied in February 1981, apparently in retaliation for reports on chronic famine in East Timor. Other foreign correspondents have encountered problems, often of a severe nature, in obtaining residence or even short term visit visas. In justifying moves against the foreign correspondents, the Government said they should observe the same obligations as those imposed on the domestic press.

The Sydney Morning Herald and *The Australian* were among seven foreign newspapers banned by the Government on April 25, 1982. The others were the Dutch *NRC/Handelsblad*, *The Observer* from London, *Le Figaro*, *L'Aurore* and *France-Soir* from France. From October 1982 these newspapers were permitted to resume distribution, with the exception of *The Australian*.⁶¹

In 1984 four foreign correspondents had difficulty in extending their stay. They included Joe Manguno of the *Asian Wall Street Journal*; Gilles Bertin, bureau chief of AFP; Susomo Awonohara of the *Far Eastern Economic Review*. Isabelle Reckeweg of UPI, who had been six years in Indonesia and was president of the Jakarta Foreign Correspondents' Association, was expelled

from the country in June because of publication in October 1983 of details of the troop build-up in East Timor.⁶²

Another victim of banning was *The Sydney Morning Herald's* then foreign editor, veteran Australian analyst Peter Hastings, who wrote in late 1984 that Irianese anthropologist Arnold Ap had been killed by Indonesian Red Beret commandos (Kopassadha). Hastings quoted a letter he had received from some Westerners who had been working in Irian for some time and had learned the truth about Ap's death. The cultural leader died as a result of a military conspiracy. The story, written by a journalist who had enjoyed good access to Indonesian leaders for many years, contradicted an account of Ap's death given by foreign minister Dr. Mochtar at a Jakarta press conference. Further, it hinted that military chief General Murdani was ultimately responsible for the action of his special troops. Although Hastings had, in the past, experienced temporary restrictions in visiting Indonesia, he found that this time he was truly *persona non grata*.

Foreign periodicals seeking circulation in Indonesia must have each issue cleared by the Attorney-General, who is responsible for censoring the foreign press under Presidential Decision No. 4/1963. In most cases advance copies of periodicals are sent to the Attorney-General's office for inspection before the bulk of copies arrive for distribution. Offending articles either result in the entire issue being banned, or are torn or blacked out and the issue still circulated. Newspapers are supposed not to require a distribution permit, but in the case of *The Straits Times*, the largest circulation foreign newspaper, the distributor applies similar censorship procedures in consultation with the Attorney-General's office. Even advertisements carrying Chinese characters can cause offence.

In mid-1980 moves were initiated to restrict Jakarta foreign news agencies from distributing within the country their stories about Indonesian affairs. Such stories appear periodically in some local newspapers because of commercial arrangements they have with the news agencies. The move came in a letter from the head of the Indonesian news agency Antara requesting foreign agencies to restrict the distribution and marketing of news originating from Indonesia to 'countries outside Indonesia only'. It is only through the services of Antara and the other smaller news agency, Kantor Berita Nasional Indonesia (KNI), that Indonesian newspapers can subscribe to the international commercial agencies. One of the reasons behind the request from Antara was apparently to keep Indonesian newspapers from publishing foreign agency reports on domestic affairs considered sensitive. So far, only Associated Press has been able to follow the restriction, by installing a 'selector machine' which can withhold all news items bearing Jakarta datelines.

A parallel is the installation in early 1985 of TV sets in villages along the Irian Jaya PNG border which are 'adjusted' by the Government so that they can pick up only TVRI of Indonesia, but not foreign channels (such as

Australian ABC-TV or those from ASEAN countries) which beam from satellites. These sets, and the accompanying solar cell panels and disk aerials, were bought from an Australian supplier. It is hoped by this means to spread further the official word to the sensitive border zone.

3.3. FREEDOM OF ASSOCIATION AND RIGHTS OF WORKERS

3.3.1. The Context

Article 28 of the 1945 Constitution reads: 'The freedoms of association and of assembly, to express thoughts orally and in writing and so forth are to be settled by legislation.' The Elucidation to the Constitution states that Articles 28, 29, paragraph 1 and 34 'concern the status of residents'. These articles, both those which only concern citizens and those which concern all residents, express the desire of the Indonesian people to build a nation which is democratic in character and which wishes to implement social justice and humanism. This article has been cited by the New Order government as evidence of its commitment to the constitutional right of association, for example in its reports on freedom of association to the International Labour Organisation (ILO), in the mid-1970s.

But in fact the years from 1970 to 1980 have been marked by a narrowing of the freedom of association. The number of political parties has been reduced, civil servants face difficulties in joining independent political parties, trade unions and peasants' associations have been transformed into government-sponsored organizations, and the government is attempting to limit the role of student bodies. A short description of the strenuous recent history of political parties and their regulated existence can be found in chapter 2. In this section detailed attention will be given to the civil servants' freedom to join or not to join associations, to the students organizations and to the freedom of labour and peasants association. As trade union rights are so intimately linked to the social and economic rights of their members considerable attention is paid to questions such as the freedom to strike and bargain collectively, and to conditions of work.

3.3.2. Civil Servants

The period of parliamentary democracy in the 1950s saw considerable penetration into the bureaucracy by political parties with, for example, the PNI strong in the Departments of Home Affairs, Information and Education, and the NU strong in Religious Affairs. Parties found access to power and finance through this penetration. Discussions in the National Council on the forms of Guided Democracy included proposals for the depoliticization of civil servants.

General Nasution's submission on behalf of the army leadership in August 1958 included a proposal 'to guarantee the discipline of civil servants by forbidding their active involvement in politics or becoming members of a political party'. In July 1959 President Sukarno had decreed that senior civil servants and personnel in state enterprises were obliged to resign their party memberships or give up their jobs, but it appears that by 1961 the regulation was still not being effectively applied.⁶³ At the first New Order MPRS session, March 1966, the regulation was mentioned for consideration for revocation, but President Suharto's government did not proceed toward revocation, rather a cabinet meeting of October 1966 instructed all ministries to reactivate and apply the regulation consistently, causing heated party protest. Rival drafts on the issue were put to the DPR in February 1966 (from the government and NU), but parliamentary discussion continued until mid-1969, while government spokesmen advocated 'depoliticization' of the state apparatus. In June 1969 agreement was reached for revocation of the regulation of 1959 but with the provision that revocation would be complemented by a Government Regulation of 'the political life of civil servants'. The Bill of Revocation (No. 2/1970) was accompanied by Government Regulation No.6/1970 which appeared to ban party membership for a restricted list of senior civil servants. But the Regulation also contained the statement that 'all civil servants in carrying out their office may not carry out political activities which are not in accordance with their status as civil servants', given a wider interpretation in the official clarification to the regulation. This apparently innocuous statement was very widely used during 1970-1 by Internal Affairs Minister, Amir Machmud, as the legal basis for his policy of 'monoloyalty', which forced a wide range of civil servants to resign party membership or their jobs. In 1970 the entirety of the nation-wide civil administration in his department were announced to be members of 'Kokarmendagri' (Functional Group Corps of the Ministry of Internal Affairs), under the threat of dismissal. This was not really 'depoliticization', as Kokarmendagri (itself formed in 1966) had become in 1969 a member of the government party 'Sekber GOLKAR'. The civil servants affected thus became GOLKAR members, and provided a vast organizational backbone for GOLKAR while largely destroying that of the PNI, whose local branch executives included substantial numbers of civil servants. During the election campaign in 1971 'monoloyalty' was extended beyond Internal Affairs and 'Kokar' (Functional Groups) were formed in most Government departments.⁶⁴ In November 1971 the various Kokar were merged into a vast organization with acronym, 'KORPRI' ('Karyawan Corps'), including all civil servants and personnel in state enterprises. KORPRI members are automatically GOLKAR members, and its leadership includes the Internal Affairs Minister and the GOLKAR Chairman and Secretary General. The parliamentary debate over Law No. 3/1975 on Political Parties and GOLKAR provided an opportunity for revision of the wide interpretation of Government

Regulation No. 6/1970 and both the PDI and PPP, the two civilian parties in parliament, argued strongly for legislative endorsement of the right of civil servants to become members of political parties (Clause 2, Article 7). Although the legislation was ratified by the DPR on August 14, 1975, the final position remained uncertain until the coming into force of implementing Regulation No. 20/1976 on August 7, 1976. In the meantime official attitudes were illustrated by the denial in February 1976 by the Head of the Central Java Regional Office of the Religious Affairs Department that officials were prohibited from entering political parties. He explained that officials were allowed to leave KORPRI but they also had to leave their jobs. Asked if that were not a prohibition, he replied 'that is an interpretation'. He cited a presidential instruction that KORPRI be strengthened. In July 1976 the Internal Affairs Minister emphasised that KORPRI would continue, and that civil servants could join political parties but not then remain civil servants. He urged civil servants not to be 'hermaphrodites' or 'dualistic'. The implementing Regulation No. 20/1976 defines 'civil servants' as all those stipulated in Law No. 8/1974 and all those of equivalent status (in state-owned banks, companies and other commercial bodies, heads of villages, and all of the officials of the state referred to in Law Nos. 3/1975 and No. 4/1974). These may not be members of political parties, except with written permission from the competent official, i.e. official with competence to appoint or dismiss those civil servants. A written application must be made through official channels and a decision must be made within three months. The official may reject the request if it is considered that membership would disturb the smooth execution of the duties of the civil servant concerned. On receipt of permission the civil servant may become a member, but that permission may be revoked if the competent official afterwards considers that membership does disturb the smooth execution of the civil servant's duties. Those civil servants not specified must give notice of intention to join a political party or GOLKAR to the competent official, who must send official acknowledgement. All heads of bodies must maintain a list of the names and records of civil servants who become members of political parties or GOLKAR in the area under their authority. Those already members of political parties or GOLKAR had six months to adapt themselves to the stipulations of this regulation.

The legislation does, therefore, on the face of it, offer some protection for civil servants who wish to become party members and not lose their jobs. But the discretionary power of the competent officials is wide and those officials are themselves GOLKAR members. All civil servants who do not apply for permission or give notice remain automatically members of GOLKAR through their membership in KORPRI. The continuing validity of Presidential Decree No. 82/1981 on KORPRI formation and the instruction that KORPRI be 'strengthened' offer further presidential endorsement of officials wishing to avail themselves of the discretionary powers to deny permission to join political

parties. During the DPR debates the parties argued that the need to seek approval for party membership is a constraint. The conduct of the 1977 and 1982 elections suggest little hope for change.

3.3.3. Labour and Peasant's Associations

Organizational Developments and the ILO

The Indonesian Government claimed in 1975 that protection of workers' representatives is maintained by legislation, including Law No. 18/1956, which mentions the right to organize and to conduct collective bargaining, and Law No. 12/1964 concerning the termination of employment in private undertakings, which prohibits dismissal for any reason without permission by the competent authority. The Provisional People's Assembly (MPRS) of 1966 called for a basic law in respect of the entire labour force, which should include provisions on employment, equitable wages, social guarantees, and public health. This was acted upon with Law No. 14/1969, the Basic Manpower Law, which is said by government representatives to include 'the right to establish and become members of democratically formed trade unions' and to conclude Collective Labour Agreements (CLA's), to contain provisions on the settlement of disputes, the right to strike, and on social insurance. During the 1970s the Indonesian Government has sought to promote 'tripartite Councils', consultative arrangements between Government (usually the Department of Manpower, Transmigration and Cooperatives) and employers' and workers' associations. These have been seen as a basic elements of 'Pancasila industrial relations' (HIP).⁶⁵

However, political developments concerning the freedom to form labour and peasant organizations have not been expressed so much through legislation, but rather through increasing pressure against this freedom, from the late 1950s into the 1970s. Already President Sukarno's plans concerning Guided Democracy envisaged the fusion of most party-affiliated mass organizations ('organisasi massa' or 'ormas') into 'functional groupings'. Two such groupings were labour ('buruh') and peasants ('petani') organizations. For the former group, this implied fusion of around a dozen major trade union federations and several hundred trade union organizations, most of them affiliated with one of the more than thirty political parties of the 1950s. The Indonesian Army leaders took steps in advance of the President towards forming 'functional groups' under army supervision, with the creation of 'Cooperation Bodies' (BKS) with a range of party ormas under a military chairman.⁶⁶ The BKS became unpopular with their constituent members through the military attempts to control ormas activities, and the Indonesian Communist Party (PKI) refused to continue working with the BKS organizations. Also President Sukarno's attempt to fuse the unions into a single organization in July 1960 failed through resistance led by the PKI-affiliated Union Federation SOBSI.

Two major contradictory developments for labour and peasant organizations characterized the years 1960–65: the continuation of army plans to control such organizations, and the provision for a form of workers' councils, called enterprise councils, in state enterprises.

With respect to the first, the Army's BKS were dissolved into a national organization, 'Union of Indonesian Socialist Karyawan Organizations', SOKSI in December 1962. By the end of 1963 SOKSI claimed 146 member organizations and 7½ million members. It was strongly opposed to left-wing unions and labour philosophy, and generally supported management decisions on for example strike bans and price rises. It received substantial support from the Army leadership, the management of Government enterprises and conservative civilian ministers and politicians. SOKSI established its own sub-organization for peasants, women, students, intellectuals and youth and was consistently accused by left-wing organizations of trying to prevent workers from holding party membership and of having forced existing organizations to dissolve themselves into SOKSI.

'Enterprise councils' were formed at President Sukarno's initiative.⁶⁷ The regulations provided for councils at all levels of management in each state enterprise, from central board down to single factories and estates. The basic pattern for representation was to be one management representative, five from labour and peasants, apportioned as relevant to the enterprise, and one expert. Reports indicate that by mid-1964 there were 657 councils with over 2,700 members, with approximately 30 per cent of positions held by PKI labour and peasant ormas, and 39 per cent by SOKSI and management. The councils were both an arena for rivalry between SOKSI and left-wing ormas, and a means for labour and peasant participation in management.

With the start of the New Order Government the PKI ormas were banned along with SOBSI and the party proper and 'screening groups' were set up in all Government bodies and enterprises. SOKSI sponsored purges in the Departments of Labour, Agrarian Affairs, and Plantations. The enterprise councils ceased to exist in 1966–7 and initiative for organizing labour unions passed from SOKSI to Sekber GOLKAR.⁶⁸ At the end of 1967 GOLKAR contained 262 organizations, including 20 professional organizations (e.g. attorneys, doctors, engineers), 15 civil servants organizations, the teacher's union PGRI, and several party-affiliated union organizations. During 1968 GOLKAR began to monopolize links with overseas worker institutions (the ILO, ICFTU and AFL-CIO), and worker education projects with America and West Germany.

During the election preparations and campaign of 1970–1, the parties protested at, among much else, GOLKAR pressures on unions to dissolve themselves into GOLKAR. In November 1971⁶⁹ the unions were deprived of important source of membership as all personnel in State enterprises were obliged to become members of KORPRI.⁷⁰ In June 1971 the Federation of Indonesian Muslim Trade Unions ('Sarbumusi') sent a complaint to the ILO

Committee on Freedom of Association based on their election campaign memorandum of April 23, 1971 to the President and the Chairman of the Supreme Court. It contained allegations that the right to organize had been infringed, and that trade unions had been forced to dissolve 'by all kinds of manipulation, including the use of authority'. This included a list of unions affected, mainly in Central and East Java. Sarbumusi claimed violations of the 1945 Constitution, ILO Convention No. 98 and Law No. 14/1969 (the Basic Manpower Law). In its reply of November 5, 1971 to the ILO the Indonesian Government stated that it had 'consistently observed trade union rights as fundamental rights guaranteed by the Constitution of the Republic of Indonesia, Article 28 of which specifically states the right of freedom of association and of assembly. Furthermore, Labour Law No. 14 of 1969 lays down the right of workers to establish and join trade unions and of unions to enter into collective agreements with employers'. The Government categorically denied the infringements. Sarbumusi, in a further communication of August 21, 1971, asked the ILO 'to leave the matter in abeyance' since the question was being entrusted to the ICFTU which had sent a representative to Indonesia to examine the situation. On these grounds the ILO Governing Body, in February 1972, decided to leave the examination of the complaint in abeyance and decided that, accordingly, the allegations did not, at that time, call for further examination in substance.⁷¹

Government statements on the 'crystallization' of labour unions continued. In January 1973 Estate Workers Unions were affiliated into one single organization. On February 20, 1973 the fusion of all remaining workers' organizations (i.e. those workers not included in KORPRI) was announced in a 'Declaration of Unity'. This fusion created the FBSI, the All-Indonesia Workers Federation ('Federasi Buruh Seluruh Indonesia'), with a government appointed leadership which was confirmed by the first congress of the FBSI in 1981.

A similar process took place with peasants' associations, which on April 26, 1973 were fused into the HKTI, the Harmony Association of Indonesian peasants ('Himpunan Kerakunan Tani Indonesia'), accompanied by similar complaints about government intervention and outside pressure. HTKI has been described as 'a government controlled and largely inactive organization supposed to protect the interest of the farmers and the labourers whom they exploit'.⁷² The importance of the HKTI as the sole formal organization of small-farmers and labourers should be seen in the context of an elaborate network of controls on all forms of political life at the village level. These have included the barring of all mass organizations at the village level, the assignment of a military attaché to each village, the use of such 'public relations' exercises as ABRI Masuk Desa (The Armed Forces to the Village Campaign), increasing state interference with procedures for electing village officials through the screening of popular candidates and the imposition on occasion of military appointees, and the 1979 regulations on village government. These

latter regulations replaced Village Councils with Village Consultative Councils (Lembaga Musyawarah Desa), further reducing the already small margin of democratic control at the local level. It is in this context that the seeming passivity of agricultural labour needs to be considered.

Thus, from 1973, all peasants' and workers' associations were fused, at least at their executive levels, into the HKTI and FBSI. Around September 1973 a fishermen's association, apparently analagous to FBSI and HKTI was formed: the HNSI, All Indonesia Fishermen's Association ('Himpunan Nelayan Seluruh Indonesia').

All civil servants and other personnel in the State enterprises are automatically members of KORPRI. The organizational picture is, however, not entirely clear. The 'professional' or white-collar associations are apparently not included in FBSI but can themselves become members of GOLKAR, as had the Judges', Prosecutors', and Teachers' Associations already in the late 1960s. GOLKAR was reorganized in 1971, with the provision of five secretaries for GOLKAR 'fields', placed over fourteen coordination bodies: civil servants; manpower; spiritual and cultural; artists; entrepreneurs; cooperatives; peasants/farmers; fishermen and sailors; Hankam (Defence Department); and ormas (students, university students, intellectuals, women and youth). It appears that FBSI and HKTI work in association with their respective boards but it is not clear where the 'professional' associations fit in.

In a report on the freedom of association and collective bargaining to the 1973 ILO Conference the Indonesian Government explained that the registration of unions is conducted through the submission of an application signed by the authorized representatives, together with a copy of the union constitution, details of the executive board and its election, and the address of its headquarters. The union's registration may be 'deleted' by the Department of Manpower if 'the union changes its activities to activities which can no longer be considered to be of a trade union character'. Trade unions are free to join international organizations. The government commented that in the past most unions had been sub-organizations of political parties and 'as such were hampered in the execution of their basic obligations. The idea of breaking ties with the political parties, and simplifying organizations through mergers, has gained support'. The Government 'does not wish to disrupt this development towards responsible trade unionism'.⁷³

But this development appears to be far less autonomous than the government claims and is indeed, as indicated above, carried out by government inspired action. And with the leadership of the old labour and peasant organizations subsumed into organizations headed by government sympathizers and appointees, there appears to be little chance of anything but further 'crystallization', i.e. reduction in the numbers of organizations, although some organizations apparently remain effectively in existence despite the formal fusion.

Dialogue on labour matters is carried out at the national level through the tripartite formula, with a Tripartite Council which began operation in 1974 under the chairmanship of the Minister of Manpower, Transmigration and Cooperatives. Membership consists of officials of the ministry, the FBSI, and the employers.⁷⁴ It meets at least once every two months, although there was little activity of a tripartite nature at levels below the national Tripartite Council. This passivity in industrial matters is reflected in the rate of formation of Collective Labour Agreements which was admitted in 1975 to be 'dismally small'⁷⁵ and since 1984 are being replaced by Standard Common Agreements (KKBs) which can be filled out without any kind of collective bargaining. Even of these rather unilateral standard agreements there are only a few and most companies continue to function with 'company rules' imposed by management and approved by the Ministry of Manpower.⁷⁶

Since the formulation of Pancasila Industrial Relations in December 1974, it has been stated that their adoption 'entails the necessity of reforming the existing labour legislation to bring it into harmony' with those concepts.⁷⁷ Questions have been raised regularly by the ILO Committee of Experts in its Annual Report on the Application of Conventions and Recommendations with respect to Convention No. 98, concerning the Application of the Principles of the Right to Organize and to Bargain Collectively which Indonesia has ratified.

In 1979 the ILO Committee of Experts, with regard to the question of anti-union discrimination, commented on the Indonesian Government's reference to Act No. 21 of 1954, considering that 'this protection is extremely limited and does not satisfy the requirements of the Convention', and in 1982, with reference to Act. No. 14 of 1969 (Basic Principles concerning Manpower) the Committee requested the Government 'to indicate how this provision ensures to workers protection against acts of anti-union discrimination both at the recruitment stage and during the employment relationship'.⁷⁸ In 1986 the Committee of Experts reiterated its observation that the Indonesian legislation 'seems intended to protect the employer against a 'dictatorial attitude of a trade union (as is stated, moreover, in the explanatory text attached to the Act) and to exclude any system of trade union security rather than to protect the workers against anti-union discrimination within the meaning of Article 1'.⁷⁹

Another issue before the ILO Committee concerned a Ministerial Regulation of 1975⁸⁰ on the registration of workers organizations, which defines labour organizations, unions and federations in such a way that only the government controlled SBLPs (industrial unions) could fulfil the requirements. The Committee of Experts requested the Indonesian Government on several occasions 'to indicate precisely how workers' organizations are protected in practice against acts of interference, for instance by means of measures tending to bring about the creation of workers' organizations or to financially, or by some other means, sustain them with the object of placing them under the control of an employer or an employers' organization (Article 2 of the

Convention)' and, in 1983 and 1986, concluded again that this regulation was 'not sufficient'. Also concerning the 1975 Ministerial Regulation, the Committee stated time and again that its provisions with regard to concluding Collective Labour Agreements (limited to federations covering at least twenty provinces and comprising fifteen trade unions) are 'in conflict with the obligations placed on governments by virtue to the provisions of Article 4 of the Convention'.⁸¹

On several occasions the international labour movement has addressed itself to the question of the violation of trade union rights.⁸² The ICFTU again did so recently in a letter of December 1984 to the government. Not surprisingly, the Minister of Manpower replied in August 1985 that there was no reason for concern, that the trade unions are moving towards 'very bright prospects' and, above all, that the FBSI is supportive of this development. This places the complaining organization in a difficult situation, as it has maintained friendly relations with the FBSI which also has a member on the Executive Board of ICFTU.⁸³

These relations have recently become even more difficult as a 'stream-lining' of the organizational structure of FBSI, reducing further any independence which may have existed, was carried out over the objections of the ICFTU. At the same Congress, in November 1985 when the reorganisation was approved, the name of the FBSI was changed into SPSI (Serikat Pekerja Seluruh Indonesia) in order to leave out the word 'buruh' (trade union) which in the eyes of the government has too much of a left wing connotation. The Pancasila Industrial Relations rules were adopted by the Congress to be included in the statutes of the new SPSI statutes. In addition, to the surprise of many observers the Congress did not reelect the outgoing chairman, Agus Sudono, but Imam Sudarwo, who is not only a Golkar parliamentarian but also chairman of the Indonesian Textile Employers' (!) Federation.

Context of Indonesian Labour Law

The general framework for social justice and in particular the rights of workers and unions are in the Guidelines of State Policy. Both the 1978 and 1983 Statutes prescribe that policy in the field of labour protection be aimed at bettering 'wages, the terms of employment, working conditions and industrial relations, worker safety and health, as well as social security and other things in the context of improving the welfare of the workforce as a whole'.⁸⁴ Both go on to state: 'The development of labour relations needs to be directed towards effecting amicable co-operation between workers and employers which is inspired by Pancasila and the 1945 Constitution, and in which co-operation each party respects the other, each needs the other, each understands the role as well as rights of the other, and carries out respective obligations in the total production process, in a corporate effort to raise the participation of society in development'.⁸⁵

The 1978 Statute then states briefly: 'Trade unions struggle for the social and economic interests and the rights of workers and the life of the unions. By these means, amicable co-operation amongst workers, employers and Government needs to be increased.'⁸⁶

It is in addressing the role of unions, however, that the 1983 Statute contains a significant attenuation by avoiding any reference to the idea of struggle:

In the context of increasing smoothness, efficiency and continuity in business life, employers need to guarantee that they grant a share which is humanly fitting and accords with the contribution of service produced by workers. Business is additionally obliged to observe a rise in the welfare of workers based on capacity and the progress of the firm. Business also is obliged, together with the unions in addition to their role of attending to the fate of workers, to strive for the workers acquiring a consciousness of participating in accountability for the smoothness, progress and continuity of business life. The Government will work towards the creation and constant building of harmonious relations between employers and workers, which will urge the achievement of smoothness, efficiency and continuity in business life, and at the same time can fulfil the welfare needs of the workers in their firms as appropriate to the development and progress of those firms.⁸⁷

'Wage policy, in addition to taking note of rises in workforce productivity and production growth, needs to be directed towards raising the welfare and purchasing power of low income earners.'⁸⁸

The effect of this attenuation of the purpose and means of an autonomous labour movement, expressed in the 1983 Statute, is to provide parliamentary justification for further divergence from the body of Indonesian labour law as it had evolved over the previous thirty-eight years. As consolidated in the first major labour statute of the New Order, Law No. 14 of 1969, Indonesian labour law stood already rather ambiguously. Quite apart from the extralegal methods used to subvert it, a number of weaknesses existed even at the time of consolidation, and some have developed since. Of those incorporated into the 1969 statute, the most serious were the strike prohibition applicable to an inordinate number of 'vital' industries (Presidential Decree No. 7 of 1963), and the draconian limitations on the right to strike of Law No. 22 of 1957. The failure to have tied sanctions in respect of labour-law transgressions to the gold standard has of itself, due to inflation on the Indonesian scale, weakened the bite in otherwise often reasonable labour law.⁸⁹ Of those developed since 1969, the stultification of pluralism and competition within the labour movement was achieved in Ministerial Regulation No. Per-01/Men/1975 (Articles 1 and 2), while as of March, 1980, the courts have been deprived of their power which was transferred to the Minister of Manpower.⁹⁰

The role of the HIP (Pancasila Labour Relations) as an ideological bludgeon has already been noted.⁹¹ Its power can not be overstated as its main purpose has been to obfuscate the inherent conflict of interests between labour and management, quite apart from the commendable objective of delineating the

valid common interests. Actions branded as counter-Pancasila have come to be labelled 'subversive'. The principle of consensus is made sacrosanct, yet for consensus to hold in situations of inherent conflict, the 'consensus' must be prescribed by the ruling power. The inevitable dissent is thus condemned as being anti-consensus, hence anti-Pancasila, and hence subversive.

As demonstrated by Mulya Lubis, the Pancasila Labour Relations doctrine can be turned to positive effect. Quoting President Suharto's speech of February 20, 1977, he notes the President's injunction that the struggle of the whole people be borne equally upon their shoulders and that: 'Labour relations based on Pancasila establish the working class as human beings. There can be no other case, since Pancasila and the development we undertake are, in the final analysis, for the humanisation of the people. Workers unequivocally may not be considered merely as a factor of production, still less may their status be degraded to that of only cogs in the great industrial machine.' Lubis insists that if such were the true sentiments underlying the three principles of Pancasila Labour Relations, i.e.: '1. partners in profit and production; 2. partners in responsibility; and 3. awareness of rights and duties;', these could genuinely become the basis for radical structural change in Indonesian labour relations.⁹²

Right to Organize

On the rights to associate, organize and bargain collectively, Law 14 of 1969 states:

11. (1) Every worker has the right to establish and become a member of a workers association.
- (2) The formation of workers' associations is to be conducted in a democratic manner.
12. Workers' associations have the right to enter into contracts between workers and employers.

Immunity is in principle granted to trade union membership, establishment and activities by a Ministerial Regulation of 1967: 'Permission to sever work relations is not to be given on account of matters relating to membership of a trade union which is not banned, or of a labour movement, outside of work hours, or within work hours with the employer's permission.'⁹³

However, in practice many illegal dismissals are reported for reasons of trade union activity.

An initial weakness lies in the right-to-organize legislation. In a survey for the ILO, Jay A. Erstling has described the effect of Articles 1 and 2 of Ministerial Regulation No. Per-01/Men/1975 as follows:

The legislation of Indonesia establishes not only a minimum membership requirement but a geographic requirement as well. In order to be registered as a labour organization, a federation must have a membership of not less than 15 trade unions and be represented in at least 20 provinces. If the federation fails to meet these requirements, registration is

also denied to its regional organizations, member trade unions and their respective subordinate units.⁹⁴

The cynicism of this regulation lies in the fact that it is effectively impossible for any union to meet such stringent standards to achieve legal status without government help. The effect, then, has been to ensure the monopoly of the Federasi Buruh Seluruh Indonesia (FBSI), on a par with KORPRI as sole federation for the civil service and HKTI for the agricultural sector.

Compared to KORPRI and HKTI, FBSI is by far the most controversial of the three. This is not because there is less government intervention in its affairs, nor because it enjoys a larger constituency. Indeed, in 1979, only some 8 per cent of Indonesian workers were employed in manufacturing industry, and only 18 per cent in service industries⁹⁵—and a high proportion of the latter would have been public servants. As for government intervention, it is now believed that the very conception of FBSI took place in an office of BAKIN, the state intelligence organization. It has been publicly reported that three-quarters of the monthly income of FBSI comes as aid from the President.⁹⁶ A Member of Parliament and former leader of FBSI, Soetanto Martoprasono, in remarking that the FBSI is neither independent nor democratic, said: 'The leaders of the FBSI undermine the struggle of the workers themselves... [they] are not responsible to the workers but are responsible to those above. While the FBSI retains this form of responding to pressure from above, the present flare-up among workers will not end.'⁹⁷ Examples of just how FBSI acts as a mechanism for controlling the workers include the following: An instruction from the Central Executive of FBSI to 'All Leaderships, Trade Unions affiliated to the FBSI, Jakarta' (instruction No. 124/ADM/IX/81 of 3.9.81), in part reads:

We are sending enclosed herewith a specimen draft declaration from the East Kalimantan Regional Executive Council of the FBSI of 12 August, 1981, No. Kep.-II-01/B/FBSI/-KT/VIII-1981, in connection with the 'Declaration of the Conferral of the Honorary Title of Father of National Development and President Designate' to the Consultative Assembly in 1983, for your information and to enable you to prepare the necessary materials.

We instruct those Central Leaderships of Trade Unions affiliated to the FBSI which have not yet issued a declaration to the same effect as the above-mentioned enclosed specimen to issue a written declaration as soon as possible, to send the original of the said declaration to the Central Executive of the FBSI, and to submit a copy to the Secretary-General of the Peoples' Consultative Assembly, to the Directorate General for Publications, Department of Information, and to the mass media.

Another is the case of *Dinamika*, the newspaper of the Metal and Ceramic Workers Union of FBSI. *Dinamika* was closed down in November 1981 by the Ministry of Information at the request of the Central Board of FBSI. The Ministry's reasons for so doing included the following:

As holder of the official permit, the weekly bulletin *Dinamika* does not emphasise in the content of its articles subjects of an informative nature but on the contrary issues articles

of a controversial and antagonistic character, which is not in accordance with the Regulation mentioned above. . . . The deviations from the above mentioned Regulation (No.01/Per/Men.Pen/1975) have caused the Central Board of the All Indonesian Labour Federation (FBSI) as the mother organization of the Metal and Ceramic Workers Union, to regard it as necessary to send a letter to the Minister of Information, dated 27 August 1980 No.256/ADM/9/1980, and to the Director General for the Development of the Press and Publications, dated 10 December, 1980, to propose the withdrawal of the official permit of the newspaper *Dinamika* because its contents are in the direction of tendentious questions and incitements against fellow leaders of the All Indonesian Labour Federation.⁹⁸

Elsewhere in this study it will be demonstrated that there exists a measure of industrial unrest in present day Indonesia in which at times the FBSI, in a limited manner, takes up the workers interest. The examples above show that such instances of 'independence' hardly can be ascribed to a lack of interloping officialdom. Nor can they be attributed to being founded on a broader constituency than that of agricultural or civil service unions. Rather, it is that the nature of the constituency is so different. The urban industrial workforce is increasingly well educated, more accessible to and making greater use of the metropolitan press, and more accessible to legal aid services. But most importantly, it is concentrated and so organized that its workplace activities are slightly less subject to mechanisms of political control.⁹⁹ In that sense, there is more room for labour activism in the industrial sector than in the agrarian sector. Furthermore, in the industrial sector there is not the same conflict of interests as with the not-so-small farmers in the HKTI.

In June, 1983, the FBSI comprised around 3 million members, organized into 21 industrial unions.¹⁰⁰ The structure of FBSI is one of industrial unions in tandem with a geographical trans-industrial hierarchy. Both the individual unions and the trans-industrial structure are organized in a geographical hierarchy extending down from a central board (Dewan Pimpinan Pusat) through provincial boards (Dewan Pimpinan Daerah) to regency boards (Dewan Pimpinan Cabang) and the factory shop floor ('basis').¹⁰¹ An industrial union is termed a Serikat Buruh Lapangan Pekerjaan, or SBLP; there are 21 of these. In May 1981, the trans-industrial structure comprised 26 provincial boards and 268 regency boards, while at the shop floor level there were 8,210 'basis' (or shop floor committees) of the industrial unions. The 8,210 'basis' represent a trifling proportion of the 110,000 firms registered in 1981.¹⁰² And of those 8,210, Buntaran Sanusi reported that only around 73 per cent are considered by employers or workers to exist factually—and this notwithstanding a government decree that where 25 or more workers are employed by a firm, a 'basis' is to be established.¹⁰³

Right to Strike

As in most countries the exercise of the right to strike is subject to 'statutory regulations'. These are contained in Law No. 22 of 1957 and Presidential Decision No. 7 of 1963.¹⁰⁴ The latter, in article 2, exempts scheduled industries, projects and government departments from the right to strike, subject to sanctions of one year's imprisonment or a Rp. 50.000 fine. Presidential Decision No. 123 of 1963 contains the schedules. These list some 27 state and private corporations, 14 government departments and banks and 20 development projects. The extensiveness of the schedules, transgressing the most generous conception of a 'vital' service industry cannot be overstated. INDOC's descriptive summary of the schedules is as follows:

They include not only government departments, such as air and sea communications, railways, harbours, transport, civil aviation service, radio, post and telegraph, but also state corporations, development projects, plus certain private enterprises and banks. The state corporations named include the electricity, oil and gas supplies, general mining, tin mining, coal, chemical industries, pharmaceuticals, electrical machinery, sugar, rubber and tobacco estates, and the weapons factory at Bandung. Development projects include the Jatiluhur Water and Hydroelectricity Project, Kalimantan Highway, Sriwijaya Fertilizer Plant in Palembang, specified tourist hotels, Sarinah Department Store and Ancol pleasure park in Jakarta, Tuban airport in Bali and the Central Istiqlal Mosque in Jakarta. The Banks include Bank Indonesia, Development Bank of Indonesia, and the Indonesia State Bank. Foreign private enterprises named are Shell, Starvac and Caltex, Goodyear Tyre and Dunlop Rubber.¹⁰⁵

Whatever the desirability of maintaining a source of foreign exchange, desirability is no synonym for a legal imperative (even in the absence of precise and binding international obligations). The International Covenant on Economic, Social and Cultural Rights exempts in Article 8(2) only the police, armed forces and officials in the administration of the State from the right to labour activism. ILO Convention 87 of 1948 excludes only the police and armed forces, but this important Convention has not been ratified by Indonesia.¹⁰⁶ ILO Convention 98 of 1949, to which Indonesia is bound, exempts the armed forces and police and 'does not deal with the position of public servants engaged in the administration of the State, nor shall it be constructed as prejudicing their rights or status in any way.'¹⁰⁷ However, this Convention does not protect the right to strike. In 1978 the ILO Conference adopted a Convention (No. 151) on Labour Relations in the Public Service but it does not contain a specific right to strike. In addition, Indonesia has not ratified this Convention. Still, on the basis of the general opinions of the ILO supervisory bodies, as laid down in the general survey of 1983, it can be concluded that Indonesian legislation on the question of the right to strike clearly falls short of international standards.¹⁰⁸ In addition it should be noted that the definition of 'public service' is stretched to include every person working in a private company in which the Government holds 'a share'.

In political terms, the Schedules commend themselves to the interpretation that the price for a billowing external debt, rocketing inflation and collapsing domestic productivity was placed squarely on the tertiary and foreign exchange earning sectors in 1963. The price was high then, and, by legal inheritance, continues to be so now, long after the crisis of the economy has faded, a development for which the New Order government has claimed credit.

The other constraint on the right to strike is also onerous. Law No. 22 of 1957 institutes what effectively must be considered a compulsory arbitration system. In the first instance, the parties to an industrial dispute are to settle the matter between themselves. Where this does not occur, either or both of the parties is to inform the designated official of the Ministry of Labour (as it was then called). At this stage the option of recourse to non-official arbiters is available also, as an alternative to the official arbiters. The decision of the non-official arbiters is legally binding but the non-official arbiters may be chosen only by consent of both parties.¹⁰⁹ When the official arbiter of the Ministry is informed he investigates the dispute, and offers mediatory services if they seem likely to be effective. If not, the matter is handed over to the Regional Committee for the Settlement of Labour Disputes.

These Regional Committees are tripartite bodies comprising five representatives from each of government, labour and employers. The five government representatives are drawn one from each of the Ministries of Labour, Industry, Treasury, Agriculture, and Communications or Navigation. The Ministry of Labour representative holds the Chair. The Regional Committee is empowered to resolve a dispute with binding legal force, and to summon witnesses and experts in so doing, as well as having access to all pertinent evidence, including documents and books. A Regional Committee's decision can be appealed to the Central Committee which is composed similarly to the Regional Committees. Its powers are also similar, save that it may additionally determine whether a matter on appeal from a Regional Committee is of purely local nature and thus to be denied appeal to the Central Committee, and it may equally appropriate to itself from the hands of the designated Labour Ministry official or the Regional Committee any dispute which it considers 'can endanger the interests of the state or the public.'¹¹⁰

The extent of this Executive prerogative via compulsory arbitration is stamped in the reserve power of the Minister:

- (1) The Minister for Labour may annul or defer the execution of a decision of the Central Committee if such is viewed by him as necessary for maintaining public order or protecting the interests of the State.
- (2) Annulment or deferral of execution of a decision referred to in paragraph (1) is to be made after the Minister of Labour has conferred with the ministers whose departments are represented on the Central Committee.¹¹¹

Thus industrial action may be taken only after bipartite consultations have failed and the Regional Committee informed. The total time lag involved can be

as long as three weeks, or even longer if bureaucratic procrastination intervenes between delivery of the advice note and its actual conveyance at the Ministry of Labour office to the Chairperson of the Regional Committee. Any action attempting to circumvent this process incurs a penalty of three months' imprisonment or a fine. Yet even under such cumbersome machinery, the right to strike is far from assured as the law offers no immunity against the power of any of the Executive-appointed arbiters in the act to compel a resolution to a dispute with identical sanctions.

Two further institutions need to be mentioned briefly. The first is the Dewan Penelitian Pengupahan, or Wages Board, which is empowered to determine wages both by sector and region.¹¹² This body has in fact determined a comprehensive range of wages, but has no power of sanction to enforce compliance. Enforcement is thus left to the voluntary co-operation of other authorities who may be incidentally involved. One such case has been that of the Governor of Jakarta threatening reprisals within his powers to firms failing to pay the basic wage.¹¹³ And though cases are rare, the determinations of the Wages Board constitute evidence before the Committees for the Settlement of Labour Disputes, which contrary to the Wages Board, can legally enforce its decisions.

The other institution to be noted is the Tim Bantuan Masalah Perburuhan (Labour Problems Assistance Team). The 'team' was first formed in mid-1981 as a composite of various ministries, KOPKAMTIB, FBSI, and the Chamber of Commerce and Trades. It appeared to be primarily concerned with industrial conflict in the economically 'strategic' areas.¹¹⁴ The national team is replicated at the local level, sometimes at town level, sometimes individual firms. By mid-1982, the then Commander of KOPKAMTIB had strengthened both the role of KOPKAMTIB and his own central control by ordering that all labour disputes would henceforth be dealt with not by the Laksusdas (regional executive offices of KOPKAMTIB), but by central command. In a forthright expression of his stand quoted in *Kompas* of January 16, 1982, Admiral Sudomo stated: 'It has become the task of KOPKAMTIB alongside the Ministry of Manpower to tackle cases of workers on strike in a preventative and repressive manner.'¹¹⁵ According to newspapers sources in the period April-June 1985 in Jakarta alone sixteen strikes were 'solved' through direct collaboration between the employer and the police and KOPKAMTIB.¹¹⁶

In addition to these legal, quasi-legal and illegal instruments of dispute settlement, it should be noted that many disputes are put down by brute force by the employers, often supported by KOPKAMTIB. These measures are supplemented by illegal dismissals as described below. Violence against workers and illegal dismissals are often not redressed because either the FBSI is unwilling to pursue the legal process or because the authorities are unwilling to enforce it. It is within this context of a compulsory arbitration system

dominated at all levels by the Executive and *de facto* intervention that the right to strike must be considered.

So it is that Indonesian workers have the right to strike, but only in a limited number of industries, at three weeks' notice, and only after alerting an Executive-appointed body with the powers to compel a resolution to the dispute in which the strike originated. Even if the Committee should decide favourably for the workers, such a decision could be enforced only upon application to a civil court.¹¹⁷ The final irony lies in the fact that whereas the only sanction (infrequently) used against employers is the fine, the value of the 1957 fine of 10,000 Rp. and 1969 fine of 100,000 Rp. is nowadays tending towards 10,—and 100,—US\$ respectively,¹¹⁸ sums which would seem utterly inconsequential to modern Indonesian employers.

Dismissal and Other Conditions

Notwithstanding the executive domination of the compulsory arbitration system, the sheer cumbersomeness of the machinery can provide some protection to workers as far as they are subject to an formal dismissal procedure. One of the strong foundations of Indonesian labour law is that dismissals are prohibited without prior permission of the Regional or Central Committee, with appeal to the Minister.¹¹⁹ This procedure has been summarized as follows: 'An employee cannot normally be dismissed without Government authorization from the Regional Committee for Labour Disputes. Dismissal of more than 10 employees in any one month can only be made through the employer's direct request to the Central Committee at Jakarta. If the request is turned down, an appeal can be made to the Minister of Manpower'.¹²⁰ Hence no matter how partial the Regional and Central Committee may be, workers can force the issue of dismissal up through a protracted process of appeal to the Minister, attracting the public gaze as they go. And indeed this is what has been done in a number of cases. In what is otherwise a virtually powerless situation, such a small brake on employers' arbitrariness is an important one.

The prohibition of arbitrary dismissals has particular relevance to sick leave. An employee may take up to one year's continuous sick leave before being subject to dismissal, provided a medical certificate is furnished. Also obligatory government service, or obligatory religious service agreed to by the Government, shall not prejudice an employee's status.¹²¹

The statistics on illegal dismissals (as far as available and trustworthy) are shocking.¹²² According to the Head of Research and Development of FBSI, M. Sinungan, from 1973, when the FBSI was set up, until June 1981, 20,222 cases of dismissal have been recorded, 45 per cent resulting from trade union activities, because workers asked for a pay rise, 20 per cent because contract labourers were laid off, and 10 per cent because of 'fighting amongst workers' or other criminal activities.¹²³

All illegal dismissals, of which those reported to FBSI are believed to constitute only a part, are in turn supplemented by the endemic practice of avoiding the responsibilities of providing permanent employment. A non-permanent employee can be readily discharged without it becoming a case of dismissal. INDOC has identified seven of the more common ways in which this is done:

1. prolongation of an employee's probationary status for years beyond the legally prescribed maximum of 3 months;
2. employment as day-labourers of people who in fact are in the employ of the same firm for months or years;
3. employment as seasonal workers of people in firms, the productivity of which bears little or no relation to the season;
4. employment by contract for fixed terms;
5. employment (in the hotel industry) not on the basis of contractual obligations but on the assumption that the employee's sole claim to remuneration is to tips received;
6. employment via labour contractors and brokers;
7. employment of a family unit as a single wage earner without reference to number or productivity of the persons concerned.¹²⁴

Outside the area of dismissal a number of other regulations govern the labour conditions which apply to those Indonesians who are employed in the formal sector. However, it is good to remember here that informed estimates are that 60 to 70 per cent of the labour force is not employed in this sector.¹²⁵ These guarantees include assured annual leave, accident compensation and severance pay to day labourers.¹²⁶ Day labourers are also included in the definition of 'worker' provided in the accident compensation provisions¹²⁷ and provided their period of employment exceeds three months, they are assured severance pay.¹²⁸

The law relating to youth and women is barely adequate, but the law relating to maternity leave reasonably strong. Founded in Law No. 12 of 1948, these conditions are summarised in a Guide for Investors of 1983 as follows: 'Young persons between the ages of 14 and 17 can be employed as workers in factories, but not in mines or work sites which are dangerous or injurious to health. They can only be employed between the hours of 6.00 a.m. and 6.00 p.m.' Women may be employed other than for dangerous manual work. Indonesia's labour laws prohibit the employment of female workers during the hours between 6.00 p.m. and 6.00 a.m. However, if a company, for reasons of public interest or welfare, feels it requires female workers to be employed during these hours, permission may be requested from the head of the labour Inspection Office. Approval in such a case may require the company to comply with specific conditions. 'Expectant women workers are allowed maternity leave of 1½ months both before and after confinement. During this period a maternity

allowance equivalent to a full day's pay is given, provided application for leave is made in advance. The benefit period before confinement can be extended to a maximum of three months on grounds of medical health.¹²⁹

One other strong point of Indonesian labour law, however, was reduced in impact by Government Regulation No. 8 of 1981. By custom, workers had until then always been paid something, even when on strike.¹³⁰ In a major departure from the spirit of Law No. 12 of 1964, Article 4 of the 1981 Regulation requires that 'workers shall not be paid if they do not carry out the work.' The exemptions from this rule are similar to those for dismissal, i.e. illness and obligatory state or religious services. Strikes are not in the category of exempt circumstances. However, as the right to strike itself is heavily circumscribed, this new limitation will not have an immediate or large impact.

In short, although certain conditions of work are well legislated for, and the process of worker dismissal itself restrained, the very mechanism by which workers can bargain in the last resort, i.e. the right to strike, is effectively denied them. Accordingly, current Indonesian Labour law is not in line with Articles 20(1) and 23(4) of the Universal Declaration of Human Rights, and ILO Convention 98 of 1949. Moreover, it makes a mockery of the Preamble and Article 33 of the 1945 Constitution, and even does not fulfill the gently worded prescription of the 1983 Guidelines of State Policy:

The development of labour relations needs to be directed towards effecting amicable co-operation between workers and employers which is inspired by Pancasila and the 1945 Constitution, and in which co-operation each party respects the other, each needs the other, and carries out respective obligations in the total production process, in a corporate effort to raise the participation of society in development.

Finally, the ominous application to industrial relations of the 1961 Subversion Law must be noted. Though not of itself a part of the body of labour law, the effect has been to suppress worker dissent.

*Forced Labour*¹³¹

Attention to the issue of forced labour in Indonesia was initially focused on the plight of contract labourers in North Sumatra and Aceh, including a great number of ex-political prisoners in the early 1970s. The ILO Committee of Experts continued to make observations on this matter from 1979 to 1984, in particular concerning the right and possibility of the contract labourers to return home.¹³² Although the rights of ex-TAPOLs continue to be interfered with by prohibitions on their employment in certain sectors, these constraints do not constitute any compulsion to work, and so shall be referred to under other sections.

In point of fact, forced labour may be a far more general problem in Indonesia than that of targeted political persecution. It is an active component of the Indonesian labour market, and though certainly not an all-pervasive norm, it is

a chronic affliction on those most vulnerable in the workforce, i.e. those most distant from press and legal protection, either through such factors as age and ignorance or sheer economic desperation, or through geographical remoteness. In particular in the impoverished agricultural areas of Central and East Java and in the outer islands forms of forced labour are endemic. As reporting on these practices comes only from (rare) press concern and non-governmental sources such as the legal aid bureaus and INDOC, and rarely is the subject of public dialogue with the government, some examples from INDOC, quoted here in detail, must suffice: The human trade in Java seems to be managed by syndicates of labour contractors with their head offices mostly in Jalan Mangga Dua, Jakarta. The syndicates are aided by accomplices amongst the main bus lines who supervise the transport of the victims.

Girls are sold in Jakarta as domestic servants for Rp.25–30,000, a sum they often have to earn back themselves by not being paid a wage for three months. Girls are sold to brothel camps near the plantations of Lampung for Rp. 35,000. Agricultural workers are sold for Rp.15–20,000 per man. The contractors keep their identity papers to prevent them from running away. Workers have to buy themselves free at sums of Rp.20,000 or more.¹³³

Whatever the value in terms of labour mobility provided by the services of labour contractors, the practices so reported are not only susceptible of the grossest abuses, but in essence resort to indentured labour, as collateral for credit in the acquisition of a job and for transport services. Lest this point be understated, the following summary by INDOC is reproduced:

The Department of Manpower and Transmigration in 1981 gave the Belgian rubber plantation PT Melania official permission to recruit 150 workers in the very poor district of Wonogiri (Central Java). The plantation (3100 ha., with a monthly production of 140 tons of rubber) is situated in the district of Musi Banyuasin near Palembang. This 'workforce project' was handled by the Wonogiri district office of the Directorate General of Development and Utilization (Bina Guna) of the Department of Manpower and Transmigration, which authorised the labour contractor Abdul Malik to recruit the workers. The contracts were registered at the Bina Guna office. In the village of Bubakan 26 poor agricultural labourers were contracted for five years with the promise of a daily wage of Rp.1,250 and food allowances to the value of Rp.600. After arrival at the plantation the contractor took their last remaining money to cover transport costs. The daily wage was no more than Rp.195. They were allowed to leave the plantation only if they paid a sum of Rp.125,000. Runaway workers were brought back by force and threatened they would have their eyes put out. The plantation paid Rp.80,000 per worker to the labour contractors. Finally a small number of the Bubakan group through great courage and endurance managed to escape and reach their village. Letters from the village head to his superiors and the office of Bina Guna and Binalindung in Wonogiri and Palembang, asking for assistance, had no result. The Department of Manpower and Transmigration even officially denies that this project was under its supervision.¹³⁴

In the case of the Asmat people a whole ethnic group has been victimized, and the issue extends from forced labour to forced transmigration and social

dislocation. The Asmats inhabit the swampy lowlands of southeast Irian Jaya. The area is endowed with dense forests, rich in species including ironwood and mahogany. The timber is the economic and cultural basis of Asmat life. The forests have long been assigned on traditional grounds of proprietorship.

The decade of the 1970s saw a powerful and efficient alliance established between Jakarta-based timber companies on the one hand and the military, police and civilian officials of the Irian Jaya on the other. The latter are said to be paid large commissions by the timber companies to

compel villagers to go into the forests, their forests, to cut down and transport trees, then float them downstream to waiting ships. Payment fixed at Rp.3,500 per cubic metre is withheld for months and the tribespeople are the victims of other fraudulent practices: the fixed amount per cubic meter is in fact reckoned per truck, and 'undersized' trucks are rejected and not paid for, yet exported nevertheless. . . . The companies bear no risk as the system involves no investments: even tools supplied to the villagers are deducted from their wages, when and if they are paid.¹³⁵

The Catholic Bishop of Agats, an American anthropologist of twenty years' experience in the region, has warned of the imminent annihilation of the Asmats. Not only does the logging deprive the people of their staple, sago, but compels the villagers to remain in the forest for as long as six weeks. As the wives accompany the men to help prepare food, the children too must go and all this for a mere Rp.10,000 per period.

The Indonesian environmentalist group KPHI, Kampanye Pelestarian Hutan Indonesia has noted that special permits were issued to the timber companies operating in Irian Jaya, exempting them from conditions normally included in forest licences. Assisting the companies, the local authorities 'relocated the Asmat communities from the interior to the river mouths, closer to prospective ironwood loading places and closer to government supervision.' Within the three years to 1979, timber exports felled under the special permits had increased tenfold to 280,000 cubic metres a year. The KPHI warned: based on these figures, the Governor of Irian Jaya demanded in 1980 an extension of the special permits, extending the scandalous forced labour in Indonesia's most remote jungles.

Yet the servitude extends beyond forestry work to the building of roads and offices. It is called 'kerja bakti' or 'voluntary labour', in which villagers are forced to work without pay on development projects. In his editorial in *Tifa Irian* of October 16, 1982 Bill Rettob wrote:

The timber-racket case in Asmat is in fact nothing new. I went to Asmat in 1978 and investigated conditions throughout most of the areas where the timber companies operate..... The things that go on behind these operations make one's hair stand on end. The people are whipped with stingray fish-tails, soldiers use firearms against people, men and women, young and old, are forced to stand out in the burning sun, teachers are slapped in the face by members of the Armed Forces, people are forced to do kerja bakti,

children are left hungry in the barracks, missionaries who come to the defence of the people's rights are threatened with being struck down. All these are but a part of the dramatic reality behind the efforts to make money from the timber trade.

It is admitted that, in particular in the case of tribal people, forced labour is difficult to distinguish from other forms of servitude which are part and parcel of a labour-surplus and underdeveloped economy, in which the imperative of survival on any terms binds the worker and his family to the dictates of employers. However, where active intervention by the government or the existence of a forceful, independent trade union movement could have countered such abuses, we find in Indonesia that the government authorities are often involved in the continuation of these excesses. The case of the Asmat people therefore, in addition to having all the characteristics of 'normal' exploitation, constitutes, in combination with the cultural uprooting, physical dislocation and exhaustion or destruction of traditional sources of income, a kind of slavery practices, which may well be in contravention of Indonesia's law 14 of 1969 as well as ILO Convention 29, ratified by Indonesia in 1950. The latter prohibits specifically a number of practices which seem to be in existence in Indonesia, such as:

- the imposition of forced labour for the benefit of private individuals and companies—Article 4(1) of the Convention;
- the granting of concessions involving forced labour for the production of products for private exploitation—Article 5(1);
- officials charged with encouraging populations to engage in certain labours constraining them to work for private entrepreneurs—Article 6;
- the work is not of 'important direct interest' to the community concerned—Article 9(a);
- the work is not of 'present or imminent necessity'—Article 9(b);
- competitive rates of wages and conditions have not been offered to solicit voluntary labour—Article 9(c);
- the work has lain too heavy a burden upon the present population—Article 9(d);
- the compelled labourers are not medically examined, exceed 25 per cent of the resident able bodied males, and in any case exceed that proportion the remainder of whom are 'indispensable for family and social life;'—Article 11(a,c).

3.3.4. Youth and Students Organizations

Since the formation of the first Western-style political organization ('Boedi Oetomo') by students of the medical school in 1908, there has been a tradition of active political involvement by the overlapping categories of youth and students. Such people took a leading role in the nationalist movement of the

1920s and 1930s, and had substantial involvement in the 1945–9 events. In 1966–7 the student ‘action fronts’, KAMI and KAPPI played the major role in the public demonstrations against Sukarno’s government.

Two sorts of organizations have been involved in this activity since 1945: party-affiliated student and youth ‘ormas’, organized on a national basis, and student councils and student senates within particular universities.

From 1957 to 1960 the ormas were subjected to the same sorts of pressures as the labour and peasants organizations (see above). A Youth Military BKS was formed in June 1957, and in February 1960 President Sukarno sought the fusion of existing youth organizations into a single functional group. At a Youth Congress from February 15–20, 1960 party-affiliated ormas were successful in deflecting plans for fusion, securing formation of a ‘federation’ that recognized the continuing existence of the member organizations. While there were ministerial threats of some sort of compelled fusion from 1960 to 1962, these were not acted upon. These organizations remained relatively unthreatened until 1973, except that the KPI affiliates were banned in March 1966, and there were some pressures in 1970–1 for youth organizations to join or dissolve themselves into Sekber GOLKAR. From 1973 there have been increasing attempts by the government to rein in the activities of both the ormas and the student councils, complemented by growing government irritation at the role of student councils in holding seminars and panel discussions on issues on which the government is highly sensitive, including allegations of corruption, maladministration, and a widening gap between rich and poor in Indonesian society. The government has found it necessary to take strong action after two waves of student unrest, one from mid-1973 to January 1974, culminating in demonstrations and destruction of property during the visit of the Japanese Prime Minister, and the second starting in April, 1977, and ending in a strident campaign, from January–March 1978, against the re-election of President Suharto.¹³⁶ These campaigns were followed by trials of student leaders involved in alleged subversive activity. Thus the 1970s moves for control have been against a background of student seminars critical of the government, student unrest culminating in violence, trials in 1974 and 1975, and a second wave of unrest culminating in military occupation of campuses from April 1977 to March 1978, followed by further trials until July 1979.

The first move of the government was the formation on 23 July 1973 of the Indonesian National Youth Committee (KNPI) a parallel organization to the FBSI and HKTI. The General-Chairman was David Napitupulu, who was a KAMI leader in 1966–7 and later became involved with the late General Ali Murtopo’s OPSUS and his Centre for Strategic and International Studies. Napitupulu was a GOLKAR representative in the DPR, as are most of KNPI’s Advisory Council members. President Suharto called the KNPI ‘a medium of stabilization and dynamism of youth’. The wave of student unrest in 1973 and 1974 took place outside of KNPI control, but by 1975 there were

complaints by both ormas and student councils that KNPI was interfering in their activities.

On February 11, 1975 a meeting of the Political Stabilization and Security Council, led by President Suharto, discussed the 1977 elections and decided that student activities outside the campus must be integrated with the KNPI. This appears to have been a direct threat to the 'extra-university' student ormas, mass organizations linked to the political parties, which published their defence of the freedom of association in the same months that the PPP and PDI were pursuing the same issue in the DPR debates.

A statement by KOPKAMTIB Chief of Staff Admiral Sudomo in 1975 implied that the KNPI had not attracted much support, while in April 1975 he reiterated that the Government continued to guarantee the existence of youth organizations, and in October 1975 that the authorities guaranteed the freedom of university students to express opinions. However, also in 1975, KNPI sought to monopolize links with the World Association of Youth and with youth organizations in the other ASEAN countries, and associated openly with General Ali Murtopo. In April 1975 the Muhannadiyah Youth complained to Admiral Sudomo that student activities in some regions needed letters of permission from regional KNPI branches, and in October 1975 the student council of Bandung Institute of Technology (ITB) complained to him of government 'suspicions' and 'prejudices' towards students and of the interference of KNPI in the non-campus activities of students. To the first Sudomo replied that it should not have happened, to the second that it concerned 'the actions of individuals'. In December 1975 a delegation from Bandung student councils and senates complained of 'unequal opportunities' and of government favouritism towards the KNPI.

Since late 1975 the situation with respect to KNPI versus the ormas organizations appears to have remained much the same, with the KNPI seeking to control their activities, and those organizations seeking official support for the publicly-stated government position of guarantees for their existence. In March 1978 one of the five points against which the PPP gave a negative vote in the MPR was the inclusion of the KNPI in the details of the Broad Outlines of National Goals as its mention by the MPR (the supreme sovereign body according to the 1945 Constitution) would provide too strong a legal and moral authority for more assertive activity by the KNPI.

Developments concerning campus activities have been more stringent. In the wake of the destructive rioting of January 15, 1974, the Minister of Education and Culture prohibited student demonstrations and processions as 'activities that are political in character (and) lean towards infringements of tranquility and order'. This ban was subject to intense student criticism in 1975 and 1976, as for example with an appeal of December 5, 1975 by the 12 Bandung student councils and senates that the government 'respect' the integrity and existence of the campuses, and a further delegation of 9 Bandung student councils to the

DPR on February 27, 1976 requested a response to the December 5, appeal and also recognition of the freedom of assembly and expression in a law on institutes of higher education.

Also in February 1976 the Minister of Education and Culture received a delegation from the student council and senate of the University of Indonesia which asked for revocation of Decision No. 28/1974. The Minister, General Syarif Theyeb told the Press that the Decision would not be revoked and that it was being interpreted more leniently than in 1974. The student delegation was tightly supervised by the Sabhara Anti-riot squads.

A meeting of university rectors from February 23–26, 1977 decided in favour of revocation of Decision No. 28 but with a new decision to follow. These issues were overtaken by the wave of student protest that led to government action from December 1977 to March 1978. On December 15, 1977 some students, taking part in an unauthorized march sponsored by all Bandung student councils, were detained. On January 20, 1978 six major Jakarta newspapers and all university student councils were suspended by order of the KOPKAMTIB Commander, and in raids into major universities in Java, conducted by armoured cars and riot troops, some 230 students were arrested. A wave of study boycotts followed in universities, some state schools, and campuses occupied by troops. From February 25–27 at least 20 students were hospitalized and 55 arrested in clashes between students and riot police at Gajah Mada University in Jogjakarta, accompanied by unconfirmed rumours and some eye-witness reports of student deaths. On March 4, 1978 troops intervened in a student strike at the Bogor Institute of Agriculture, and on March 16 students and soldiers clashed in Surabaya.

On April 3, 1978 KOPKAMTIB turned the issue of 'normalization' of student life on campus over to the newly-appointed Minister of Education and Culture, Dr. Daud Yusuf, formerly chairman of the Ali Murtopo-sponsored Centre for Strategic and International Studies. His plans for normalization have involved replacement of student councils with 'activity coordination boards' ('BKK') which would concentrate on study-related, non-political questions. The issue of these bodies is generally known as 'Normalisasi Kampus Kampus' (NKK). From May 1978 student opposition to the BKK has been led by the Institute of Technology in Bandung and the Universitas Indonesia in Jakarta. In April 1979 an illegal student election took place at Bandung to elect a student council, in which 73 per cent of the students were reported to have taken part. The minister gave the illegal council until May 5 to disband, two of its leaders were suspended from the Institute and the rector was dismissed. A report of July 1979 indicated that 60 per cent of students at Gaja Mada, Jogjakarta, had endorsed a BKK set up in November 1978, and that similar progress had taken place in Ujung Pendang and Surabaya. But in March 1979 the *Far Eastern Economic Review* reported an apparent 'change of heart' at these institutions, with posters criticizing the president, Dr. Daud Yusuf and

other senior officials. In September 1979 President Suharto publicly defended Dr. Daud Yusuf and his 'normalisasi Kampus' policy, but in November 1979 an illegal student association at the University of Indonesia in Jakarta called on the government to reject this policy, as did delegations from Jakarta and Bandung to the DPR. Troops dispersed a student attempt to burn Dr. Daud Yusuf in effigy. In February 1980 ten truckloads of students went to the DPR to support members who were voting to obtain government explanations to be submitted on the decrees on student councils. But the members failed to obtain a majority and no government explanations were given.

3.4. FREEDOM OF BELIEF AND RELIGION

3.4.1. The Context

Freedom of religion and belief is in Indonesia a delicate and complex issue and probably the most controversial. It is laid down in Article 29 of 1945 Constitution:

1. The State shall be based upon belief in the One, Supreme God.
2. The State shall guarantee the freedom of the people to express and to exercise their own religion.

All 'official' religions are imported and though Indonesia is predominantly Moslem and has the largest population subscribing at least nominally to Islam, even Islam is not indigenous. Continuing fear of fundamentalism is often weakened by the fact that Indonesians are Sunni Moslems and are less militant and centralized than, for example, the Shiites in Iran. While there is a tendency to focus on the problems of minority religions, especially on the ten million Christians, the emergence of militant Islam has led to renewed attention for the Islamic majority consisting of 145 million people.

3.4.2. Islam

Like all other 'indigenous' institutions existing at the time of Dutch colonialization Islam on the one hand was left in 'benign neglect' and on the other hand had to find responses to directly or indirectly imposed modernizations. The answers have been of many kinds ranging from early revolts with the aim of establishing an Islamic State to entrenchment in personalized forms of mysticism. Apart from some as yet small sects of religious fanatics the main currents of thought within the Islamic revival movement are the 'puritans', those for whom a stricter adherence to the Islamic prescripts is the answer, and the 'accommodists', who advocate a more dynamic Islam which will find within the boundaries of the great principles of Islam more suitable answers to the

problems of today. Both these movements have to overcome the resistance of the traditional religious scholars, who have practiced over the years a form of 'adaptive legalism' which has characterized traditional dealings with the challenge of modernization.

Some politico-religious groups continue to press for an 'Islamic State'. Others interpret the Constitution and Pancasila in the light of the Jakarta Charter of June 22, 1945 to mean that Islam occupies at least a special place. They would accept freedom to worship for other religions but assert that the government of Indonesia has to take a more active role in favour of Islam. In their view the government has to see to it that Moslems observe Islamic Law. Islamic Law should prevail over conflicting Adat Law; attempts to convert Moslems away from Islam should be forbidden; Moslems should be assisted in making the Mecca pilgrimage, etc. Others again dismiss the importance of governmental impact for the moment and stress the necessity for Islam to redefine its own priorities, reformulate its world views, and restructure its teaching in order to put itself in the mainstream of human development.

Among these different currents and with recent events in Iran still fresh in mind, the government is admittedly not in an easy position. However, it has forced itself into an even more unfavourable position by its general fear of any rival political force. In this way, the authorities have developed an ambiguous policy of at times wooing the Islamic majority, if not by deeds at least by words, and mostly repressing their political aspirations.

In this way the presidential blessing of a total ban on gambling in January 1981 was generally seen as a concession to the Moslem segments of society, who are considered to be a formal and potentially wide-based political opposition. Particularly in Jakarta during the 1970s, gambling establishments prospered supported by the local government, but came under continuous criticism from fundamentalist Moslems. Initially seen as another gesture towards Islam was the ban on television commercials from April 1, 1981. It was suggested that materialism in advertisement caused frustrations on one hand, and rising expectations on the other. The television advertisements have accentuated a gap between urban standards of living and those of the rural majority. Thus, Jakarta was seen as the market place for perfumes, fancy clothes and coloured TV sets, goods not available for the rural poor.

Some observers have declared this kind of policy to be irrelevant, if not counter-productive. After considering that with the failure of both parliamentary democracies and military technocracy in Moslem countries, militant Islam has become the only available alternative, S.H. Jansen writes that

this is very much the case in Indonesia even though General Suharto follows President Sukarno in practicing towards Islam the policy first enunciated by the colonialist Snouck Hurgronje; that is to tolerate Islam as a religion but to curb it as a political force. This division, fundamentally incompatible with the essential nature of Islam, has not worked and even in the 'rigged' election of 1977, the Islamic religious parties polled 30 per cent

of the vote and in 1982 still 29 per cent. An organized mass party like Masjumi with a clear, popular ideology and an able and experienced leadership, could be eliminated from the Indonesian political scene only by the sort of holocaust that decimated the Indonesian Communist Party, and that is most unlikely.¹³⁷

Whether this prediction is correct or not it remains a fact that the Government is increasing its repression against highly militant sects and trying to maintain its control over the 'recognized' Moslem parties, even by forbidding certain personalities to lead the Friday prayer.

Anyone who argues for a greater role of Islam in society towards the goal of an Islamic state or making Islam a state religion is an extremist in the eyes of the government. This view makes the Moslem leaders fear that the government will use certain incidents to reduce political manoeuvrability. Such an incident was the hijacking of the Garuda DC-9 in March 1981, which was organized by a militant Islamic group which earlier that month had been involved in an attack on the Cicendo police station in Bandung, the capital city of the province of West Java. The government said links between Imran Mohammad Zein, leader of that group and the Kommando Jihad, the Holy War Command, confirm its view that Islam extremism is centred around the establishment of an Islamic state.¹³⁸ Imran was sentenced to death and was executed in March 1983. Salman Hafidz, another member of Imran's group was tried also for subversion for his role in the Cicendo attack and was executed in February 1985. He was dedicated to the idea of establishing an Islamic state and while in prison he wrote comments on the Koran to be published after his death. The authorities withheld the papers.¹³⁹ In October 1983, a small Moslem religious sect was banned by the Department of Religious Affairs because its teachings were regarded as having the potential to disrupt public order. The sect specifically rejected the validity of the 'traditions' historically held to stem from the Prophet Mohammad.¹⁴⁰

The Ministry for Religious Affairs, an overgrown bureaucracy with over 100,000 employees, is functioning as an establishment agency by producing and distributing religious literature on a massive scale, organizing and supervising pilgrimages to Mecca and scrutinizing all kinds of literature (including novels and shorts stories) for 'elements detrimental' to acknowledged religions. Purely religious activities, such as the building of Mosques, are being financed by the Government and, recently, gambling and radio and television advertising were completely abolished to the satisfaction of the Islamic leadership. In certain regions, notably the province of Aceh, which is a traditional Islamic stronghold, the Government had to accept reluctantly the passing of stricter laws concerning the local government's role in enforcing the observance of Islamic principles.

3.4.3. 'Other' Religions

The Pancasila recognizes on its face all monotheist religions and seems to disapprove of atheist or paganist ideologies. This is confirmed by the Guidelines for the Implementation of the Pancasila and the Broad Outlines of State Policy which were adopted at the 1978 session of the People's Consultative Assembly.

Presidential Decree No. 1 of January 27, 1965 states that there are only six official religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. There are still many other known movements of a mystical nature called 'aliran kebatinan' and quite a number of these have been forbidden by the Ministry of Religious Affairs.¹⁴¹ These often include forms of Islam advocating the arrival of a Redeemer, the 'Ratu Adil' which has a potential for attracting discontented peoples in the rural areas. 'Recognition' of these movements and currents is not being contemplated.

In 1978, during the discussions on the Broad Outlines of State Policy the inclusion of the word 'kepercayaan' gave raise to strong reactions. Literally kepercayaan means belief, but it acquired the connotation of mystical belief. Many elements of this 'belief' are so engrained in the daily life of millions of Indonesians that it would be difficult to come to a conclusion as to their independent role. The PPP leadership declared that kepercayaan could be accepted on one condition, that the inclusion of the word in the Broad Outlines did not aim nor imply the recognition of a separate religion. This part of the Broad Outlines was not agreed upon by acclamation, but it led to the PPP walk-out from the Assembly session. Such a walk-out and even a vote run counter to the practice of reaching consensus, through the system of musyawarah and mufakat.¹⁴²

From 500 to 1000 BC Hinduism and Buddhism came to the Indonesian islands and left their traces everywhere. They have been preserved in a much purer form on the island of Bali, hence the official name of the religion is 'agama Hindu-Bali'. Millions of Indonesians practice this religion in relative calm. The greatest threat to it comes from the growing number of tourists who require that special rites and celebrations are organized during their stay.

Protestant and Catholic religions, whose adherents are spread throughout the archipelago, but which are found in greater concentrations in some of the outer islands such as Irian Jaya, the Moluccas and North Sulawesi and among ethnic minorities, have for a long time been relatively free from governmental pressure. The comparatively high educational level of the Christians and their extensive social activity and network have assured them an impact which could be considered disproportionate to their numerical strength. The impression that their numbers are growing at a slightly higher rate than those of other religions has stirred ill-feelings, in particular among conservative Islamic leaders. When, during the 1970s (ex) political prisoners and their families were 'persuaded' or preferred to abandon 'atheist' ideologies, many turned to the

Christian churches who had had the courage to support them directly and indirectly during their lengthy detention. In 1978, the Minister for Religious Affairs issued two regulations aimed at curbing the missionary activities of religious bodies in general, but with a restrictive impact on the Christian churches in particular.¹⁴³ The first would forbid 'spreading' a religion to those who are already adherents of a religion and the second was aimed at controlling the influx of foreign aid to religious bodies and limiting the number of foreign personnel employed by religious bodies by forcing a training programme upon them which would within two years have foreigners replaced by Indonesian nationals. The Council of Islamic Scholars, the Majelis Ulama, quickly endorsed the scheme, but the National Council of Churches, (DGI) and the Catholic Bishops' Conference, (MAWI), in a joint statement pointed out that 'missionary work' is an integral and essential element of most world religions, including Islam.¹⁴⁴ It is a corollary of each individual's right to change religion. They also made reference to the unconstitutional character of the two ministerial regulations, which ought to have been Presidential Decrees, according to Article 5 of the Assembly Decree No. 11 of 1978. Concerning the limitation of foreign personnel, the DGI and MAWI argued that the Church is universal and ecumenical and that not only foreigners are working in Indonesia, but Indonesian Christians are working elsewhere. A Joint Decision of the Ministers of Home Affairs and of Religious Affairs was issued on January 2, 1979.¹⁴⁵ It contains some slight improvements but does not take away the tension between the wish to limit missionary activity on the one hand and respect for the constitutionally protected freedom of religion on the other. Instead, it risks creating further ambiguity and uncertainty by leaving application and interpretation to local authorities. Further deliberations between Church leaders and Government officials have taken place but have not resulted in a much clearer picture.

It has been claimed by the Government that these measures are primarily aimed at curbing subversive activities by Libyan-backed Moslem radicals. The broadness of the regulations seems to believe this explanation and, besides, the existing governmental apparatus to suppress 'subversive activities' is well equipped. What remains is the impression that this is another instance of governmental preoccupation with unity and stability. The Minister for Religious Affairs explained that the Ministerial Regulations were not meant to curb freedom of religion but were necessary 'to create and confirm the Unity and One-ness of the people and to consolidate the national stability and security'.¹⁴⁶

3.5. FREEDOM OF MOVEMENT AND RESIDENCE

3.5.1. The Context

The 1945 Constitution, which is now in force, gives no express right of freedom of movement. Article 28, which expressly refers to some freedoms, does not refer to freedom of movement and merely states that these 'and similar freedoms shall be provided by law'. This in any event defers recognition until laws are promulgated. To date no laws guaranteeing freedom of movement have been enacted. Further, as Article 28 is part of Chapter X which deals with citizenship, the inference is strong that in any event the right, even if once legislated, would only extend to citizens whom Article 26 (1) defines as 'natural born Indonesians and those who take out naturalisation papers.' Indonesia has to date neither signed nor ratified the International Covenant on Civil and Political Rights.

In Indonesian law and practice limitations on freedom of movement in Indonesia derive from various sources. Laws have been enacted which restrict freedom of movement, Law, No. 3/1962 from Sukarno's days, which gave wide powers to the Attorney-General to intern and exile individuals and was reaffirmed by Law No. 5/1969 under Suharto's New Order Government. There are many other ways in which the freedom of movement may be curtailed: arbitrary imprisonment, restrictions in times of emergency, immigration and emigration laws, passport restrictions preventing overseas travel and denial of rights to non-citizens. To these may be added arbitrary and uncertain implementation, bureaucratic delays, special fees and voluminous procedural requirements.

3.5.2. Freedom of Movement of Residents

A distinction should be drawn between citizens and non-citizens as different laws apply to them. The necessity for all residents to possess and carry identity cards is an essential starting point for a discussion on the individual's right to freedom of movement. In a State which does not require identity cards, freedom of movement is for practical purposes guaranteed to some extent. With the obligation to carry such a card the facility to restrict becomes a practical possibility.

The New Order Regime has also introduced other identity type certificates for residents. The Certificate of Non-Involvement in the 30 September 1965 Affair, the 'Surat Bebas G. 30 S', was introduced and required officially until the late 1970s by virtue of a KOPKAMTIB decision of November 23, 1973.¹⁴⁷ The Certificate was required if a resident wished to change his permanent residence from one province to another, travel to another province for a period of more than one month, or travel abroad. To obtain a job the Certificate was

needed and this requirement formed part of the advertisement inviting applications. The Certificate was obtained by paying the required fee of 100 Rp 'just to cover the cost of the paper' explained Admiral Sudomo.¹⁴⁸ Its validity was limited to one purpose. Thus, each trip or move required the obtaining of a new Certificate and another was required for enrolment in a course or applying for a job. Certificates were available only to those not implicated, in the broadest sense, in the 1965 coup attempt. Conversely, those implicated suffered severe restrictions on their freedom of movement. Even though the G. 30 S Certificate is now officially abolished, it has been replaced by a new notation on the identity card of ex-detainees of 'E.T.', meaning ex-Tapol, and their freedom of movement after release is, in consequence, still restricted. They must still obtain consent for overseas travel and internal changes of residence, and the stamp 'E.T.' on their identity card signals them out for possible special treatment if detained for even the slightest misdemeanor.

All residents who wish to move must obtain a permit, 'Surat Jalan', for specific types of move. A short day-trip requires no special permit, although the identity card must be carried at all times. An inter-province or time-extended journey requires a Surat Jalan. This permit is obtained from the local administrative office and requires the endorsement of the local Police Chief and KOPKAMTIB office. The Applicant, who must pay a fee, must specify the purpose and period of the proposed trip. On arrival at the desired destination and on return home the applicant must report his arrival and return to all three offices. A Surat Jalan is rarely given for multiple trips. If a resident desires to move residence, another special permit, 'Surat Pindah', must be obtained.

Different rules apply at law and in practice to different classes of residents. Golkar members and, inevitably, members of ABRI are proffered favoured treatment. Former detainees suffer continuing legal restrictions as noted above. Non-citizen residents, most notably the Chinese, do not enjoy the privileges of citizens and, in consequence, are easy victims to bureaucratic delays and harassment. In other legal and practical ways freedom of movement of a resident is restricted. Certain regions in the country are 'closed' to prevent migration, notably Jakarta. Other areas have access restricted for security reasons, e.g. East Timor and the island of Buru. Other permits are also officially required such as a work permit and all vehicles require registration with the appropriate regional department office. Any vehicle which is moved out of a province to another for a period exceeding one month requires re-registration. Freedom of movement may also be restricted, if not effectively prevented, by bureaucratic delays and costs. For many, the cost of obtaining the requisite permit is beyond their financial means: for others, the exigencies of work prevent them from being able to spare the time needed to complete the administrative requirements to obtain the permit.

Although the Government has attempted to stifle petty corruption amongst law enforcement officers, it is still not uncommon for police and military

officers to establish roadblocks, demand to see identity papers and to detain persons travelling without correct papers which often leads to the demand for a financial payment beyond the traveller's means. The traveller's knowledge of this possibility acts as a disincentive to travel.

Internal exile is an alternative which has been used frequently in Indonesia since colonial times, when leaders like Sukarno, Hatta and Sjahrir all were exiled. Former Tapol political prisoners have been sent to internal exile, often under the subterfuge of transmigration.¹⁴⁹

In Indonesia, only citizens are eligible to acquire passports and their acquisition by a citizen is not an automatic right but a privilege granted on application and satisfaction of various criteria. A passport fee of 10,000 Rp. adds to the general poverty which also prevents the vast majority of the population from contemplating an overseas visit. Further, a passport is not an automatic guarantee of departure. An exit permit is required and to obtain it an applicant citizen must produce his passport, his airplane/ship ticket, his foreign visa and also obtain a Taxation Department Clearance Certification. Since November 1982 also a fiscal fee of Rp. 150,000 has to be paid on every exit from the country. Exit permits may be refused and no meaningful appeal procedure exists in the event of a refusal. Permits are notoriously refused for seemingly capricious reasons, usually based on grounds of national security, e.g. the playwright Rendra, who was refused a permit to visit Australia in May 1980. Members of the so-called Petition of 50 opposition often cannot travel abroad because they cannot get hold of the necessary forms to fill out. Persons under suspicion of involvement in subversive activities against the New Order Regime also are prevented from leaving, or, in a few cases, are encouraged to depart into voluntary exile, as in the case of some leaders of the cessionist movement in Irian Jaya, and former Fretilin leaders.

3.5.3. Freedom of Movement of Foreigners

It is a well-recognised principle of international law that sovereign nations have the right to prevent citizens of other nations from entering their territory and settling there. Indonesia has historically exercised strong legislative measures to control the movement of foreigners into and around the country, justifying this policy on the grounds, *inter alia*, of preventing subversion, controlling an influx of illegal immigrants, combating the spread of crime, and preventing foreign acquisition and control of indigenous assets.

With the exception of diplomatic personnel whose movements are covered by international conventions, entry into Indonesia, as in most countries, is dependent on a valid passport and visa/entry permit. A variety of visas are available: most commonly, a short term tourist visa which is fairly easily and rapidly obtained, including at the port of entry, under new 1979 guidelines aimed at facilitating tourism.¹⁵⁰ Other visas, once obtained are strictly enforced

as to time and purpose. Extensions are given but require the completion of numerous time-consuming administrative procedures in Jakarta or in one of only a few provincial capitals and necessitating the applicant's personal attendance. Often these procedures are so exhausting that potential applicants choose the easier course of not applying and departing the country instead.

Internal control of the movement of foreigners is covered by the Alien Control Regulations of 1953 and 1954. An Alien Control Bureau was established within the Justice Department to oversee the aliens and to maintain a Register of all foreigners in Indonesia.

The Regulations provide for criminal sanctions for breaches. Other regulations require foreigners to carry at all times their correct immigration papers, and long term foreign residents must also obtain an identity card. Foreigners are prevented from visiting some areas almost completely, such as East Timor, and for other restricted areas a 'surat jalan' is required. The Law on Nationality No. 62/1958, requires all foreign births, deaths and marriages to be notified within 14 days and as Indonesia does not recognise dual nationality, some Indonesians who marry aliens can find themselves stateless, with all attendant ramifications. Permanent residency can only be acquired after 15 years continual residence. Aliens with entry permits permitting employment must also obtain work permits¹⁵¹. Foreigners are not immune from administrative delays and procedures. Expulsion of foreigners is not uncommon (especially researchers and journalists) and during times of national emergency, interpreted to also include election time, foreigners are confined to particular regions by virtue of KOPKAMTIB directions.

As for citizens, the multiplicity of often unknown and unpublicised laws and regulations enables Government law enforcers a wide discretion to control and restrict freedom of movement and, what is worse, abuse their powers on unwitting offenders.

3.5.4. Transmigration

As a matter of longstanding policy the Indonesian government has been concerned about the overpopulation of the central islands of Java, Madura, Bali and Lombok. To solve this problem, an active campaign of furthering the resettlement of thousands of families has been a government priority. This policy, known as transmigration, is also seen to have subsidiary benefits of developing the underpopulated outer islands, encouraging agricultural and industrial development in these areas, and of strengthening national unity, defence and security.¹⁵²

From 1950 to 1972 4,500 families were transmigrated from Java to the outer islands. Under Repelita I, the first Five Year Plan, this number was doubled and under Repelita II it was doubled again. Then, under Repelita III the total number of transmigrants almost quadrupled compared to the preceding period.

Although the target of relocating 500,000 families during Repelita IV, ending in 1983-4, could not be met, the Indonesian government has demonstrated its capability of moving large numbers of transmigrant families from Java to outer islands.

Besides land problems and differences in farming systems the selection of the migrants is one of the difficulties in achieving the quota. The basic principle of the Indonesian transmigration programme is voluntary movement. 'Any suggestion of compulsion must be completely avoided' states the Elucidation to article 1 of the Law of 1972 on transmigration. However, participation in transmigration has not always been voluntary. When whole communities were affected by natural disasters, such as the eruption of the Gunung Agung volcano on Bali in 1963 and the Galunggung volcano on West Java in 1982, or displacements as in the case of the central Java Wonogiri dam in 1976, individual families were given little choice. With the increase in target numbers of transmigrants quotas were allocated to each province and district. Village officials concerned about filling their quota have been reported to put pressure on potential transmigrants.¹⁵³ By definition, successful transmigration has to involve large-scale movement of many millions in a nation where the annual population growth of the island of Java alone exceeds the official transmigration targets.

Reports regularly circulate of villagers forced into transmigration (i.e. enforced relocation) by zealous administrators anxious to meet quotas. The Government has also used transmigration, and the attendant control it has in the declared transmigration areas, as a means of internal exile for former political detainees (TAPOLS) and their families. In 1978 the ILO Conference expressed the hope that all detainees would be released and reestablished and that it could note at its next session 'that there had been no legal or moral pressure to participate in the transmigration scheme...'

In a remarkable volte-face the ILO's concern has now been met: in September 1985, the Minister of Transmigration declared in Parliament that the Government will withhold further permission from former TAPOLS to transmigrate. It was said that effective control of TAPOLS who had left their place of origin in order to try and build up a new existence in a transmigration scheme had proved to be too difficult, and that they should be kept in places where their reputation is well known and where they can be permanently controlled.¹⁵⁴

Finally, and perhaps most importantly, the population in the outer islands have tended to view transmigration as a device to 'Javanise' the non-Javanese areas in the archipelago. This fear is particularly strong in the Melanesian region of Indonesia, and has also been voiced publicly by many groups and also by Papua New Guinea politicians in their 1982 election campaign.¹⁵⁵

3.6. FREEDOM FROM RACIAL DISCRIMINATION

3.6.1. The Context: Chinese in Indonesia

The question of racial discrimination plays a part in present day Indonesia, in particular in the context of the five million Chinese minority of which approximately two-thirds are now Indonesian citizens. The economic performance of the Chinese in Indonesia forms part of the astonishingly successful business history of the overseas Chinese throughout South East Asia. The success has been attributed to various causes ranging from personal characteristics such as perseverance and frugality, to family and clan structures and to privileges conferred upon the Chinese by the colonial powers.¹⁵⁶ Whatever combination of causes goes furthest in providing an acceptable explanation, the Chinese remain in the ambivalent position of constituting an elite group which is also discriminated against, and government measures to achieve a fairer redistribution of wealth and economic power will invariably be seen as discriminatory by the Chinese minority.

Constitutional arguments for discriminating between Indonesians of different racial origin are sometimes advanced by saying that Article 6 of the Constitution makes a distinction between 'asli', native or indigenous and other Indonesians for appointment as president. This constitution was conceived during the final days of the Japanese occupation and several leading Indonesian jurists, including former prime minister Djuanda, prefer the term 'asli' to be given to mean that no 'foreigner' can accede to the Presidency rather than to establish a distinction between two kinds of Indonesian nationals.

3.6.2. Status

The great majority of the approximately three million Chinese Indonesian nationals have been living in Indonesia for many generations. These so called 'peranakans' had Dutch nationality before independence. Their children have gone or are going to Indonesian schools, speak Bahasa and affinities with China are usually thin. Most of these Chinese Indonesians obtained Indonesian nationality by force of the first Law on Nationalities in 1945.¹⁵⁷ In 1958 the second Law on Nationalities became effective.¹⁵⁸ The first Law on Nationalities was based on the principle of 'ius soli' and considered as nationals all those who were born in Indonesia and living there unless they had repudiated Indonesian nationality. Article 5 of the Dutch-Indonesian Independence Agreement stipulated that at the moment of the transfer of sovereignty all Dutch nationals who were not of Dutch origin would obtain Indonesian nationality unless they repudiated this within a specified period. Article 18 of the agreement specified this period as being two years after the transfer of sovereignty which took place on December 27, 1949.

A complication was that according to an old Manchu law all overseas Chinese had been considered by subsequent Chinese governments as Chinese nationals. On the basis of this law all Chinese Indonesian nationals continued to have a double nationality. To end this situation Indonesia and China concluded in 1954 the so called 'Sunarjo-Chou En Lai' treaty which was ratified by Indonesia in 1958. At the end of 1960 the two countries agreed upon the executive details which included an obligatory choice for either nationality before December 15, 1962.

Children under age would again have an opportunity of choice when becoming of age. These choices had to be made through filling out prescribed forms and submitting them to the courts.

On April 10, 1969 Indonesia unilaterally denounced the 'Sunarjo-Chou En Lai' treaty. Theoretically this could not affect the position of the Chinese who had opted for Indonesian nationality, as December 15, 1962 had already passed. The only group which legally could be affected were those children under age who had been promised another opportunity for choice. However, in connection with the denunciation of the treaty the Minister of Justice issued a circular letter¹⁵⁹ to the courts which declared void all these forms irrespective of the date of delivery. The result is that many Chinese who had already given up their Chinese nationality but whose applications had not been finalised yet were barred from obtaining the Indonesian nationality. The registration procedures requesting foreigners and stateless persons who want to obtain Indonesian nationality to produce various kinds of documents and forms are extremely slow and are open to many forms of abuse through official corruption. The result is that there are at present in Indonesia almost 80,000 stateless persons of Chinese origin who are in a legal limbo and whose rights are at the mercy of any petty official. As in other instances it is the poor among the Chinese Indonesians who suffer most in such a situation.

In addition there are a number of Chinese foreigners estimated at approximately one million, the vast majority of whom consider themselves nationals of the Chinese Peoples Republic. This group (often called 'totok') still speak one of the Chinese dialects and in general have strong affinities with their mother-country.

In 1979 there were rumours that there were plans to deport all Chinese foreigners to China. These reports were however contradicted by the government and indeed Presidential decree No. 13 of 1980 even simplified the application procedures for Indonesian nationality and decreased the cost. Regrettably, implementation of such decrees is often frustrated by the opposition or greed of certain officials.

3.6.3. Economic Discrimination

It is in the economic field that Government policies are most openly directed at strengthening the economic position of the 'indigenous' population at the expense of the Chinese minority.

As early as the first years of the republic when scarcity of foreign currency rendered import licences highly profitable, it became Government policy to favour autochthonous Indonesians in granting these licences. It became early practice however to sell licences to Chinese, often under cover of a so-called 'Ali Baba Company' ('Ali' standing for the Indonesian nominal licensee and 'Baba' indicating the Chinese factual owner). Since 1960 Presidential decree No. 10 forbids Chinese retail trade at village level.

Later governments, including the present Government, have continued these policies. Since 1965 it is necessary, in order for a company to be recognised as a 'national company', that ownership and management are at least 50 per cent in the hands of autochthonous Indonesians. Foreign capital can be invested only in joint ventures with national companies, although in certain sectors of the economy 100 per cent foreign investment is still allowed. Such joint ventures are at present fixed at 50 per cent, but government policy is to upgrade step-by-step the national company's share.

Since 1974 the Indonesian National Banks have to give priority to the Pribumi, the autochthonous Indonesians, when granting low-interest credits, even when these applicants do not fulfil all requirements. The 1979 Presidential Decree No. 14 requires all public purchases or contracts under 50 million ruphias to be granted to the economically weak groups, i.e. companies owned fully by autochthonous Indonesians. This is an important limitation as the public sector is the largest sector in the Indonesian economy.

Another important area of unfavourable treatment of the Chinese is the new agrarian legal system instituted in 1960. It ending the then dualistic legal system of the colonial days, and introduced a new system of property rights.¹⁶⁰ The 'hak-milik', right of disposal, is the most complete land right but is withheld from Indonesians holding double nationality.

Their rights were converted not into 'hak-milik' but into 'hak guna bangunan', usufructs which would expire after 20 years. This conversion amounts to an expropriation without compensation for landowners who at that time had not yet been faced with the forced choice between Chinese and Indonesian nationality. Accepting the need for a complete revision of the agrarian system and a fairer redistribution of land and land rights, it cannot be denied that the measures were disproportionately hard for Indonesian nationals of Chinese descent.

3.6.4. Education and Culture

In general, state institutions of higher learning have to restrict the number of Indonesian nationals of Chinese descent to approximately 2 per cent of the total enrolment while private institutions have a limit of 30 per cent. An exception is made for the State Institutes of Technology in Bandung and Surabaya which are limited to 10 per cent.

The traditional Chinese schools have been abolished for more than a decade and Chinese associations for cultural or political purposes are not allowed. Only Foundations, often based on clan interests, are allowed. Chinese books and newspapers are forbidden. Only one newspaper partly in Chinese characters exists, *Harian Indonesia*, published under government control in Jakarta. Also the import of all books, papers and even songs and tape-recordings in Chinese are forbidden. Ancestor worship is not forbidden but public religious demonstrations which can lead to disturbances are.

Regularly—every two or three years—re-registration of all Indonesians of foreign descent is called for by the government. In theory this applies to all those of foreign descent, but in practice only those of Chinese descent, in particular business people, are subjected to sanctions. Sometimes the registration is subcontracted to a Chinese firm. These and other pressures have led many Chinese Indonesian nationals to change their names to Indonesian names. (As the Chinese name traditionally consists of the family name, a second name shared by all members of the same generation and a third name which is the true personal name, the change to Indonesian names which do not contain these ties entails a certain loss of family and group solidarity). Anti-Chinese sentiments are not caused solely by economic competition; as only 10 per cent of the total economy is in the private sector, 'Chinese' domination can be but limited. Antagonism from orthodox Islamic circles is certainly reinforced by the fact that the Chinese are not Moslems but Christians, Confucianists or Buddhists. Public sentiment, often fed by allegations from army circles, is usually biased against the Chinese minority for its alleged communist sympathies. This surfaced again when, in early 1979, the influx of Vietnamese refugees, most of Chinese origin, was debated in Parliament. Several speakers, including the 'opposition', showed considerable hostility towards these unwanted immigrants. In case of war it was argued the Chinese would never side with people other than their own—'a Chinese being a Chinese after all'. Later in July there were references to the influx as a 'refined invasion' and as 'dragging the Trojan horse within one's walls'. Political circles sometimes refer to the so-called 'Vietnamse solution' of forcing the Chinese minority out.

On several occasions racial tensions have led to major anti-Chinese riots, most recently in November 1980 in Central Java. It was reported that on that occasion 8 youths, all ethnic Indonesians, were killed and 14 wounded. While 680 people were arrested and 240 shops, 230 homes, 23 small factories, 32

office buildings and a school were damaged according to General Yoga Sugama, head of BAKIN.¹⁶¹ Here, as on other similar occasions, the Government was caught between its wish to de-emphasize the spontaneous racial character by charging that the riots were 'organized' on the one hand, and its desire not to admit that there existed widespread discontent on the other. This indecisiveness led to delays in releasing the news about the riots which, in itself, may have contributed to spreading the violence through rumours and gossip. It cannot be said, however, that the Government is totally unwilling to protect the lives and properties of the Chinese minority in such large scale rioting. The Government has often reacted with late—as some observers noted 'to let off steam'—but firm action and publicly denounced the riots. KOPKAMTIB chief Sudomo had words of caution for the Chinese: 'I would like to remind the Chinese to look into themselves, exhibit social solidarity and realistic attitudes and continuously try to get along with the society which defines 'your environment'' but this advice to potential rioters was more blunt: 'I have already given the order to shoot on sight anyone caught burning or damaging property.'¹⁶²

3.7. CONCLUSIONS AND RECOMMENDATIONS

Freedom of speech and expression remain precarious in present day Indonesia. Draconian legislation, some of it dating back to colonial times, is in force and, when needed in the eyes of government, is enforced. Predictability of the government's harsh response in cases of widespread expressions of discontent contrasts with the unpredictability of prosecution in individual cases. In this way potential dissenters and the informal opposition are kept in check. Banning of books and films are commonplace.

Although there is a brief reference in the Indonesian Constitution to press freedom, there are severe restrictions on this freedom both under the press laws and by various restrictions and pressures imposed on journals and their editors and staffs.

All publications require in one form or another a government permit, and those which offend against the government's concept of the proper role of the press are threatened with withdrawal of the permit, or if they persist in giving such offence, have their permit withdrawn temporarily or indefinitely. Publications have been suspended in this way on such grounds as 'slandering the government, inciting groups against each other, tending to induce a feeling of animosity against the state and the leader of the government'. No criticism is tolerated of the Pancasila, the 1945 Constitution, the Government's programme and its implementation, government officials or the Head of State.

Although there is no pre-censorship, editors are from time to time given specific instructions not to publish certain news items. Journalists are expected

to refrain from reporting on matters which may produce ethnic, religious, racial or inter group-tensions. Editors have been sent to jail and journalists have been arrested and detained for offending against such guidelines or instructions. The severity of the pressures exerted tends to be greater at times of elections or on other occasions when political or social tensions are high.

Current legislation and administrative practices with regard to freedom of association have severely limited the exercise of this fundamental right, which acquires special importance in a process of development in which participation by the population is a key element. The suffocating control of the government is felt in particular in what it considers to be sensitive areas such as political parties, student organizations, professional groups and trade unions. Civil servants are virtually obliged to be members of a government-controlled organization while student bodies, having escaped to some extent this fate, encounter more direct forms of repression.

The right to organize in labour unions is almost exclusively reserved for government-controlled trade unions, while the right to strike is subject to the dictates of a compulsory arbitration system. The definition of what is a 'vital' sector in which strikes are officially forbidden is over-broad. In general the government creates and maintains a climate which is inimical towards trade union activities, as is evident from its efforts to erase even the word 'struggle' from the official vocabulary on labour relations and the word 'trade union' from the name of the FBSI, the only nationwide industrial federation of trade unions.

Though certain conditions of work are well legislated for and the procedure for dismissal or workers itself restrained, the practice leaves most workers without substantive protection against abuse by employers or government officials. In particular tribal and other minorities in the outer islands and especially vulnerable groups in the informal sector (women, children) are subject to exploitation akin to forced labour. Dismissals for trade union activities can be easily carried out under guise of other reasons, while interference in labour conflicts by military and police on behalf of the employers is frequent. In short, government obligations which follow from the principles expressed in the 1945 Constitution and international standards, such as articles 20 and 23 of the Universal Declaration and the few ILO Conventions ratified by Indonesia, are not being met in domestic law and practice.

The New Order government is engaged in social engineering in order to realize development, for which stability and security are thought to be the first priority. Tensions between the different religious streams have to be kept to a minimum. In addition, the government has shown a constant concern lest a greater degree of Islamization of society would also lead to more political power for Islam. The intertwining of religion and politics, more pronounced in militant Islam than other currents and beliefs, has put the New Order government in an ambivalent position towards the majority of its own popula-

tion. The 'hard line' approach against Moslem radicals could well turn out to be counterproductive as its repressive policies are aimed not only at violent opponents but also at Islamic intellectuals and modernists. The recent insistence on Pancasila as the sole foundation has contributed to the tensions within the Islamic majority, as well as those between them and the government.

Freedom of movement is not fully guaranteed under the law or practice of the New Order government. In addition to internal exile as an administrative detention measure, movement is curtailed by a myriad of immigration and emigration laws, travel permits, passport restrictions and fees and other procedural regulations. Special groups such as the ex-Tapols and known dissidents are subject to special treatment. Policies, in themselves legitimate, for redistribution of the population through transmigration plans have been tainted by undue pressure on peasants to engage in such schemes.

With regard to the exercise of civil and political freedoms it is recommended that the People's Assembly and Parliament supplement existing constitutional provisions with more detailed laws and precise implementing regulations and measures, provided that the judiciary can verify that such legislation, regulations and measures do not take away the fundamental core of these freedoms.

The Anti-Subversion Law, and the 'hate-sowing' and 'lese majesty' articles in the criminal code should be reviewed and, as a first step, the rights of persons arrested and detained under the Anti-Subversion Law should be made explicit and fully in line with provisions under the new KUHAP.

The recent law on the registration and clearance of organizations should be reconsidered, and in daily practice the government should accept a wider range of non-governmental organizations which it does not control. No individual should be forced, directly or indirectly, to join certain professional organizations, in particular in areas where the fundamental rights of Indonesian citizens are dependent on the independence of the professionals, such as judges, lawyers and journalists.

Requirements for establishing trade unions and trade union federations should be relaxed and brought into line with ILO recommendations. The right to strike should be recognized, the onerous procedure for compulsory arbitration preferably abolished or otherwise made more balanced and expeditious, and the schedules listing vital industries revised in order to contain only sectors really vital to the survival of the state. Existing procedures for protection against dismissal should be followed in practice, and fines for transgression of labour laws by employers should be increased and collected in order to act as a deterrent. Government should not interfere in the conduct of trade union affairs. The exploitation of vulnerable groups of workers should not be condoned by the government but actively resisted through the development of special protection policies.

Of the two ILO Conventions which are considered fundamental by the ILO

for the right to organize (Conventions no. 87 and 98) Indonesia has only ratified No. 98. No. 87 should also be ratified and labour legislation be brought into conformity with it.

Although there are discriminatory regulations and practices against the Chinese minority and a manifest continuation of a policy of forced assimilation, one should also note that there exists—increasingly since the abortive coup of 1965—an alliance between the Chinese economic elite and the Islamic power holders, military as well as civilian, to protect business interests and personal security.

Special protection measures for the 'economically weak' could be justified even when they represent a majority and result in the Chinese minority being taxed more. However, such measures should be based on duly established laws in which race itself is not an issue and which are executed in an equitable manner. It is difficult to see how such a policy could justify the restrictions on Chinese religious and cultural practices.

NOTES

1. Quoted from: *Indonesian Tragedy*, Brian May; Routledge Kegan and Paul Ltd., London 1978, p. 404.
2. Normalization is the policy which aims at replacing Student Councils by University Boards without student representation. The boards would decide all policy at the Universities. A.B.C. 'Report from Asia, 17 February 1980', reported in Indonesian News Selections; Bulletins of the Indonesian Action Group, No. 16, April 1980. See also chapter 3.3.4.
3. *Far Eastern Economic Review*: 'Keeping the opposition in Line' April 27, 1979.
4. Report from Asia A.B.C. July 12, 1979 as reported in Indonesian News Selections op. cit. No. 14, August 1979.
5. Tapol Bulletin No. 31, January 1978/9 p. 9.
6. The 1945 Constitution Article 4, paragraph 1.
7. See *Suharto's Indonesia*, Hamish McDonald, p. 136.
8. Malari is the acronym for Malapetakan 15 January, the Calamity of January 15, 1974.
9. General Sumitro was then head of KOPKAMTIB. After touring the campuses, receiving students' delegations and debating with intellectuals he declared at the end of November 1973 that a new style of leadership was needed. This and his meeting of January 11, 1974 in Magelang, Central Java (where the military academy is situated) with the generals Sarwo Edhie and Nasution gave ground to rumours of coup involvement. *The Indonesian Tragedy*, Brian May, p. 304.
10. Observers report on the detention and trial of Hariman Siregar on charges of subversion and conspiracy held in the Jakarta District Court. Paul Stein & John Dowd, observers, December 24, 1974 for ICJ Australia, p. 7.
11. *Ibid.*, p. 16.
12. Tapol Bulletin No. 9, March 1975, p. 2.

13. Tapol Bulletin No. 10, June 1975, p. 3.
14. *Ibid.*, p. 3.
15. Report to the International Commission of Jurists, 'The Trial of Sawito Kartowibowo', by Rodney Lewis, Secretary-General ICJ Australian Section p. 32.
16. *Ibid.*, pp. 6-7.
17. See for details of the defence statement: Heri Akhmadi, 'Breaking the Chains of Oppression of the Indonesian People'. Bandung, June 7, 8, 9, 10, 1979, Publication No. 59, Cornell University, Ithaca, New York.
18. Article 2 of Presidential Decree No. 5/1959 provides in part: 'Anyone who ... knows or should be able to foresee that (the following) will obstruct the implementation of the Government's programme namely—i. supplying food and clothing for the people within the shortest possible time; ii. establishing security for the people of the State. ... shall be liable to a term of imprisonment. ...' from Tapol Bulletin No. 33, April 1979 p. 3.
19. From an English translation of the Indictment presented to the Central Jakarta District Court on February 14, 1979 against Dr. Doddy Chusuiadi Suriadiredja.
20. Soenardi was defence lawyer of Sawito Kartowibowo on appeal. To his letter of December 10, 1981, No. 079/SMD/AD/XII/1981 an annex was enclosed concerning the role of Colonel Hatief in relation with General Suharto during the September 30, 1965 coup attempt. That annex was part of Sawito's defence.
21. It was reported that the two army men in removing posters from the wall of a mosque in Tanjung Priok had desecrated the mosque by not removing their shoes and smearing gutter water on the wall. A number reacted vehemently but, as it turned out later, did not use violence against the army men themselves.
22. On June 25, 1986 Amnesty International released a report entitled 'Indonesia, Muslim Prisoners of Conscience', which details many of the facts described in this section (AI-ASA/21/10/86).
23. Dharsono himself had never signed the original petition of 50 but many of the other people who signed the White Paper had.
24. As quoted in AI report (see note 22), p. 26.
25. On May 12, 1986 an appeal court reduced his sentence to seven years.
26. This appeal was rejected.
27. Tapol Bulletin No. 25, December, 1977, p. 10.
28. *Tempo* Magazine, September 10, 1977.
29. *Sydney Morning Herald*, July 24, 1980.
30. *Sydney Morning Herald*, September 4, 1980.
31. Tapol Bulletin June 27, 1978, p. 6.
32. See for background information of the Petition of 50 Group chapter 2.3.2.
33. Human Rights Report Indonesia 1980, T. Lubis and F. Abdullah ad. Lembaga Bantuan Hukum 1981, pp. 56-9. Concerning KOPKAMTIB see also chapter 2.9.3.
34. See Albert P. Blaustein and Gisbert H. Flanz (eds.) *Constitutions of the Countries of the World*, New York, 1973.
35. See Abd. Rahman Saleh's article 'The Press and the Lembaga Bantuan Hukum', published in *Legal Aid in Indonesia (Five Years of Lembaga Bantuan Hukum)*, Jakarta 1976, P. 45.
36. Soebagijo I.N. with Soendoro (ed.), Lima Windu Antara, Sejarah dan Perjuangannya, Lembaga Kantor Berita Nasional Antara, Jakarta 1978.

37. Soebagijo I. N., Abdurahman Surjomihardja, P. Swantoro, *Lintasan Sejarah PWI*, PWI Pusat and Departemen Penerangan, Jakarta 1977.
38. Undang-undang Pokok Pers; Undang-undang No. 11 Tahun 1966, Direktorat Jenderal Pembinaan Pers dan Grafika, Departemen Penerangan RI, Jakarta (no date mentioned).
39. *Pers Indonesia*, No. 32-3, Januari 1983, 'Undang-undang Republik Indonesia Nomor 21 Tahun 1982 tentang Perubahan atas Undang-undang Nomor 11 Th. 1966 tentang Ketentuan Pokok Pers Sebagaimana Telah Diubah Dengan Undang-undang Nomor 4 Tahun 1967.'
40. *Tempo*, April 2, 1983, 'Beban dan Langkah Harmoko'.
41. Information Minister's Regulation No. 3/Per/Menpen/1969 on the License to Publish during the transitional period for general press publications, Chapter V, article 16.
42. *Pers Indonesia*, No. 31, Juli 1982, 'RUU Pokok Pers: SIUPP dan SIT berbeda Nafas dan Jiwanya'.
43. See for the details of the Indonesia Raya case: Atmakusumah, 'Kasus Indonesia Raya', in Abdurachman Surjomihardo (ed.), *Beberapa Begi Perkembangan Sejarah Pers di Indonesia*, Proyek Penelitian Pengembangan Penerangan, Departemen Penerangan RI in cooperation with Lembaga Ekonomi dan Kemasyarakatan Nasional, Lembaga Ilmu Pengetahuan Indonesia (LEKNAS/LIPI), Jakarta 1980.
44. For the contents of this White Book of 1978 Student's Struggle see Chapter 3.1.3.
45. In August 1978 the Minister of Defence and security, then General M. Yusuf, proclaimed 'There will be no longer any ban under press provided that what is written is factual'. In February 1979 President Suharto himself declared 'there is nothing to fear in publicizing all apparatus. Likewise, there is no need for hesitation in directing criticism towards the Government, either at central or regional level'. These pronouncements counted for little.
46. *Kompas*, February 20, 1982, 'Rektor UI: Pers Mahasiswa Harus Paralel Dengan Universitas.'
47. *Pers Indonesia*, No. 30, April 1982, 'Surat Keputusan Menteri Penerangan Republik Indonesia No. 76/Kep/Menpen/1982 tentang Pembekuan untuk Sementara Waktu Surat Izin Terbit Majalah Mingguan Berita Tempo Berkedudukan di Jakarta.'
48. Menteri Penerangan Republik Indonesia, 'Surat Keputusan Menteri Penerangan Republik Indonesia No. 104/Kep/Menpen/1982 tentang Pencarian Kembali Surat Izin Terbit (SIT) Majalah Berita Mingguan Tempo di Jakarta', Jakarta, June 7, 1982, signed by Director General for Press and Graphics Sukarno, SH.
49. *Indonesian Observer*, September 8, 1982, 'Ban on Pelita Daily to be Lifted.'
50. Komando Operasi Pemulihan Keamanan dan Ketertiban, official letter prohibiting further publication of Jurnal Ekuin, addressed to the publisher and Editor-in-Chief, dated March 12, 1983, signed by Commander of KOPKAMTIB Admiral Sudomo.
51. *Sinar Harapan*, November 15, 1983, 'Tiga Tersangka Penjab 'Al-Risalah' Terus Diperiksa.'
52. *Merdeka*, November 12, 1983, 'Jaksa Agung Larang Al-Risalah.'
53. *Tempo*, October 22, 1983, 'Risalah Kucing dari Yogya.'
54. *Kompas*, October 22, 1983, 'Deplu RI Peringatkan Kuasa Usaha Kedubes Iran.'
55. Index on Censorship Vol. 13, No. 3, June 1984, P. 46.

56. According to *Merdeka* of January 14, 1985 the complete list is: Communicare (Padang), Assalam (Pekanbaru), Kharisma, Bandung Sakti and Komposis (all of Bandung), Permata, Prospek, Pos Masa, Jantera, and Aspirasi (all of Jakarta), Al Ikhwan (Jogjakarta), SK Kampus Mentari (Surakarta), Gelora Saraswato, Himpi Bali, Widya Dharma, Kertha Askara, Kertha Patrika, Pramaya, Gema Swastiastu, Bali Smerti and Gita Saraswati (all of Denpasar in Bali), Suara Pambaharuan (Menado), Sumber Rhena (Ternate) Bull, Markas Cabang (Ujungpandang), and Seri Buku Voc (Flores).
57. On July 1, 1979 Admiral Sudomo, Commander of KOPKAMTIB, said he would close down newspapers that spread 'untruths and tendentious news', and called for a differentiation between 'fact' and 'opinion'.
58. *The Indonesia Times*, December 7, 1982, 'Group of 50, Sponsor of Political Troubles—Sudomo Accuses.'
59. Departemen Penerangan Republik Indonesia, official letter containing 'written warning', addressed to the publisher and Editor-in-Chief of Prisma, dated March 2, 1983, signed by Director of Press Promotion Daan S. Sahusilswane.
60. The most publicized case involving foreign correspondents is the death of the five journalists working in East Timor for Australian television in 1975. It is clear that the Press played a major role in conveying to the rest of the world the aspirations of the East Timorese and the impending invasion by the Indonesian army, and that this role was acutely embarrassing to the Indonesian authorities. While this is not the place to investigate the East Timor question, the death of these men at the hands of the Indonesian army loom over a discussion of the position of foreign correspondents in Indonesia.
61. Index on Censorship, Vol. 13, No. 1 February 1984, p. 43.
62. Index on Censorship, Vol. 13, No. 5 October 1984, p. 44 and Vol. 14, No. 1 February 1985, p. 62.
63. Presidential Regulation No. 2/1959.
64. On elections see Chapter 2.4.3.
65. See Chapter 2.3.2 for the question of Pancasila.
66. The Worker-Military BKS ('BKS-Bumil') was formed in October 1957 from 14 labour organizations, and the Peasant-Military BKS ('BKS-Tamil') in September 1958.
67. On the basis of Government Regulation No. 45/1960 which provided for such councils in all State enterprises. Formation was slow as the implementing regulation was not signed by the President until October 12, 1961 (Government Regulation No. 232/1961. and management was generally unsympathetic to the proposal.
68. See section on Golkar in Chapter 2.4.3.
69. By Presidential Decision No. 82 of November 1971.
70. The civil servants directly as members, those within the enterprises through local kokars. (Chapter 3.3.2).
71. ILO Official Bulletin, Suppl. Vol. LV, 1972, 130th Report, Case No. 674, pp. 107–8.
72. Newsletter of International Labour Studies, July 18, 1983, p. 5.
73. On the basis of national reports the ILO Committee of Experts publishes general surveys, most recently in 1983 (ILO, Report III (Part 4 B), 1983).

74. The PUSPI, The Indonesian Employers Association.
75. Regulated by the Collective Labour Agreement Law No. 21 of 1954 and the implementing decree of the Minister of Labour of September 7, 1954 No. 49. In 1975 the FBSI had settled 40 CLA's.
76. INDOC Update May 1986, p. 14.
77. The 'Pancasila Industrial Relations' which are supposed to inspire labour arrangements are based on the 'Ira Dama' (the three principles), which propose the establishment between workers, employers and the government of 'rumanso handarbeni' (a sense of co-ownership), 'melu hangrukebi' (a sense of co-responsibility), and 'mulat sariro hangroso' (continuous introspection).
78. ILO Report III (Part 4A), 1983, p. 175.
79. ILO Report III (Part 4A), 1986, p. 209.
80. No. Per.01/Men/1975, to which Regulation No. 02/Men/1987 refers.
81. ILO Report III (Part 4A), 1983, p. 175 NS ILO Report III (Part 4A), 1986, p. 209. See also 1986 Conference Committee Report, Provisional Record 72nd session, p. 31/40-1.
82. On several occasions since 1983, and in particular during the 1985 Conference, the Director-General of the ILO has been requested by international trade union organizations with consultative status to intervene with the Indonesian government for clemency towards a number of trade union leaders who were, after many years of imprisonment, facing death sentences. The government did not even reply to these interventions and the executions were carried out as scheduled.
83. The same is true for the other non-communist international federation, the WCL.
84. Chapter 4, Section 'Ekonomi', Sub-section 10 'Workforce', paragraph (b), in each of IV/NOR/1978 and II/MPR/1983.
85. Paragraph (c), *ibid*.
86. IV/MPR/1978, Paragraph (c) continued.
87. II/MPR/1983, Paragraph (d).
88. II/MPR/1983, Paragraph (e).
89. See Syahnir Mahnida: 'Bobot Undang-undang Perburuhan', *Prisma* 5, May 1981, pp. 20-3, pp. 21-2.
90. INDOC, 1981, *op. cit.*, p. 69.
91. See chapter 2.3.2
92. *Prisma*, January 1981, pp. 48-55.
93. Surat Eduran Menteri Tenaga Kerja No. 362/1967, Article 6(a). In her analysis of Indonesian labour law, Syahnir Mahnida, *op. cit.* p. 21, has pointed out that whereas Government Regulation No. 11 of 1952 (Articles 3 and 1c) permitted transfer as a form of discipline for public servants, the superseding Regulation No. 30 of 1980 does not include transfer as a public service disciplinary measure. This then returns public servants to the position of private sector employees, and both, in accordance with inherited Dutch law, are immune to 'Staf Overplaatsing' or non-consenting transfer.
94. Regulation issued by the Minister for Labour, Transmigration and Co-operatives (Peraturan Menteri Tenaga Kerja, Transmigrasi dan Kopersi). For text, see: *Indonesian Labour Legislation: Volume II*, 4th edition, Legal Bureau, Department of Labour and Transmigration, 1980; at pp. 277-8. For comment, see Jay A. Erstling, *The Right to Organize: A Survey of laws and regulations relating to the right*

- of workers to establish unions of their own choosing, ILO, Geneva, 1972; pp. 31, 74. This question also has been raised regularly by the Committee of Experts, most recently ILO Report No. III (Part 4A), 1986, p. 209.
95. 'Laporan Khusus: Adakah Payung Hukum Berkembang bagi Buruh?' in *Prisma*, December 1979, pp. 38-48; p. 39.
 96. INDOC, March 1983, p. 10; for recent developments see INDOC Update, May 1986, p. 10.
 97. INDOC, February 1982, p. 4 (*Topik*, 4.4.1981).
 98. The quotations are from INDOC, March 1983, p. 13-15.
 99. A more considered analysis of the causes for increasing resistance in the industrial sector is given in Lane, 'Worker resistance to exploitation in Indonesia 1981-82', CARPA Bulletin, December 1982, as reprinted in *Newsletter of International Labour Studies*, July 18, 1983, pp. 22-3.
 100. Susumu Awanohara: 'Managing Labour', in *Far Eastern Economic Review*, June 30, 1983, p. 14.
 101. INDOC, May 1981, p. 88.
 102. In 1985 the FBSI claimed that there were 20,000 'basis' (*Nerdeka*, 30-10-85 in INDOC Update May 1986, p. 14).
 103. *Prisma*, December 1979, p. 46.
 104. Prof. Imam Soepomo: *Hukum Perburuhan: Undang-undang dan peraturan-peraturan*, Djambator, Jakarta, 1972, p. 7.
 105. INDOC, March, 1983 Update, p. 7.
 106. Article 9.
 107. Articles 5 1. and 6.
 108. ILO, Report III (Part4B), 1983, pp. 63-70.
 109. Law 22 of 1957, Article 3. For the non-official arbiters, see Articles 19-22.
 110. Law 22 of 1957, Article 12.
 111. Law 22 of 1957, Article 11.
 112. *Prisma*, December 1979, p. 43.
 113. INDOC, May 1981, pp. 71-2.
 114. The legal status of this 'team' and even more the legal basis for its military interventions in labour disputes remain doubtful.
 115. The information concerning KOPKAMTIB was taken from INDOC, March, 1983, pp. 4-5.
 116. *Merdeka* January 4, 1985 in INDOC Update, May 1986, p. 24.
 117. Even this last possibility for an impartial decision is subject to Executive prerogative: a Committee decision can be enforced only at the Minister's discretion, INDOC 1981, op. cit., p. 69.
 118. Law No. 22 of 1957, Article 26 and Law No. 14 of 1969, Article 17 2. respectively.
 119. Law No. 14 of 1969, Article 14, affirming the procedure laid down in Law No. 12 of 1964.
 120. Badan Koordinasi Penanaman Modal: *Indonesia: A Guide for Investors* 1983, Jakarta, 1983, p. 46.
 121. Law No. 12 of 1964, Article 1(2)(a) and (b).
 122. A compilation of abstracted cases reported in the INDOC series, 'Indonesian workers and their Right to Organize 1981-3', shows that in 93 of the 116 cases contravention of the right to organize was at issue.

123. *Sinar Harapan* 18-07-81; INDOC, February 1982, p. 5.
124. INDOC, May 1981, pp. 119-21.
125. On informal sector, see chapter 1.4.
126. Government Regulation No. 21 of 1954, Article (43).
127. Law No. 33 of 1947, Article 6.
128. Law No. 12 of 1964, Article 12.
129. Badan Koordinasi Penanaman Modal, op. cit., p. 46.
130. INDOC, 1983, op. cit., p. 9.
131. Having defined 'workers' as 'every person who is able to perform work both within and outside of a work relationship in order to produce services or goods in fulfilment of the needs of society', Law 14 of 1969 proscribes discrimination in any aspect of its application, and proceeds: '3. Every worker has the right to work and to a humanly fitting income. 4. Every worker has the freedom to choose and/or transfer to work appropriate to the worker's aptitude and abilities.' Judicially speaking, it would not be inappropriate to allow some latitude on the matter of whether the Indonesian government can reasonably be expected to find work for all its citizens at all times and appropriate to each citizen's aptitude and talent at that. However, the absolutely minimal interpretation of these two clauses must be that labour can be neither forced nor unpaid.
132. ILO Report III (Part 4A), 1984, p. 81.
133. Semarang daily *Suara Merdeka* of March 13, 1982 as reported in INDOC, 1983, p. 28.
134. Ibid, pp. 27-8, based on reports in: *Suara Merdeka* (4, 8 and 17.3.82) *Pelita* (17.3.82), *Pikiran Rakyat* (27.3.82) and *Kompas* (10.4.82).
135. *Kompas* October 4, 6, 7, 1982 and *Tifa Irian* October 16, 1982 were the sources for the TAPOL account in West Papua: The Obliteration of a People, TAPOL (UK), London, 1983, at pp. 46-51. (It should be noted that TAPOL first publicised the issue immediately following the *Kompas* revelations in its TAPOL Bulletin No. 54 of November, 1982)
136. See chapter 3.1.3.
137. G. H. Jansen, *Militant Islam*, Harper Row New York 1979, p. 190. See also Deliar Nur, *Islam as a Political Force in Indonesia: the Making of a Nation*, Canberra 1980.
138. For a more detailed analysis see Guy Sacerdoti's article 'The extremist exorcised' in *Far Eastern Economic Review* of April 10, 1981, pp. 28-30.
139. Tapol Bulletin, No. 68, March 1985, p. 23
140. See *Country Reports on Human Rights Practices for 1983*, report submitted to the Committee on Foreign Affairs U.S. House of Representatives and the Committee on Foreign Relations U.S. Senate, by the Department of State, in accordance with sections 116(d) and 502(b) of the Foreign Assistance Act of 1961, as amended, February 1984, p. 783.
141. See therefore the 'Almanac' of Sumatra of 1969, published in Medan, quoting 30 heretic movements.
142. See RIMA Vol. 12, No. 2, 1978, *Survey of Major Political Developments in Indonesia in the First Half of 1978*, Comp. by C. Van Dijk, pp. 140-4. See also chapter 2.1.
143. Ministerial Regulation SK 70, issued on August 1, 1978 and Ministerial Regulation SK 77, issued on August 15, 1978.
144. Various dialogue conferences between churches, including Moslems at both

- national and international level, e.g. in Geneva the World Council of Churches in June 1976 recognized this. President Suharto echoed this also in a speech in 1969.
145. Joint Decision No. 1/1979 issued on January 2, 1979. A translation in Dutch has been used.
 146. See the weekly *Tempo* of September 23, 1978.
 147. Kep 027/Kopkam/XI/73.
 148. Admiral Sudomo as quoted in *Sinar Harapan*, December 18, 1976.
 149. For internal exile see also chapter 4.6.2.
 150. *Indonesian Newsletter*, November 17, 1981, item 6.
 151. Employment of Foreigners Act No. 3 of 1958 and Presidential Instruction No. 10 of 1968.
 152. Law No. 3 of 1972, concerning the Basic Stipulations for Transmigration.
 153. H. W. Arndt, *Transmigration*, p. 63.
 154. Based on reports in *Kompas* October 1 and 5, 1985.
 155. For the question of transmigration and its impact on the local population and environment see chapter 1.6.
 156. See G. Y. Adicondro, 'From Chinatown to Nan Yang: an Introduction to Chinese Entrepreneurship in Indonesia', *Prisma* (English), No. 13 (June 1979).
 157. Law No. 3 of 1946, given retroactive effect as from August 17, 1945.
 158. Law No. 62 of 1958.
 159. Circular letter of July 1, 1969, No. DTC/9/11.
 160. It must be stated that all foreigners are excluded from each kind of landownership.
 161. Accounts of the November 1980 events can be found, *inter alia*, in *Far Eastern Economic Review* of December 5 and 12, 1980, *NRC-Handelsblad* December 9, 1980 and Indonesian Weekly *Tempo* No. 41 December 6, 1980, pp. 12-14. INDOC 1980/005 (Leiden, Netherlands) contains a personal account by an Indoc source.
 162. *Far Eastern Economic Review* December 12, 1980.

Aspects of Criminal Justice

by Professor J. 't Hart

4.1. INTRODUCTION

The 'New Order' of president Suharto entailed a new orientation in the field of law and law enforcement. Under the preceding period of the 'guided democracy' (1959–65) of president Sukarno, the rule of law had been completely abandoned. A striking expression of this was the Basic Law on Judiciary Power No. 19/1964. According to this law the administration of justice should be based on the concept that law is an instrument of the revolution in its development towards an Indonesian society (art. 3). Legislative power, judicial power and executive power should not be separated, as the revolution required the unity of all forces (cf. the Elucidation, i.e. the official commentary forming part of the law). In fact, the President was authorized to interfere, in the interest of the revolution, in matters of jurisdiction (art. 19). The 'new order' on the contrary was legitimated by a proclaimed opposition to this subordination of justice to politics, by a return to the rule of law, and by restoring the 1945 Constitution. In fact, the 1964 Basic Law on Judiciary Power was replaced by a new one, No. 14/1970, according to which the guide to the administration of justice is not the revolution but Pancasila. The realization of legal aid, a right recognized by this law, was the main purpose of the new Legal Aid Institute, (Lembaga Bantuan Hukum, LBH), formed in the same year 1979.¹

The renewed interest in the rights of the individual in law enforcement, made possible by the mental climate of this period, had its manifestation in the field of criminal law in the creation of a completely new code of criminal procedure: the KUHAP (Kitab Undang-undang Hukum Acara Pidana) No. 0/1981. This is not to be confused with KUHP, which is the criminal code. The KUHAP can be considered as the logical continuation of the codification of the individual rights recognized in the 1970 Basic Law on Judiciary Power, such as the presumption of innocence (art. 8), the right to compensation for illegal detention (art. 9), the right to be tried in open court and to be present in person (art. 16, 17) and the right to legal aid (art. 36). Criminal law and criminal procedure were regulated by Dutch colonial laws, namely the code of criminal law, KUHP (Kitab Undang-undang Hukum Pidana; Wetboek van Strafrecht

voor Indonesie of 1918², which is still in force, and the code of criminal procedure HIR (Herziene Indonesisch Reglement, or RIB: Reglemen Indonesia Jang dibaharci, of 1848, as revised in 1941). Although the criminal code could be subject to various criticisms, it is especially the code of criminal procedure which determines and implements the rights of individuals at the different stages of investigation and trial. As human rights are primarily concerned with the rights of individuals, it is the code of criminal procedure which should grant and protect human rights. For this reason, it is not surprising that a new codification has been realized first in the field of criminal procedure.

However, the first draft of the new code of criminal procedure was made by representatives of several institutions such as officials of the Department of Justice, police officers, prosecutors and judges, who were competing with each other to have more power under the new code. The result, presented to the parliament in 1979, appeared still to be a product of legal thinking of the past period. According to many lawyers, it was worse than the HIR. University teachers, practising lawyers and several lawyers' associations and institutes, including LBH, campaigned against this draft. Under pressure from these lawyers, making use of the competition between officials inside the bureaucracy, and with the positive support of then Minister of Justice Mudjono, the first draft was significantly amended during the discussions in parliament. In a parliamentary *ad hoc* commission important improvements, such as the so-called pretrial hearing (preperadilan), were realized. The present KUHAP, which resulted from a political compromise, was ratified by the President and promulgated on December 31, 1981.

In this chapter on aspects of criminal justice the new situation in criminal law enforcement since 1982 will be analysed. Special attention will be paid to the protection of fundamental rights under KUHAP, both at the level of the law and in practice. On the practice of criminal law enforcement, reliable information has been obtained from many lawyers practising at different levels, such as defence counsel, judges, members of parliament, former ministers, government officials, lawyers who have been political prisoners and university professors. But, as the application of KUHAP is still in an early stage, many questions are not quite clear; there is not yet a stabilized doctrine. The formulations of human rights in the International Covenant on Civil and Political Rights (ICCPR) have been used as standards in this chapter. This covenant, however, has no legal force, as it has not been ratified or even signed by Indonesia.³ Moreover, the meaning of human rights formulations, even when codified, is not determined by ontological essence. Human rights can never be understood outside the context in which they function. On the contrary, they must be seen in a specific historical and social context which influences their content and the means of implementation. Nevertheless, even accepting these reservations, the ICCPR is useful, not to invalidate provisions in Indonesian law, or their implementation and application, but as providing a

checklist and as a basis for discussion, especially since the ICCPR is an internationally authoritative formulation of the very human rights which KUHAP, according to its Elucidation, seeks to protect, and an authentic elaboration of the Universal Declaration on Human Rights of the United Nations, of which Indonesia is a member state.

Criminal procedure in Indonesia relates in the main to six possible stages of the proceedings, namely (1) the investigation and interrogation by the police, (2) the preparation of the indictment by the prosecutor, (3) a pretrial, (4) the trial, (5) an appeal, and (6) cassation.

4.2. PRELIMINARY INVESTIGATION

4.2.1. Criminal Law Enforcement

An analysis of the present human rights situation under the new KUHAP should start with some preliminary remarks concerning the three basic institutions of criminal law enforcement: the police, prosecution and judiciary.⁴

Under the Basic Law on Police No. 13/1961 and the Basic Law on Prosecution No. 15/1961, the police and the office of prosecution are both autonomous agencies of the government with strictly separated tasks. Under the KUHAP, the police (in KUHAP terminology: interrogators, assistant investigators and investigators) are exclusively charged with the investigation. The former power of prosecutors to carry on further investigations is abolished. This can be seen as a result of a long standing process of militarisation of the police force and making it autonomous. The specific tasks of the prosecutors are limited to prosecution (art. 137)⁵ and implementation of court decisions (art. 270). To obtain coordination between investigation and prosecution, the public prosecutor has the authority, after the investigator considers his investigation completed and has handed over the file to the prosecutor, to return the file within fourteen days to the investigator if he considers it to be still incomplete. In that case, the investigator is obliged to carry out immediately additional investigation in line with the directives of the prosecutor (art. 8(2) and (3), art. 110(2)–(4)).

The minimum condition to start an investigation is a reasonable presumption of a criminal act (art. 102(1), 106). Once criminal proceedings have been started, in the preliminary phase they are always subjected to the principle of expediency: law enforcement officials have a certain discretionary power to drop a case. The politically most important expression of the expediency principle is the authority of the Prosecutor General not to proceed with a case if prosecution and adjudication can damage the public interest.⁶ This authority has been conceded for important cases which could arouse public disorder or damage the image of the state. In fact, the Prosecutor General has to consult

high officials and politicians such as the Chief of the National Police, the Minister of Defence, other ministers and even the President. For example many cases of corruption, especially of judges, have been covered up in this way, including the PERTAMINA corruption case. The special authority of the Prosecutor General should be distinguished from the authority of investigators and prosecutors during the investigation and prosecution to terminate a case because of absence of sufficient proof, because the facts do not amount to a criminal act, or 'for the sake of the law' (i.e. for social reasons, such as that the case is not of sufficient importance to merit prosecution) (art. 109(2), 140(2)(a)). This discretionary power of investigators and public prosecutors is meant only for petty offences. A decision by the Prosecutor General not to proceed with a case is final, but such a decision by other prosecutors can be opposed and then reviewed by a judge in pretrial proceedings.

Among the most important innovations which KUHAP brought about is the introduction of a pretrial hearing, entailing a certain control of the proceedings of law enforcement officials, and the possibility of granting rehabilitation and compensation, which was not provided for under the HIR.⁷ On request, a judge of a court of first instance, appointed by the chairman, has the authority to examine and decide whether or not an arrest, a detention and a termination of investigation or prosecution is valid, and to decide on compensation and/or rehabilitation for a person whose criminal case is dropped at the level of investigation or prosecution (art. 77, 78(2)). From art. 82(1)(b) and (3)(d) it can be deduced that the judge can also provide for the return of confiscated goods when they are not required as materials of evidence. As far as the termination of investigation or prosecution is concerned, a request can be submitted by the investigator, the prosecutor or an interested third party. One could say that the principle of equality of arms has been realised on this subject between the rival offices of the police and public prosecutors! Nevertheless, within these legal limits, protection by the judge of the individual in pretrial hearings can be rather restricted. As will be demonstrated, KUHAP contains many time limits and formalities which officials have to observe and which should imply important safeguards for the protection of suspects. But most of these formalities and time limits do not carry any legal sanction and the Indonesian judiciary has not developed in its case law any doctrine on the exclusion of illegally obtained evidence. In this way, the observance of the legally prescribed time limits and formalities is mostly at the mercy of the law enforcement officials themselves. Non-observance does not have any consequences in the criminal procedure, although theoretically a disciplinary punishment of the official concerned is possible.

4.2.2. Interrogation

Basic human rights of a suspect at the stage of interrogation include the right to information (to be informed promptly and in detail in a language which he understands of the nature and cause of the charges against him,⁸ the presumption of innocence (the right to be presumed innocent until proved guilty according to the law),⁹ protection against self-incrimination (not to be compelled to testify against oneself or to confess guilt)¹⁰ and the right to a hearing of witnesses (to examine, or have examined, the witnesses against one and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against one).¹¹

On the face of the law, these fundamental rights have been reasonably implemented in the preliminary criminal procedure. As to information, art. 51 states the right of a suspect or defendant (for the phases of investigation and prosecution KUHAP uses the term 'suspect', for the trial 'defendant') to be clearly informed in a language he understands about what has been presumed about him at the start of an examination: a formulation which already implies the right to assistance of an interpreter.¹² At the beginning of an interrogation, the interrogator is obliged to show his identity card (art. 104). Art. 66 states that the suspect or defendant shall not be burdened with the duty of providing evidence. When he is interrogated, he must be in the condition to speak freely (art. 52), without pressure being brought to bear upon him by anyone and in any form. The same rule applies in the case of a witness (art. 117(1)). Statements of suspects and witnesses must be recorded in a report in the minutest detail in the words used by the suspects themselves (art. 117(2)) and signed by the investigator and by themselves after they have approved the content. If they are not willing to attach their signature, the investigator must record this in a report, mentioning the reason (art. 118). There is no explicit right for the suspect to keep silent. His guilt must be proved in a court session, based on legally recognized evidence.¹³ If he is detained, he should be separated from convicted prisoners and should not be submitted to the same regime¹⁴ which also is a consequence of the presumption of innocence. Witnesses must be examined without administering an oath, except when there is sufficient reason to presume that they will not be able to attend the court examination (art. 116(1)). The suspect has to be asked whether he wants a witness to be heard; if he does, it has to be recorded in a report and the investigator is obliged to summon and examine the witness for the defence (art. 116(3) and (4)).

In practice, these formalities often are not observed, as they are not followed by legal sanctions. Moreover, the rules on fairness of the interrogation are often violated: suggestive questions, traps, pressure, statements not recorded in the suspect's own words but in summaries made by the interrogator, refusal of permission to read the report before signing it, psychological ill-treatment leading sometimes to physical ill-treatment and even to torture. Ill-treatment is

not a practice only of special military or police corps, it is a general phenomenon occurring in all kinds of cases. Sometimes it happens even in road traffic cases. However, in serious cases it is reported to be more frequent. For instance, in the recent case of Lt. General Dharsono, the defence team complained about his rough treatment. In recent cases of young men involved in the Tanjung Priok riots, defendants complained in court of having been beaten or tortured during the preliminary inquiry, and withdrew before the judge their statements in the police reports. Ill-treatment and torture are not only violations of fundamental procedural rights of KUHAP, but also infringements of the internationally recognized human right not to be subjected to torture or to cruel, inhuman or degrading treatment.¹⁵

Defence teams make their complaints on ill-treatment and torture in court sessions for various reasons. First of all, to make a public protest. Secondly, to affect the 'evidence value' of the statements during investigation. This has to do with the legal provisions on proof. As has been pointed out, illegally obtained evidence is not excluded and can still be used to prove the criminal charge. But in the specific case of pressure, torture and other ill-treatment, the credibility of the content of the statements is affected. As under KUHAP a criminal charge is proved when the judge is convinced (based on at least two pieces of evidence) that the criminal act has really been committed and that it is the defendant who is guilty of perpetrating it (art. 183)¹⁶, statements made under pressure etc., although formally not excluded from evidence on which the judge could base his decision, might carry little or no weight. But it all depends on the judge, on his willingness to accept the possibility of ill-treatment and on his courage to state that he is not convinced by statements made by an ill-treated suspect. Ill-treatment is hard to prove: police officials usually deny it in spite of the many complaints, and judges usually do not seek to establish the truth about the complaints. This attitude is strongly connected with a lack of independence.¹⁷ Often defendants receive as a formalistic answer that they should not have signed their statements. In a recent case, the defence team asked the courts to hear a physician who treated the physical consequences of torture after the defendant's release. After a first refusal of the court, the physician was finally summoned. But as in the meantime he was threatened by the police, he did not appear and the court refused to make use of its authority to force him to appear (art. 159(2)).

In practice, pressure and other illegal activities of interrogators do not occur if a defence counsel is present; defence counsel has the right to be present during interrogation. But many suspects have no lawyer and lawyers of detained suspects have difficulty in being present at the interrogations of their clients.¹⁸ Obstruction of legal aid by the police is quite common. The obligation to ask suspects if they want witnesses for the defence to be heard is normally not heeded, the summoning and hearing of witnesses requested by the defence is sometimes refused. Also witnesses sometimes seek protection by being

accompanied by a lawyer at their interrogation. But this depends on the agreement of the interrogation officials: a witness does not have any right to be assisted. Moreover, to pay a lawyer as a witness is possible only for the rather well-to-do. In the recent Dharsono case, witnesses appeared to be examined on oath during investigation, contrary to art. 116(1). According to the defence team, this practice was evidently meant to be a pressure upon the witnesses concerned not to change their statements recorded in the investigation reports when they were examined during trial.¹⁹

Comparable with the situation in cases of subversion,²⁰ in cases of large-scale organized crime arrests, detentions and interrogations are sometimes carried out in the first instance by LAKSUSDA, local branches of the military security service KOPKAMTIB. The human rights situation during LAKSUSDA investigation and detention is even worse. The attitude of the judiciary towards this interference is ambiguous. On the one hand, there still is a joint statement of the President of the Supreme Court, the Minister of Justice, the Prosecutor General and others, which instructs the judges to subtract military custody from the term of imprisonment,²¹ legitimizing in this way the military custody.²² On the other hand, courts are reported sometimes to consider military custody as non-judicial and not to allow subtraction.²³

4.2.3. Search and confiscation

Search and confiscation on the one hand constitute forcible means necessary to carry out police investigations, but on the other hand are serious interventions into rights of privacy and property. By international standards, no one should be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. Everyone has the right to protection of the law against such interference.²⁴ Everyone has the right to own property alone as well as in association with others. No one should be arbitrarily deprived of his property.²⁵

To avoid arbitrary interference, KUHAP contains many detailed provisions. The basic principle for house search is that the investigator should have a warrant from the chairman of the local district court (art. 33(1)). To enter a house, he has to show his identity card (art. 125) and be accompanied by two witnesses in a case where the suspect or occupant consents to the search; if he objects or is not present, the search has to be in the presence of the village head or community chief and two witnesses (art. 33(3) and (4)). On the conduct and result of the search, a report must be made by the investigator within two days and read out to those concerned, dated and signed by both the investigator and the suspect or his family and/or the village head or community chief and the two witnesses. A refusal to sign by the suspect or his family must be recorded in a report, mentioning the reason. Finally, a copy of the report must be provided to the owner or occupant of the house concerned (art. 33(5), 126). However, in

case of need, a written order from an investigator instead of a warrant will be sufficient (art. 33(2)). In an emergency situation, when an investigator has to act immediately and cannot possibly ask for a warrant first, he can perform a search of the suspect's house; of the place where the suspect lives, stays or is present; of the location where the criminal act has been committed or left its trails; in lodging houses and other public places (with some exceptions, if not caught in the act) (art. 33(2), 34(1), 35). For suspected subversion, warrants for search and confiscation are only required if the suspect is not caught in the act. In that case the warrant must be obtained by the investigator charged with the investigation (Anti-Subversion Law art. 6(2)).²⁶ At the time of an arrest, an interrogator is authorized only to search the suspect's clothes, and the goods he carries with him, if there is sufficient reason to assume that these goods may need to be confiscated. The investigator is authorized to make a body search at the time of the arrest or when the suspect has been brought to him by an interrogator after the arrest.

As to confiscation, the basic principle is that a warrant from the chairman of the district court (art. 30(1)) is needed and also a certain relation between the goods to be confiscated and the criminal act concerned. However, in a very urgent situation, if an investigator has to act immediately and cannot possibly obtain a warrant first, he is authorized to confiscate movables and report it immediately afterwards to the chairman of the court in order to get his approval (art. 28(2)). In carrying out a confiscation, the investigator must first show his identity card. The goods to be confiscated must be shown to the suspect and information about them must be asked for. The village head or community chief and two witnesses have to be present. The investigator must prepare a report, which should be read out to the person concerned, and signed by the investigator, village head or community chief and witnesses. A refusal to sign must be recorded and copies of the report submitted to the investigator's chief, the person concerned or his family and the village head (art. 128-9; for the administration and preservation, see art. 130, 44, 45).

The investigator must give a receipt for any goods he confiscates. Letters or written materials should have a clear relation with the suspect (art. 42). When the suspect has been caught in the act, the investigator can also seize letters and goods transported by post, (tele)communication offices or agencies (art. 41). If not caught in the act, a special warrant of the chairman of the court is needed to open, examine and confiscate them (art. 47(1)). The confiscation of letters and other written materials from those who are obliged to keep them secret can, provided they do not concern state security, only be carried out with their agreement or by a special warrant of the chairman of the court (art. 43).

Finally, the confiscated goods have to be returned when they are no longer needed for investigation and prosecution, especially as evidence, when the case has been dropped for lack of sufficient proof or turns out not to be a criminal offence, when it has not been proceeded with in the public interest or dropped

by the prosecutor 'for the sake of the law,' except when the confiscated goods have resulted from a criminal act or been used for committing it, and immediately after the final decision of the court, except when the goods are to be seized for use in the interest of the state or in order to be destroyed (art. 45(4), 46, 194). If they are not required as evidence, restitution can be obtained already at the pretrial stage (art. 82(1)(b) and (3)(d)).²⁷

Apart from this very limited possibility of obtaining restitution at the pretrial stage, the provisions in KUHAP on search and confiscation are not supported by any sanction. Often they are violated. For instance, in big cities such as Jakarta police officials in search for illegal weapons stop motorbuses and search the clothes of all occupants and the goods they carry with them. This is done without any warrant, even without suspecting any particular individual. In recent cases of muslim activists relating to the Tanjung Priok riots, the prosecution produced as evidence several weapons which the defendants stated they had never seen before and there were no warrants or reports of the alleged search. In cases where the evidence has been illegally obtained, it can nevertheless be part of the formal basis of the court's conviction. Defence teams can only try to persuade the judges at the trial not to rely on evidence of which they cannot be certain whether it really comes from the defendants, as the investigators and prosecution state.²⁸ Confiscated goods are said sometimes to disappear.

It is striking that a new code like KUHAP has no provision on monitoring of telephone calls. Monitoring seems nevertheless to be a widespread practice of the security agencies.²⁹

4.3. DEFENCE RIGHTS

Although several fundamental rights discussed in this chapter have to do with the defence in criminal cases during the preliminary investigation and during the trial, three of them are of particular concern: the right to legal aid, the right to adequate time and facilities for the preparation of the defence, and the right to free assistance of an interpreter.

4.3.1. Legal Assistance

The usual formulation of the right to legal aid contains four elements:

- the right to defend oneself in person or to be assisted by a counsel of one's own choosing;
- the right to free legal aid in case of inability to pay, if the interest of justice so requires;
- the right to communicate with counsel;
- the right to be informed of his right to legal aid.³⁰

The right to be assisted by a counsel of one's own choosing is explicitly guaranteed by KUPAH art. 54 and 60. If the suspect or defendant has not chosen a counsel, a lawyer must be assigned automatically to a person suspected of or charged with having committed a criminal act which carries the death sentence or a prison term of fifteen years or more. In this case ability or inability to pay is irrelevant. A counsel must also be assigned automatically for those who are unable to pay and who are liable to a prison term of five years or more; these cases are regarded by KUHAP as cases in which the 'interest of justice' requires free legal aid, as in the formulation in ICCPR. To appoint a lawyer is an obligation of the official concerned with the preliminary examination. Every assigned lawyer has to give his assistance free of charge (art. 56(1) and (2)).

This right to legal aid lasts throughout the whole proceedings whenever the defendant is interrogated, from the beginning of the preliminary examination by the police interrogator to the trial, and at every stage (art. 54, 56(1)). Although there are no provisions which guarantee that the suspect is informed of this right, the new KUHAP nevertheless constitutes an improvement: under the old HIR the right to legal assistance was recognized only during the trial, not during the preliminary investigation, and the defendant was entitled as a matter of right to the services of a lawyer only where the crime carried the death penalty.

If the suspect has been arrested or detained, the legal adviser in turn has the right to be present and to speak with his client whenever he is being questioned, from the moment of arrest or detention and at all stages of the proceedings (art. 69 and art. 70(1)). It is generally assumed that legal assistance and the right to communicate imply that the contact between counsel and his client must be private.³¹ KUHAP allows privacy only implicitly in as much as it makes some exceptions. If there is evidence that the counsel abuses his right to speak with his client, he will be given a warning by, according to the level of investigation, the investigator, the public prosecutor or the prison official. If the warning is not heeded, communication may be closely watched by these officials, and if the abuse continues, such communication can be forbidden entirely (art. 70(2)-(4); 71). These restrictions on the confidentiality, however, do not apply after the case has been delegated by the prosecutor to the district court for trial (art. 74). A real violation of privacy and confidentiality occurs in charges of crimes against the security of the state: in these cases the official mentioned can listen to the discussion (art. 71(2)), and this restriction does not end after the delegation to the court. A detained suspect or defendant and his lawyer have the right to correspond (art. 62(1), 73). This correspondence should not be censored, except when there is sufficient reason to presume that the correspondence is being abused: in that case a letter can be censored or examined, and the detainee must be informed by its being marked 'censored' (art. 62(2) and (3)).

Although the counsel has the right to be present at the interrogation of his client during investigation, he has no right to intervene: he only can watch and listen (art. 115(1)). His presence is considered to be a prevention of torture and other abuses by investigators to extract confessions, which easily could be committed under the old HIR when interrogation took place 'behind closed doors'. But in cases of crimes against the security of the state, according to KUHAP, the legal adviser can only watch but not overhear the examination of his client (art. 115 (2)).

Although the KUHAP provisions are an important improvement compared with HIR, the practice is not always as favourable as it might seem for the suspects. In this context, several factors have to be taken into account. First of all there is a traditionally patriarchic way of thinking in which all public officials (police, prosecutors and judges as well) consider themselves as servants of the same interest as the representatives of the government, and in which criminal procedure is not seen as an important protection of the individual. Although KUHAP, according to its Elucidation, is meant to bring about a change and to strengthen provisions for the protection of basic human rights and human dignity,³² it did not suddenly change the mentality of the average official. Moreover, the level of general education of most policemen is rather low: elementary school, at most junior high school. It is very difficult for them to understand the principles on which officially the new KUHAP is based. Relevant also is the situation of the legal profession.³³ Lawyers are too few and not always qualified: there are no bar examinations and among the lawyers are so-called 'bush-lawyers' without law school education. All these lawyers, bush-lawyers included, can be assigned as counsel in criminal cases (art. 1(13)). When they are assigned by a law enforcement official, they enjoy a rather low remuneration from the state for their costs (Rp. 100,000 a case for first level trial, appeal and cassation together).³⁴ In addition, lawyers, including members of LBH, have been harassed by government officials for carrying out professional responsibilities, especially in cases with a political impact. To be a good lawyer in criminal cases, one needs idealism, time and courage. Most harassment and pressure is directed at the client. Officials attempt to convince suspects to renounce legal assistance and sometimes force them to withdraw their mandate to LBH lawyers or other human rights activists. Officials pressure them not to proceed with habeas corpus requests or with complaints about abuses.³⁵ Sometimes lawyers are simply not assigned to suspects during the preliminary inquiry, sometimes they are not admitted to their clients or access is made difficult, as in some recent cases of young muslim activists relating to the Tanjung Priok incident of September 12, 1984. Some internal regulations ('juklak') appear to limit the rights guaranteed by KUHAP, e.g. art. 70(1) states that counsel has the right to contact and to speak with the suspect at every stage when he is under examination and at every moment in the interest of the defence. But 'at every moment' is interpreted in a regulation of

the Minister of Justice³⁶ as 'at every moment during office hours'; and the police often interrogate arrested or detained suspects at night when offices officially are closed. Moreover, there is no provision in KUHAP which obliges police officials to warn counsel when interrogations will take place, and these officials refuse to do so. If the suspect is detained in prison, he cannot warn his lawyer by himself. In this way, the right to have a lawyer present at the interrogation is illusory for detainees in prison. As mentioned above, the text of art. 70 suggests that counsel and client have a right to privacy of their conversation. Only if the counsel abuses his right to communicate, there shall be an admonition; if this is not heeded the conversation shall be closely watched and finally, if abuse continues, banned. But another regulation of the Minister of Justice prescribes that jail wardens should always be present and watch the communication between detainee and lawyer, without listening.³⁷ This entails in practice that prison officials have the opportunity to hear the entire conversation and that in case of detention in prison any real confidentiality between suspect and counsel is impossible. Although it is hard to say whether the privacy and confidentiality of the correspondence between detainee and lawyer are normally respected, it has been noted that many letters do not reach their destination. Correspondence between counsel and political detainees is in practice censored more often than not.

4.3.2. Time and Facilities

The right to adequate time and facilities for the preparation of the defence must be analysed in the framework of the entire situation of both the suspect and his lawyer. A defence has to be based on knowledge about the (reasonable) grounds of suspicion or the charges. KUHAP art. 51 states that a suspect or defendant has the right to be clearly informed in a language he understands about what has been presumed about him at the start of an examination or the charges brought against him. The indictment which the public prosecutor issues must contain, besides the identification of the suspect, an accurate, clear and complete explanation of the criminal charge and time and place of its occurrence. Copies must be sent to the suspect or his proxy or his lawyer (art. 143; for amendment of the indictment, see art. 144). The summons to attend court, issued by the prosecutor to a defendant, must mention the date, day and hour of the court session and the case for which he is summoned. It must be notified to him at the latest three days before the beginning of the session (art. 145, 146).

In practice, the right to information necessary for the defence is often violated. According to Indonesian lawyers only in spectacular cases which attract much public attention are the provisions generally observed. This applies to the right to be informed in a language the suspect/defendant understands as well as the right to receive a copy of the indictment. Also the minimum term of three days between notification of the summons and the

court session, is often not observed. Again, KUHAP does not contain any sanction. Only if a lawsuit does not mention the personal data of the suspect and the description, time and place of the criminal act, it is legally invalid (art. 143(3)).

When the court pronounces a verdict, it should contain many items, including identification of the accused, the offence with which he is charged, a summary of the facts and the evidence on which the decision has been based, the relevant law, the presence or otherwise of all constituent elements of the offence and, if the verdict is one of guilt, the sentence, specifying whether the defendant is to remain in custody or be released and any liability for costs (art. 197). All these items constitute necessary information to conduct a defence on appeal or cassation. A request for appeal must be made within seven days after the verdict has been pronounced or has been brought to the notice of an absent defendant (art. 233(2)). In a case of cassation, a request must be submitted within fourteen days after the defendant has been informed of the court's verdict (art. 245(1)). An applicant for cassation is obliged to submit to the court's clerk a memorandum which contains the reasons for the appeal by way of cassation within fourteen days after making the application (art. 248(1)). A memorandum is not necessary for an ordinary appeal, but in practice it is the only way for the defendant and his counsel to explain their defence and their objections to the verdict of the trial court.³⁸

The evidence collected by the investigators is accessible to the suspect and his counsel. On their request, the official concerned must provide them with a copy of the report of the preliminary examination (art. 72). At the stage of prosecution they are entitled to a copy of the whole file including the indictment, and at the trial stage the whole dossier of the case including of the verdict of the judge (for an appeal) (art. 236(3) and (4)). In practice counsel sometimes finds out at the court hearing that his set of copies of reports is not complete. Although he can obtain the missing copies from the court, or—if the judge refuses, as sometimes happens—he can at least be allowed to see the dossier and read it. He can be faced at a very late stage of his defence with unexpected difficulties and with lack of time for the preparation of a rebuttal of the evidence of the public prosecutor, and for the presentation of rebutting evidence. In cases connected with the Tanjung Priok riots and the BCA bombings in September and October 1984, the defence team often did not have access to the prosecutor's dossier until one or two days before the trial opened.

At the end of the examination of the evidence by the district court, the defendant and his counsel can state their plea and must always be given the last word (art. 182(1)(b)). However, the right to have the last word after the prosecutor's charges and replies exists only in the trial at first instance.³⁹ In practice, this right at first instance is sometimes denied to the defendant, as the chairman of the district court states that in his view the defendant has already sufficiently expressed his views and arguments.

4.3.3. Interpreter

The right to the assistance of an interpreter free of charge if one cannot understand or speak the language used in court is granted by art. 177(1). The interpreter, to be appointed by the judge/chairman of the session, must promise under oath or pledge to truly interpret all that has to be interpreted. The same right to communication is provided by art. 178 to dumb, deaf or illiterate defendants. Art. 53 extends this right to the preliminary examination. In practice, it is usually observed as far as foreigners are concerned. In the case of Indonesian suspects who cannot speak or write Bahasa, or who are dumb and/or deaf, compliance with the rule depends on the interest of the investigator to obtain information from these suspects. Although these KUHAP articles do not mention that the assistance has to be free of charge, they are interpreted as implying it. There is no right for the suspect or defendant and his counsel to have (free) assistance for the confidential communication between them in the preparation of the defence.

4.4. ARREST AND DETENTION

4.4.1. Liberty and Security

The right to liberty and security of the person should prevent a person being subjected to arbitrary arrest or detention. Arbitrariness is to be understood as deprivation of liberty not based on lawful grounds and not in accordance with procedures established by law.⁴⁰

According to KUHAP, the basic conditions for an arrest for a crime are a strong presumption of a criminal act and sufficient initial proof; for lesser offences arrest is permitted only when the suspect, without valid reasons, has failed on two consecutive occasions to comply with a summons (art. 17, 19(2)).

There appear to be three different forms of detention: house detention; city detention, entailing the obligation to report oneself at definite times; and detention in a state penitentiary. The latter must be subtracted in full from the term of the sentence. For city detention the subtraction must be one-fifth and for house detention one-third of the entire period of detention (art. 22). The form of detention can be changed from one to another (art. 23(1)). On request a suspension of detention can be granted, with or without bail or personal guarantees, and it can be withdrawn (art. 31). In practice, it is sometimes conceded to ordinary criminal suspects, but not to political suspects. In the big cities it is easier to obtain than in the regions. According to the stage of the procedure and the duration of the detention, it is for the investigator, prosecutor or judge to decide whether to grant it.

Detention is legally permissible only in certain cases and limited to specific grounds and conditions. Cases are the commission, or attempting or aiding the

commission, of a criminal act liable to a prison term of five years or more, and a number of specifically enumerated crimes (art. 21(4)). The grounds are the presence of circumstances which give reason for concern that the suspect or defendant will disappear, damage or destroy evidence materials and/or repeat the criminal act. The conditions are strong suspicion on the basis of sufficient evidence (art. 21(1)).

For arrest and for detention some formalities are required. In case of arrest the police should show the assignment letters and hand over to the suspect the arrest warrant which contains the suspect's identity and mentions the reasons for his arrest and explains in brief the criminal case of which he is suspected and his place of examination. A copy of the arrest warrant must be delivered to the family of the arrested person immediately after his arrest. Only if a suspect is caught in the act, can arrest be made without a warrant (art. 18). For initial detention or further detention, a detention order or verdict by a judge should be presented, which contains the identification of the suspect or defendant, mentions the reason for his detention and a brief explanation of the criminal act of which he is suspected or accused and his place of detention. A copy of the (further) detention order or the verdict must be delivered to his family (art. 21(2) and (3)).

The validity of arrest and detention can be checked on request by the judge in a pretrial hearing. As the pretrial procedure, introduced by the new KUHAP, is still in an experimental stage, it is hard to say exactly how far-reaching this control will be: there is not yet an established doctrine. Normally the legality of arrest and detention is subject to judicial control and there is also a noticeable tendency towards a more severe checking of other formalities, as far as arrest and detention are concerned, such as delivering a copy of the warrant to the family. However, in cases with a political impact, judges are still reluctant to recognize the invalidity of arrest or detention.⁴¹

It should be recalled that the main subject of this chapter is detention in normal criminal cases. Many arrests and detentions have been carried out by military and intelligence officials, not under KUHAP, but for political and security reasons. Sometimes arrest and detention are based on charges under special (criminal) laws⁴², sometimes they are made without any charge. Individuals subject to such practice are in particular those believed to be involved in subversive or separatist activities, such as radical Muslim activists, Muslim preachers and Timorese suspected of supporting Fretilin.⁴³ For these various categories of detainees, protection derived from an improved criminal procedure in codified laws can be at a very low level or even be non-existent.

4.4.2. Right to be Informed

The right to information, for the purposes of the defence, exists at every stage of criminal proceedings. Anyone who is arrested must be informed, at the time of

the arrest, of the reasons for his arrest and must be informed of any charges against him.⁴⁴ The arrest warrant, explaining in brief the criminal case, must be handed over to the suspect, and a copy must be delivered to the family of an arrested person immediately after his arrest (art. 18(1) and (3)), as must a detention order, mentioning the reason for the detention and explaining briefly the criminal case (art. 21(2) and 3)).

These provisions are often not observed. For instance, in the case of the mass arrests during September and October 1984, after the Tanjung Priok incident, arrests were made without warrants, and copies of arrest and detention orders were not given to the families of the suspects. In ordinary pretrial hearings, judges are inclined to consider infractions of these formalities as a reason to invalidate the arrest or detention; but in cases with a political impact, there is a reluctance to do so.⁴⁵ Formalities which are a condition to effect a decision are generally observed, as in the case of a change in city or house arrest, where the obligation to send a copy of the decision to the suspect or defendant and his family (art. 23(2)) is a constituent element.

4.4.3. Reasonable Time

Because the guilt of a suspect has not yet been established and because the suspect is to be presumed innocent until he is tried and convicted, the duration of detention should be strictly limited. Anyone arrested or detained should be entitled to trial within a reasonable time or to release.⁴⁶

Investigators and their assistants on their order, public prosecutors and judges all have the authority to detain a person, within the following time limits:

arrest by investigators or their assistants	1 day
initial detention by an investigator	20 days
extension by a public prosecutor	40 days
total	60 days
detention by a public prosecutor	20 days
extension by the chairman of the court	30 days
total	50 days
detention by the judge of a district court which is trying the case	33 days
extension by the chairman of the court	60 days
total	90 days
detention by the judge of a high court which is trying the case	30 days
extension by the chairman of the high court	60 days
total	90 days
detention by the judge of the supreme court which is trying the case	50 days
extension by the chairman of the supreme court	60 days
total	110 days

Each time limit is to be considered as a maximum: it does not preclude the possibility of releasing the suspect or defendant before the termination of the detention period (art. 19(1). 24–8).⁴⁷ Time limits for detention under KUHAP bring about an improvement, as under HIR there was no final time limit: detention could be prolonged endlessly for periods of thirty days each.

A suspect, his family or counsel can file an objection to the detention or the type of detention to the investigator, who can reconsider his decision. If within three days there is no compliance on the part of the investigator, the matter can be submitted to his superior. The objection can result in termination or suspension of the detention, with or without conditions (art. 31(1), 123). Arguments put forward by the defence at this level can refer to the legal validity, but also to the necessity and expediency of the detention order. The discretionary powers of police officials result in practice, according to Indonesian lawyers, to abuse, arbitrariness and corruption. At the level of the pretrial hearing, only the legal validity of the detention can be submitted to the judge (art. 77, 124). In practice, time limits for arrest and detention are not infrequently exceeded.

4.4.4. Habeas Corpus

For the same reason that the duration of detention should be strictly limited, an arrested or detained person should be entitled to take proceedings before the court in order that the court may decide without delay on the lawfulness of his detention, and order his release if the detention is not lawful.⁴⁸

The codification of this right is an important achievement of the KUHAP. Anyone arrested or detained, his family or proxy, may file a request, stating the reasons for the complaint, to the chairman of the district court for an examination of the validity of his arrest or detention prior to or separate from the principal case against him, which is to be adjudicated later (art. 79). It is the chairman of the court who appoints the single judge for this pretrial hearing (art. 70). The judge must hear both the suspect or petitioner and the official in charge. The schedule for a pretrial hearing must be fixed within three days after receipt of the request and the judge must render his judgment at least within seven days thereof. If the judge rules against the suspect when he is detained under the authority of an investigator, the suspect may request a new hearing after his case has been turned over to the prosecutor. If the judge rules in favour of the detainee, he has to be released immediately and he is entitled to compensation and rehabilitation (art. 81, 82). Appeal to the high court is granted exclusively against a decision which invalidates the termination of an investigation or prosecution; in other cases appeal is not possible (art. 83).

On the functioning of habeas corpus in pretrial hearings two remarks are to be made. On the one hand, the supreme court in a circular letter allows the military (LAKSUSDA) to intervene in pretrial hearings on illegal arrest or

detention.⁴⁹ On the other hand, judges are reluctant to invalidate arrest or detention not only in cases of political importance, but even when the government's interests are concerned. As not to 'lose face' has great importance in Indonesian culture, not only for individuals but also for governmental institutions, and as the government's interests are often at stake, judges usually favour the government,— a manifestation of their lack of independency and impartiality.⁵⁰

The failures in the practical functioning of pretrial hearings reflect a deficiency in the realization of fundamental rights and especially of habeas corpus, which is corroborated by another lack of judicial control. Anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized to exercise judicial power.⁵¹ From the time limits of arrest and detention it may be deduced that for a suspect who is deprived of his liberty it can take 81 days before a judge decides on his detention: i.e. the chairman of the court on the extension of the detention ordered by the public prosecutor. There is no provision in KUHAP which imposes an obligation to bring a detainee (promptly) before a judge and to have him heard. There is not even a provision which instructs the investigator and the prosecutor to hear him on their decision whether or not to order (further) detention. Art. 122 urges them only to start the examination of the case. Decisions on (further) detention are taken on the file.

4.4.5. Compensation and Rehabilitation

An enforceable right to compensation,⁵² has been granted to everyone who has been the victim of unlawful arrest or by several provisions of KUHAP (art. 30, 77, 81, 95, 96, 274). This compensation can be requested either by a suspect whose case is dropped at the stage of investigation or prosecution, or by an interested third party (art. 77(b), 81). Other legal grounds for compensation are to have been arrested, detained, prosecuted, convicted or submitted to other measures without lawful reasons or because of mistakes (art. 95(1)). Where a judge decides that an arrest or detention is illegal, the judgement must state the amount of compensation to be paid (art. 82(3)(c)). The enforcement of the decision must be in accordance with the procedure in a civil case (art. 274). KUHAP does not indicate any criteria to establish the amount. According to the implementing regulation, the amount can vary from a minimum of Rp. 5,000 to a maximum of Rp. 3,000,000.⁵³ In some circumstances an innocent defendant has a right to a formal rehabilitation of his honour and reputation. This corresponds with a fundamental right to be protected against unlawful attacks upon one's honour and reputation.⁵⁴ In pretrial proceedings rehabilitation can be requested by a suspect whose case is dropped at the stage of investigation or prosecution, or by an interested third party (art. 77(b)), or by a suspect who has been arrested or detained without lawful reasons or because of

mistakes (art. 95(3). In these cases the request should be submitted to the court within 14 days after the notification of the decision.⁵⁵ Rehabilitation in the case of an acquittal after being tried has to be expressed in the decision of the court (art. 97(1) and (2)).⁵⁶

4.5. TRIAL AND PUNISHMENT

4.5.1. Conditions

The conditions of trial, the trial proceedings, penalties, appeal and independence of the judiciary each form a part of the requirement of a fair trial,⁵⁷ although this concept is not exhausted with the sum of all specific elements. By the conditions of trial is meant the right of access to a court and to be tried without delay, and charged only with an offence which was prohibited by law at the time it was committed and for which the defendants has not already been tried and convicted or acquitted.

The right of access to a court, as the first condition of trial implied in the right to a fair and public hearing, is granted by KUHAP art. 50(3): a defendant has the right to be tried without delay by a court. If a person is convicted on a criminal charge, it is done by the court, in first instance the district court (art. 84(1)). KUHAP makes a distinction between three kinds of court sessions:

- normal trial procedure (art. 152–202);
- short trial procedure, for cases which are simple with regard to evidence and to the application of the law (art. 202–204);
- quick trial procedure, for minor criminal offences (art. 205–210) and road traffic violations (art. 211–216). ‘Minor’ criminal offences include those which carry a maximum penalty of six months imprisonment and/or a fine of Rp. 7,500.

This section will confine itself to the normal trial procedure at first instance; short and quick trial procedure, and appeal and cassation will be mentioned only when necessary.

The right to be tried without undue delay⁵⁸ is urged upon law enforcement officials and judges by many KUHAP provisions. For instance: a suspect has the right to be examined without delay by an investigator and to have his case further referred to the public prosecutor, to have his case submitted to court without delay by the public prosecutor and to be tried without delay by a court (art. 50). In fact, a prosecutor, after his decision to prosecute, must prepare an indictment in the shortest possible time (art. 140(1)). In pretrial proceedings the judge must determine the day of the hearing within three days after receipt of the request (art. 82(1)), and so on. But nearly all these time limits, whether vague or precise, are not provided with a legal sanction, with some exceptions

such as time limits for arrest and detention.⁵⁹ In practice, as has already been pointed out, reasonable time and also exact time limits are not adhered to as there are no sanctions for transgression. A criminal process can go on endlessly, especially when a suspect or defendant is not detained, a situation which invites corruption of officials who can speed it up.⁶⁰

The *nulla poena* principle has been codified in art. 1(1) and (2) of the criminal code KUHP. It embraces the principle of legality (every charge and every verdict must be based on a legal provision) and the prohibition of retroactive effect of the law: no one shall be held guilty of a criminal charge on account of any act or omission which did not constitute a criminal offence at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. Art. 1 of KUHP also contains a provision that, if subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit from it.⁶¹ On this basis in criminal law, KUHAP constructs the following procedural rules.

To start an investigation, a reasonable presumption of a criminal act is needed (art. 102, 106), i.e. (normally) a criminal act according to KUHP and its basic principles. The indictment prepared by the public prosecutor must give an accurate, clear and complete description of the criminal offence charged by stating the time and place of its occurrence (art. 143(2)(b)). Proof consists of convincing the judge of the defendant's guilt, the conviction being based on at least two pieces of evidence (art. 183). The deliberations of the court must be based on the indictment and on the pertinent evidence given in court (art. 182(4)). Finally, the verdict has to refer to the offence, as proven and criminal in law, and to the pertinent legal provisions (art. 197)(1), returning in this way to the basis in criminal law, its general and specific dispositions. However, it is obvious that, whereas the *nulla poena* principle has been formally recognized in KUHP, it could at any time be denied in a special law of the same constitutional rank. This is also the case with the 'ne bis in idem' principle, which prohibits trial and punishment for an offence for which one has already been finally convicted or acquitted.⁶² This principle has been codified in KUHP art. 76(1).

4.5.2. Proceedings

If the public prosecutor does not drop a case, he has to submit it to the court with a request for immediate trial, accompanied by an indictment. The indictment, to be valid, has to conform to a number of formalities.⁶³ When the case has been referred to a court, the chairman, of his own accord, has to study whether or not the case falls within the jurisdiction of that court. If not, he can transfer it to the court considered to be competent. Copies of his decision must be sent to the defendant or his counsel and the delegating letter referring the

case to the court must be returned to the prosecutor. The prosecutor can object to the chairman's decision (art. 147–51). The defendant is not a party at this stage of the proceedings. But equality of arms has reasonably been granted by his ability to contest the competence of the court at the start of the hearing by filing an exception. Besides the competence of the court, this exception may concern the validity of the indictment and its charges. If the court does not accept the exception, the hearing will continue; if it accepts it, there will be no further examination of the defendant or the witnesses and the public prosecutor has to remedy the deficiency in the indictment and start again. Both prosecutor and defence have a right to appeal a decision on an exception (art. 143, 156).

The chairman of the court allocates cases to a bench (or panel). Panels in the normal trial procedure consist of three judges or, in exceptional cases due to lack of judges, of a single judge. Judges who compose the panel to which the case is assigned by the chairman must determine the day of the hearing and order the public prosecutor to summon the defendant and witnesses to come and attend the court hearing (art. 152). This provision is, together with the right to have a copy of the indictment, the logical continuation of the right to information,⁶⁴ and closely linked to the right to time and facilities for the preparation of the defence.⁶⁵ The summons, which must give the date, day and hour of the hearing and the case for which the person is summoned, must be received at the latest three days before the start of the hearing (art. 145, 146, 227). The right to be present in person at the trial⁶⁶ does not exclude a judgement by default, but the right to be present has to be guaranteed. Under KUHAP, if a defendant does not appear, whether he is legally summoned or not—in most cases the summoning is done too late—the court must postpone the hearing and order him to be summoned again. If he is absent for no valid reason after he has been legally summoned for the second time, the court shall order that he be compelled to be present at the next hearing (art. 154). At the beginning of the hearing, after the identification of the defendant, the prosecutor reads out the charges and the presiding judge gives an explanation of it to the defendant, if necessary (art. 155, 221). After the reading of the charges and explanation, the defence can file its exception. If the defendant behaves improperly so as to disturb order, he will be admonished and, if the admonition is not heeded, removed from the court room (art. 176(1)). The court can order the detention or the release of the defendant, if there are sufficient grounds for doing so (art. 21, 30, 190). The final sentence of the court must be pronounced in the presence of the defendant and his counsel (art. 196(1), 198(2)).

The right to be present in person exists only at first instance. Appeal and cassation are normally decided on the file (which should be accessible to the defence (art. 236)). Officially, all court sessions are public (art. 64) and the defendant has the right to be present, but he is not informed of the dates of the

hearing or the pronouncement of the decision. Normally, in cases of appeal on cassation, the defence is conducted by a written memorandum or counter memorandum (art. 237, 248, 249), and the final result is known when the decision is notified.

Shortcomings of the lower courts can be redressed, and the defendant or witnesses can be re-examined, by both the high court and supreme court, or they may refer the matter back to the lower court to re-examine the witnesses (art. 240, 253). In the case of a re-examination of a witness on appeal or cassation, there is no guarantee that the defendant will be able to be present, or to put questions to the witness or to have the last say. According to practising lawyers, in cases of re-examination, which are not frequent, the defendant is normally not even summoned,—a clear violation to the right to be present and to a fair trial.

The same must be said about the right to a public hearing and pronouncement.⁶⁷ Officially, the hearing and the pronouncement of the judgement on appeal and cassation are considered to be public, just as they are at first instance (art. 64, 153(3), 197), but KUHAP prescribes annulment of the decision as a sanction only at first instance (art. 153(4)). It is in the defendant's as well as the public's interest to be informed about trials and judgements, subject to two exceptions (see below), including on appeal and cassation. This aspect has been frustrated in practice because of the lack of procedural implementation of the requirements for a public appeal and cassation procedure. Pragmatically, one could argue that a written procedure might suffice if exclusively legal questions of a technical and abstract nature are concerned. But this is not the case in appeal proceedings, where all legal and factual questions are submitted to a new judgement, and even not in cassation, although the competence of the supreme court is for the most part concentrated on legal questions (art. 253(1)). Even in cassation procedure witnesses for the prosecution or the defence can be examined again (art. 253(3)). The only exceptions KUHAP permits on the public character of sessions is in cases concerned with morals or in cases of juveniles (art. 153(3)), an exception accepted under international law.⁶⁸

Three fundamental aspects of the proceedings are too interwoven to be discussed separately: the presumption of innocence,⁶⁹ the protection against self-incrimination⁷⁰ and the right to the summoning and hearing of witnesses and experts.⁷¹

At first glance the rights to protection against self-incrimination and to hear witnesses seem to be reasonably guaranteed in KUHAP. The presumption of innocence has been explicitly recognized in art. 66: a suspect or defendant shall not be burdened with the duty of providing evidence. Doubt has to be construed in favour of the defendant in the sense that if, during the final deliberation of the court after the examination has been closed, neither unanimous agreement nor a majority vote can be realized, the decision of the court has to be based on

the judge's opinion which is most advantageous to the defendant (art. 182(6)). Several articles emphasize that the defendant and witnesses can speak freely, without any pressure (art. 52, 153(2)). The judge has to see that nothing will be done and that no questions will be asked that will cause the defendant or a witness not to be free in answering; failure to do this must result in the annulment of the decision (art. 153(4)). A defendant does not have a formal right to keep silent and not to answer questions (at best he has the factual possibility). On the contrary, KUHAP seems to presume an obligation to reply: if a defendant is not prepared or refuses to answer a question, the chairman must advise him to answer (art. 175). After this admonition, the examination goes on but in practice the defendant's decision to remain silent is treated as an aggravating circumstance in the verdict or penalty.

After the identification of the defendant, witnesses are called to be heard, beginning with the victim (art. 160(1)(b)). The chairman of the court decides the order in which the other witnesses will be examined, after hearing the opinion of the prosecutor, and the defendant or his counsel (art. 160(1)(a)). This is a departure from the previous procedural position under HIR, where the defendant was the first to be examined. This could lead to pressure for a confession. Witnesses are obliged to appear and can be brought before the court if they do not appear. But it is left to the chairman of the court to decide whether or not he will order a witness who remains absent to be brought before the court (art. 159(2), 160(1)). Witnesses are requested to give their evidence on oath or pledge (art. 160(3) and (4)). For refusal without valid reasons to make an oath or pledge, the witness can be committed to prison for up to fourteen days (art. 161(1)). The defendant has the right to seek and submit witnesses who are favourable to him (art. 65). After a witness has given evidence, the judge seeks the opinion of the defendant about the testimony (art. 164(1)). Both the public prosecutor and the counsel must be given an opportunity to put questions, through the chairman of the session, to the witness and the defendant, but the chairman can reject a question stating his reason (art. 164(3), 165(3)). As to the limits of examination and cross-examination, the judges can ask from a witness all the information needed to obtain the truth (art. 165(1)). The court, the prosecutor and the defendant or his lawyer can, through the chairman, confront witnesses with the evidence of other witnesses (art. 165(4)). Art. 168 enumerates the legal grounds for the withdrawal of a witness, i.e. the right of a witness to refuse to give evidence. These grounds all consist in a close family relationship to the defendant. Persons who can invoke professional privilege are broadly described as those who are obliged to guard a secret because of their occupation, dignity and prestige or function. The court decides on the validity of the reasons for this request (art. 170).

A very unfavourable loophole in this system is the combination of the absence of a right for the defendant to keep silent, the very restricted grounds for the withdrawal of a witness, and the possibility for the public prosecutor,

when several persons have committed one or more criminal acts, to make separate prosecutions against each of them. The public prosecutor is not obliged to combine the cases and to charge them in one indictment (art. 141, 142). In this way, the other defendants in the separated cases can be summoned and heard, on oath or pledge, as witnesses. Although they are all charged with the same criminal acts or with connected criminal acts, they have no right to keep silent or to withdraw as a witness. Furthermore, judges in practice use evidence—especially witnesses statements—in the other cases, which are materially connected but formally separated, as evidence in each case. Also the statement of a defendant as a witness in another case is used as material evidence in his own case. Moreover, prosecutors and judges refuse the defendant and his counsel access to evidence from other cases, which might be used as evidence in the defendant's own case, on the grounds that the defendant and his counsel formally have a right to access only to the dossier of the defendant's own case (art. 72).

As has been pointed out, the defendant's right to hear witnesses exists only at first instance, not on appeal and cassation.⁷² But sometimes not even at the level of the district court is the defence permitted to call its own witnesses, as was allegedly the case in some recent trials, connected with the Tanjung Priok riots. In the Sanusi case, the defence complained about a refusal of the court to hear witnesses for the defence in order to demonstrate a perjury by a witness for the prosecution whose statements were the main evidence for the prosecution. If witnesses for the defence are summoned, they are sometimes not questioned: after the examination of the witnesses for the prosecution, the court decides that it has enough information. Questions by the defence to witnesses are sometimes turned down by the chairman (art. 165(3)), seemingly only because they are embarrassing to government officials. Important witnesses for the defence, who do not appear for various reasons (such as fear), are not always ordered to be brought to court (art. 159(2)).⁷³ Experts are obliged to provide expert information (art. 179(1)), but in practice usually in a written report on their oath of office. Requests by the defence to summon the expert and to have him examined in court are not infrequently rejected. If objections lead to a re-examination of the expert, this is to be performed by the same court with a different composition of the panel (art. 180(4)). The defence has no real right to present the report of another expert to counter the evidence of the prosecution expert or the court expert. In this way, the right to a fair trial, to protection against self-incrimination, to hearing of witnesses and experts and to the presumption of innocence, as they are codified in KUHAP, are frustrated in practice. In cases of adult defendants, there is (at least in practice) no report to the court of a social assistant or probation officer on the social background of the defendant and his act, which might be relevant for the penalty to be inflicted. Only in juvenile cases is some information provided by a probation officer.

After the examination of witnesses has been completed, the public prosecutor must state the charges he considers have been proved and specify the sentence he is requesting. The defendant and his counsel can then put forward their defence, to which the prosecutor can reply. Charges, defence and reply must be in writing and be handed immediately to the court with copies to the parties concerned. The defence must always have the last word (art. 182(1)): a right which is not guaranteed on appeal and cassation.⁷⁴ The court may then ask all parties and those present in court to leave to enable the court to deliberate upon its decision (art. 182(2) and (3)).

The sentence may be pronounced on the same day or at a later date as long as the prosecutor, the defendant or his counsel are informed in advance (art. 182(8)). Consultations must be based on the lawsuit and all that has been proved in the court examination (art. 182(4)). The following are considered as legal material for proof: the testimony of a witness; information of an expert; a letter; an indication; the statement of a defendant (art. 184(1)). Evidence obtained illegally is not considered to be invalid unless there is an explicit sanction in KUHAP, which rarely is the case.⁷⁵ For the proof of a charge, the court needs to be convinced that the criminal act has been committed by the defendant, based on at least two pieces of evidence (art. 183). In the quick trial procedure, however, one piece of legally admissible evidence is sufficient, and may lead to a penalty of up to six months imprisonment after a trial without any right to free legal assistance (as the crimes and offences concerned are not liable to a prison term of five years or more)⁷⁶, and without any right to appeal or cassation except when sentenced to imprisonment (art. 205(3)).

4.5.3. Appeals and Penalties

Art. 197 and 199 enumerate a series of elements, which the sentence of the court has to contain in order to be valid.⁷⁷ The defendant and his counsel must be present at the pronouncement of the sentence (art. 196(1), 198(2)). Immediately after the sentence has been pronounced, the chairman of the court is obliged to inform the defendant about his rights viz: to immediately accept or reject the decision; to study it first; if he accepts the decision, to ask for a pardon, or to ask for its suspension to enable him to appeal against the decision, and to withdraw an immediate acceptance or rejection (art. 196). An excerpt of the sentence must be given to him immediately (art. 226(1)).

In other cases than an acquittal, both the defendant and public prosecutor have the right to appeal against a decision of the court of first instance (art. 67). No such appeal exists against sentences in quick trial cases, except when the defendant receives a prison sentence (art. 205(3)). According to the old Dutch system, corresponding with KUHAP, two types of acquittal are to be distinguished: on grounds of insufficiency of proof (*bebas*) and because the act

does not constitute an offence, or because the author of it is not liable to punishment cf. art 199(1)(b)).

Appeal against pretrial decisions are also excluded, except when they invalidate the termination of an investigation (art. 83(b)). As far as normal and short trial procedures are concerned, both the fundamental right to appeal (everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law)⁷⁸ and equality of arms are guaranteed. A notice of appeal must be presented within seven days after the sentence has been passed or, if the defendant has not been present at the pronouncement, within seven days after the notification of the sentence. Following a notice of appeal by the defendant or a specially empowered person or a prosecutor, a clerk of the court of first instance must prepare a statement to be signed by himself and the applicant (art. 67, 233(1) and (2)).

Except in cases of acquittal for insufficiency of proof, a defendant or the public prosecutor can file a request for cassation to the supreme court (art. 244). The request for cassation has to be submitted by an applicant to the clerk of the court which has decided the case within fourteen days after the defendant has been informed of the sentence for which cassation is requested (art. 245(1)).

In practice, the protection of the defendant by the provision that a prosecutor cannot appeal in both kinds of acquittal, has been limited by interpretation. According to the supreme court, the prosecutor is authorized to appeal also in case of acquittal if the acquittal is considered to be 'impure': for instance, when formally according to the decision of the district court there is not sufficient proof, but in reality this opinion of the court depends upon a wrong interpretation and application of the law.⁷⁹ This distinction between 'pure' and 'impure', derived from the Dutch criminal procedure in cassation, is not to be found in KUHP.

When a decision of a court has acquired 'permanent force', there remains exceptionally the possibility of another two procedures. Firstly, the prosecutor general can apply for cassation 'for the sake of the law': a procedure intended for obtaining pronouncements of the supreme court in very important questions of law and to achieve unity in interpretation of the law. Cassation 'for the sake of the law' can not harm the interested party (art. 259(2)). Secondly, there is a limited possibility for review (art. 263-269).

Among the elements of the decision, there are orders to release or detain an acquitted or convicted person, to restitute confiscated goods or to seize them for use in the interest of the state or in order for them to be destroyed. In the case of a penal sentence, the convicted person must be burdened with the trial expenses: in practice an amount of Rp. 500 up to Rp. 10,000 for all instances.⁸⁰ On request a convicted person can be exempted. The trial costs have to be born by the state if there is no penal sentence (art. 197(1)(i), 222). Penalties should be in accordance with fundamental rights, in that no one should be subjected to

cruel, inhuman or degrading punishment, or be required to perform forced or compulsory labour.⁸¹ Without entering into details of the penal system of the criminal code, the following penalties can be inflicted: death; imprisonment for life; temporary imprisonment (at most 20 years), detention, fine, and additionally loss of certain rights, seizure of goods for use in the interest of the state and publication of the sentence (KUHAP art. 10). The death penalty exists in Indonesia and as such is not considered contrary to human rights requirements.⁸² Compulsory or forced labour are not provided for in the law. Before the introduction of the present criminal code, there were two criminal codes in Indonesia: one for Europeans (since 1866) and one for Indonesians (since 1872). In the latter, three kinds of punitive labour were provided: labour for food without pay, forced labour without chains and forced labour with chains. With the introduction of the present criminal code KUHAP in 1918, as the only code for both Europeans and Indonesians, these types of punitive labour were abolished.⁸³

In a case of unlawful arrest, detention, prosecution and conviction, or subjection to other measures without lawful reasons or because of mistakes, the defendant can present a demand for compensation, which must be decided upon, in the form of a verdict, in a pretrial session (art. 95, 96). Rehabilitation, in case of acquittal in both its forms,⁸⁴ has to be granted in the same decision of the court. For rehabilitation in case of unlawful arrest and detention or because of mistakes, a request has to be submitted to the judge in a pretrial procedure (art. 97).⁸⁵

4.5.4. Independence of the Judiciary

For the effective realization of the rights of the defendant and an objective interpretation of the law and establishment of guilt, it is of the utmost importance that judges are able to pronounce sentences without any undue influence from either the executive or the suspect or any other interested person. As for this requirement, three elements are to be distinguished: the establishment of the tribunal by law, its jurisdiction and its independence and impartiality.⁸⁶

Since 1964, two Basic Laws on Judiciary Power have been enacted: No. 19/1964, now replaced by the present law No. 14/1970, which claims to be a return to the rule of law. As is characteristic for such basic laws in the Indonesian legislative system, they function more as policy statements than as statutory schemes: they are to be considered as statements of national intention.⁸⁷ Everything depends on the implementing laws and regulations, which at the time of writing have not yet been completed for Basic Law No. 14/1970. The present position is still determined to a large extent by older statutes and regulations, and it is not always clear whether they are really still in force. Although the principle of establishment by law permits delegated legislation⁸⁸,

this vague situation leaves a large area for executive discretion, which constitutes a serious danger for the independence of the courts.⁸⁹

The right to a competent court requires the codification by law of the various jurisdictions, to avoid arbitrary forms of proceedings. In this context it is important to take note of the KUHAP provisions on mixed jurisdiction, which allow a certain discretion to government officials to submit a case to either a predominantly military court or to a civilian court when a criminal act has been committed jointly by civilians and military personnel.⁹⁰

Once a case has been submitted to a civilian court, art. 84 determines which district courts are competent for which areas. If an act has been committed abroad, the Jakarta court is competent (art. 86). After the prosecutor has referred the case to the court, the chairman is obliged to study whether it falls within the jurisdiction of his court, and, if not, transfer it to another court of first instance. At the start of the session, the defence may file an exception and object on the grounds that the court is not competent to deal with the case (art. 147, 148, 156). However, art. 85 contains another possibility for the use of discretionary power by the government to create competence. If it appears that the situation in an area does not allow a court of first instance to judge a case, then, on the proposal of the chairman of the court or the chief prosecutor, the supreme court must call on the minister of justice either to decide that the court should try it or appoint another court of first instance.

Although the principle of an independent judiciary was already expressed in the Elucidation to the section on the judiciary in the 1945 Constitution and is emphasized in the 1970 Basic Law on Judicial Power, the administration of the court is under the control of the Ministry of Justice. Not only is the budget of the judiciary controlled by the Ministry, but it also decides on posting, transfer and promotion.⁹¹ Presidential Decree No. 82/1971 establishes the mandatory membership of public officials, including judges, in an association under the chairmanship of the Minister of Interior, KORPRI: which obliges all members to follow the association's rules and policy guidelines, enforceable by sanctions.⁹²

In March 1986, a new law was passed by parliament, according to which the executive control over the district courts and the courts of appeal will be reinforced and the judges are to be categorised explicitly as officials of the executive. Moreover, in every district there is a so-called 'tripartite' structure, which implies a periodical meeting of the chairman of the district court, the chief prosecutor and the chief of the police. In the so-called MUSIPADA-meetings, the same participants gather with the chief of the local government and the commander of the military district (KODIM). Both meetings are strictly confidential. It has been observed that meetings are held more frequently when important political cases are being tried.

As a result, there is a general fear of reprisals being taken for decisions which are unpopular with the government, particularly in cases with political

overtones. Under the old HIR, this was already shown by a dutiful acceptance of indefinite preventive detention of political opponents. And there is still a reluctance to hold executive regulations which limit fundamental rights to be against the constitution and the statutes. There is a tendency of the supreme court to interpret its jurisdiction in a narrow way, creating its own impotence to invalidate executive orders which are contrary to the legislation which they are meant to implement.⁹³ In addition, a large number of judges of the supreme court are former military officers, while others have first made a political career.

The above-mentioned circumstances may be considered as factors which explain phenomena such as the absence of a jurisdiction in which illegally obtained evidence is excluded, the unwillingness to investigate complaints of pressure or even torture inflicted on defendants and witnesses, and the reluctance to hear all witnesses for the defence. A lack of independence leads to a lack of impartiality. Formally, the obligation to be impartial appears in KUHP in different ways. Art. 158 prohibits a judge from showing by his attitude or by a remark during the trial whether or not he thinks the defendant is guilty. A judge has to withdraw if he is related to any of the officials in charge of the case or to the defendant or his counsel, or if he has an interest, directly or indirectly, in the case (art. 157, 220, 239, 251).

A further threat to impartiality is the wide spread corruption, which is related to the very low salaries of judges and other court officials.⁹⁴ In fact, as a result of the standards of criminal law enforcement, the criminal code KUHP (Kitab Undang-undang Hukum Pidana) is explained by the people as Kasih (give) Uang (money) Habis (finished) Perkara (case).

4.5.5. Prisons

The legal basis of the prison system today is still the Criminal Code (KUHP) 1918 and some other regulations which date back to the period of Dutch colonization, such as the 'Gestichten Reglement' (Prison Regulation) 1917 and the 'Dwangopvoeding Reglement' (Compulsory Education Regulation) 1917. The original texts of both these regulations, as well as KUHP, are in the Dutch language; the texts in Bahasa are translations. However, as far as these regulations are concerned, they are only partially still in use, as many ministerial decrees and circular letters have been issued to implement and interpret or replace them. A new Basic Law is in preparation by the Department of Justice.

Since the 1950s, Indonesia has tried to develop a new ideology and practice for its prison system and the treatment of prisoners, which cannot be denied some good intentions and sincere idealism. These were expressed in the conclusions of the 1956 National Conference in Sarangan and in the 1963 speech of Minister of Justice Sahardjo at the occasion of his doctor honoris

causa acceptance. Suhardjo formulated in this speech the idea of 'social reintegration' as a new basis of the treatment of prisoners. This concept was worked out at the 1964 Bandung Conference (held at Lembang, near Bandung)⁹⁵ and could be described as the 'ten commandments' of prison policy which still form the official ideology:

1. a person who has been led astray needs guidance; by giving him 'life capital' he can live as a citizen, good and useful for society. By 'life capital' is meant training in matters of financial, material, physical and other specific skills;
2. criminal punishment is not an act of revenge on the part of the State; the only torment is the taking away of personal liberty;
3. regret is achieved through guidance and supervision, not through brutality;
4. the State has no right to make a person more degenerate and more criminal than before he entered the institution;
5. during his sentence the convict must become accustomed to society, not alienated from it;
6. work assigned to the convict cannot be merely for the sake of filling time or for the interest of the government or State;
7. guidance and education must be based on Pancasila;
8. each individual is a human being who must be treated as such, though he may have been led astray in his past;
9. provisions must be made to give convicts, throughout their imprisonment, work that provides an income for them;
10. new prisons must be established which allow the supervision programme to be implemented, and existing prisons, which stand in the centre of the city, must accord with the needs of the socialization process. There should be a separation between:
 - adults, young adults and children;
 - men and women;
 - recidivists and non-recidivists;
 - 'light' and 'heavy' criminals;
 - convicted prisoners and detainees awaiting trial.

The efforts to implement this socialization system are a special responsibility of the Directorate General⁹⁶ In 1985, there were listed 148 prisons ('socialization institutes'), 210 custody houses and 81 local branches of custody houses.⁹⁷ To manage this number of institutions, it is estimated that 20,000 persons are employed. Directors and administrators of institutions are responsible to the regional heads of the Department of Justice. In the central Inspectorate General, there is a section on prison inspection.

The execution of a prison sentence should be overseen by a special judge, responsible to the chairman of the court. This judge has to control whether or not a court's decision is carried out correctly; he is informed about the

behaviour of the convict and the guidance given to him and he is authorized to discuss these matters with the prison director (art. 277-83).

In practice the ideals of the social reintegration treatment, which are generally in accordance with the U.N. Standard Minimum Rules for the Treatment of Prisoners,⁹⁸ are far from being realized. Although the situation in the various institutions spread all over the country differs from place to place, some general remarks can be made.

A first problem is the accomodation. Some new prisons have been built, but many buildings are very old. Some of them were constructed at the beginning of the century to centralize offenders sentenced to forced labour (abolished in 1918).⁹⁹ These so-called central prisons were destined for a large number of prisoners, such as Cipinang Prison at Jakarta and Kalisosok Prison at Surabaya. In many prisons there is no electric light for the prisoners. Sanitary and washing facilities are very unhygienic and dirty. Drinking water is of bad quality. Especially during the rainy season, all kinds of insects creep out of gaps and chinks. Separation of categories is hard to realize. Men and women are sometimes separated in special institutions, sometimes in different sections of the same institution. Political prisoners (i.e. those convicted of subversion) are almost always separated in special sections. Juveniles and non-convicted detainees are usually separated, but sometimes mixed up with adults and convicts. Prisoners awaiting trial have some privileges, such as wearing their own clothes. Convicts are nearly always mixed together, irrespective of their criminal records and of the term of sentence.

A second problem is the mentality and training of personnel. The high ideals to consider convicts as normal human beings, to be treated humanely, to be re-educated according to Pancasila and to be reintegrated, are not rooted in the ranks of prison officials, and especially not of the common jail warders. Conferences, resolutions and official speeches do not change the reality of every day life in these institutions. Warders have, like common policemen, a low level of education: elementary school, at most junior high school, and no specific job training. Just as many policemen, especially in the lower ranks, do not understand the basic ideas of KUHAP, so jail warders have not yet understood the basic ideals of social reintegration. In practice written regulations and circular letters often remain a dead letter. In the real situation (too) much depends on the personalities and willingness of chiefs and directors. Ill-treatment in prison is not a rare exception, although it is mostly not inflicted by warders but by other convicts on behalf of the warders. Notwithstanding official regulations, it is decided on the spot by warders whether a prisoner's conduct constitutes a disciplinary offence. There is no written information for prisoners about disciplinary offences, punishments and possibilities of complaint. Corporal and degrading punishments are rather common (for instance: to have one's head close-cropped and painted black; to stay for hours in the burning sun with spread arms, hands made heavy with stones). Accomodation,

treatment and the general conditions of detainees in police headquarters and in LAKSUSDA cells are reported to be for the most part very bad.

Thirdly, an ever present problem of Indonesian society is corruption. In fact, salaries of warders and prison officials are so low that they need other financial resources. On the one hand, goods destined for prisoners disappear: medicines, food, clothes, bedding etc. Medical care is often insufficient, both because of the incompetence and indifference of physicians, and because of a lack of necessary medicines. The quality of the food, its nutritional value, is poor. The relatives have to feed prisoners, who are used to sharing with other inmates. Many muslim prisoners cannot enter the mosque, because they have not the clean clothes they are obliged to wear. Sleeping places, mostly dormitories, are in many cases destitute of any bedding: prisoners sleep on raised planks of wood on concrete or stone. But on the other hand, everything is available for many: a better sleeping place, bedding, even a bed in the prison hospital, special food, privileges, use of telephone, special visits, drugs, a visit to a prostitute outside the prison, a one day leave. All these must be paid for, but so must simply enjoying one's rights. It has been reported that visitors to prisoners in Cipinang Prison (Jakarta) have to pay up to six times:

- to get a visitors pass;
- to enter the walls;
- to enter the hall;
- to have the convict called;
- to prolong the time of the visit; and
- to have visits outside normal days and hours.

In this climate, it is to be feared that a system of requests or complaints of prisoners to the prison officials cannot work. Complaints are too risky, a complaints procedure would probably last endlessly. The only effective solution is to make a friend of the official and to pay him a 'fee'. A period in prison or in custody thus becomes very expensive. Sometimes it is cheaper for relatives to try and corrupt a court official and have the detainee set free, rather than to help him to survive in custody.

As has been said, much depends on the attitude of the prison director, on his interpretation of the tangle of regulations and on his initiative: for instance, in creating possibilities for prisoners to work and to provide them with sport and physical training. Most prisoners pass their days in idleness in the courtyard, gathering together with the others, as life in a prison section is mostly collective. If there is any education at all such as there is in big prisons like Cipinang Prison (Jakarta), it is only basic education (elementary school level).

4.6. SPECIAL PROVISIONS AND EXTRA LEGAL ACTIONS

4.6.1. Special Criminal Laws

Criminal justice in Indonesia is not entirely determined by KUHP, KUHAP and their application. A matter of the greatest importance is the partial exclusion from the operation of KUHAP of suspicions and charges which arise under some special laws such as the Anti-Subversion Law, Anti Corruption Law, Narcotics Law and Economic Crimes Law. The Anti-Subversion Law can be considered as the most important threat to fundamental human rights. In this brief survey remarks will be limited to some aspects of this law.

Not only the content and application of the Anti-Subversion Law have been the subject of severe criticism, but also its formal legitimacy.¹⁰⁰ The origin of this law is a Presidential Decree, Pen. Press. No. 11/1963, originally seen as emergency legislation in the period of confrontation with Malaysia. According to Art. 22 of the 1945 Constitution such emergency rules should not have the form of a Presidential Decree but of a 'government decree in substitution of a law', which means that such rules should be presented afterwards to the Assembly (a provisional Assembly had been instituted in a legally correct way in 1959) for approval or rejection. Furthermore, the legal foundation of Pen. Press. No. 11/1963 is not in agreement with Law No. 2/1959 on State Institutions. Finally, President Suharto issued in 1964 a Presidential Order which declared void all decrees and orders concerning the suppression of subversive activities. If a Presidential Order is to be considered of a constitutionally higher rank than a Presidential Decree—a question which is not quite clear—then Decree No. 11/1963 ceased to be valid after 1964. However, in 1969 the Anti-Subversion rules obtained parliamentary approval and became a statute (No. 5/1969) as a package deal together with the Decree on Internment and Exile No. 3/1962 and several other decrees.

As stated above, one of the fundamental rights in the field of criminal law is the *nulla poena* principle, which contains both the principle that every criminal charge must be based on a provision in the law and the prohibition of retroactive effect of this legal provision. In human rights conventions it may be formulated only for the latter aspect, clearly and logically implying the principle of legality,¹⁰¹ which requires a reasonably clear and exact description of the criminal offence in the law. On this aspect, the provisions of the Anti-Subversion Law are already precarious. They contain in fact a wide range of activities which it is considered could endanger not only the security and authority of the state Pancasila ideology, but public and social order for industry, production, and so on. Additionally, one can be punished for expressing sympathy with an enemy of Indonesia or with a state which is not on friendly terms with it. Finally, acts of espionage and sabotage are included (Art. 1–3). The formulation of these crimes, which constitute a severe threat to any

form of criticism necessary to probe the government's policies, is very loose and vague. Furthermore, it is not necessary that the acts concerned did in fact endanger any of these things: only the possibility of this consequence is sufficient. A defendant can also be convicted when he did not intend these consequences and was not responsible for them. In 1971, the Supreme Court decided that it was not necessary to establish that there was a subversive background to the act, or connections with political or foreign forces.¹⁰² This explains how a prominent Indonesian lawyer could declare that 'only breathing is not subversive'.¹⁰³

The Anti-Subversion Law contains special procedural provisions which constitute exceptions to the normal procedure and the protection of a suspect or defendant under the new KUHAP. These concern investigation (Art. 5), and larger powers of search and confiscation (Art. 6, 14), detention (Art. 7), appeal in case of acquittal (Art. 10(3)), notification (Art. 11), and hearing of witnesses (Art. 12). A very serious exception is the authority given to the Prosecutor General, without prejudice to the normal possibilities to order detention, to detain a suspect for a period of one year, without any interference of a judge or pretrial hearing—a draconian infringement of human rights.¹⁰⁴ Moreover, this one-year period is renewable without limits. When a suspect is finally submitted to the judgement of the court, the appellate proceedings are so slow that the defendant may already have served the sentence of the lower court but still be held in detention pending the cassation proceedings.¹⁰⁵ There are no provisions for compensation in case of acquittal or unjustifiably prolonged detention.¹⁰⁶ The normal KUHAP provision on concurrency of criminal sentences is suspended (Art. 19): this means that the accumulation of consecutive sentences is unlimited.

Of particular concern is the system of investigation under the Anti-Subversion Law. According to Art. 5, the responsibility for investigation and prosecution has been assigned to the Prosecutor General. Under his directives, it is the public prosecutor who should undertake the investigation, but in practice arrest and primary examination are carried out by LUKSUSDA, the local branch of the military security service KOPKAMTIB.¹⁰⁷ Detainees often complain of torture during detention. LAKSUSDA normally composes files, which are kept from the defence and the court but serve as a guide for the further investigation and prosecution by the public prosecutor. Also after the case has been handed over to the prosecutor, military officials continue to interfere in the case, bringing pressure to bear upon the prosecutor and even on judges. For instance, a reliable and well-informed source stated that in the case of former Sukarno minister Oei Tjoe Tat a judge admitted, after the pronouncement of the verdict, that he increased the prison term under military pressure.

The possibility of special criminal procedures, with different and larger powers for criminal law enforcement officials than under KUHAP, has been

explicitly recognized in the transitory provision of KUHAP Art. 284(2), which states that within two years after the promulgation of KUHAP, all cases must be subject to the provisions on criminal procedure in certain laws, until they are amended or declared invalid. In practice, the existence of special laws, with extended powers for police and prosecution, provide ample opportunities for manipulation by the investigators and prosecutors. In fact, investigations and prosecutions are started several times over under these laws just in order to avoid, until the court session, the limitation of executive power entailed by the KUHAP provisions.

4.6.2. Law on Internment and Exile

Among the worst 'legal' encroachments on human rights are perhaps the rules on internment and exile. These rules go back to the so-called 'exorbitant rights' during the Dutch colonial domination. According to this legislation, the Governor-General had the authority, for the sake of public order and peace, to assign to persons born in Indonesia a certain place as their residence or to ban them from certain parts of Indonesia. In expectation of expulsion, a person could be detained on an order signed by the Governor-General. The decision on expulsion and the order of detention had to be notified to the person concerned. Before the decision was made, the person had to be summoned and heard; and a report of the hearing had to be made.¹⁰⁸

In this historical 'tradition' might be seen the Presidential Decree No. 39/1962 on internment and exile,¹⁰⁹ which in 1969 together with other presidential decrees such as the one on subversion, (No. 5/1969) were declared by a statute to be statutory laws. One article states, that to secure the goals of the revolution, based on presidential guidelines, the minister/prosecutor general has the authority to intern persons in certain places as their temporary residence and to ban them from certain regions of Indonesia. Accordingly this law is applicable to persons suspected of hindering efforts to achieve the goals of the revolution. Unlike its colonial predecessor this law does not require any written and signed order, or any summons and hearing. In practice it provides the 'legal basis' for a fierce oppression of the political opposition, for arbitrary deprivation of liberty without any proceedings before a judge, without any time limit, without any formalities and guarantees, and without any reason or explanation being given of the grounds for arrest of the procedures that would follow. Although government sources may claim that the rules on internment and exile are seldom applied, the very lack of written and other constraints make it impossible to verify whether or not these rules have been invoked as the 'legal' basis for the disappearance of many persons, at first suspected communists and later persons presumed to be Muslim radicals.

It may be asked whether this law has anything to do with criminal justice, as it does not involve any charge of a criminal act. The qualification under

national law is not decisive: under the international law of human rights, autonomous meaning is attributed to concepts such as criminal offence and punishment, independent of their denomination under national law.¹¹⁰ Having regard to the nature and severity of the penalties and the wide scope of their application ('everybody who might be hindering the efforts to achieve the goals of the revolution', i.e. political opponents), the law can be considered to be a violation not only of various human rights, but also of those fundamental rights which specifically refer to criminal justice.

4.6.3. Sowing Hatred

Another relic of the Dutch colonial times are the so-called 'hate sowing articles', KUHP art. 154–7.¹¹¹ Although the Indonesian Criminal Code during the Dutch colonial period bore a fair resemblance to the Dutch Criminal Code, these articles were never part of the criminal code in the Netherlands. The offences which these articles constitute consist of expressing in public feelings of hostility, hatred or disdain towards the Indonesian government or towards certain groups (e.g. ethnic or religious groups) of the Indonesian population, and of publishing and spreading such feelings. In so far as these provisions refer to hatred towards groups of the population, they should be understood in the context of a multiracial and multicultural society. But in so far as they refer to disdain towards the government, they form a useful instrument for the government to oppress freedom of expression. In fact they are colonial precursors of the anti-subversion rules. But as they are crimes under the KUHP, investigation, prosecution and trial have to be carried out under the KUHP. Although several prominent Indonesian lawyers have objected that these articles are too oppressive and that they are not really necessary since insult of authorities is already a crime according to KUHP (art. 207), these articles have been maintained and used under the 'New Order' as a continuing threat to political opponents, journalists and other publishers.¹¹² A notorious case concerned the well known Indonesian poet Rendra, arrested and detained in 1978 for reading certain poems in the Jakarta Cultural Centre Taman Ismail Marzuki, but released after several months without trial. More recent cases attracting public attention are those connected with the Tanjung Priok riots of September 1984 and the BCA-bombings. In the specific field of criminal procedure, these provisions are a permanent threat to the right to a public hearing and a public pronouncement of the judgment,¹¹³ including the right of the public to be informed about trials and judgments. This requires an active and free press, not menaced by the hate sowing articles.

4.6.4. Mixed Jurisdiction

Generally, criminal cases of civilians are investigated and tried under KUHAP by common civilian courts. However, this law allows for the possibility of an exception when civilians and military personnel jointly commit a criminal act. In this case, the authors of the criminal act can exceptionally be tried by a type of military court, under a decision of the Minister of Defence and Security approved by the Minister of Justice (art. 89(1)). This general KUHAP provision has been elaborated as follows. The criterion for the decision is whether the damage caused by the criminal act is predominantly of civilian or military concern (art. 91(1) and (2)). For the investigation a mixed team has to be composed of members of the ordinary and of the military police on a joint decision of the Minister of Defence and Security and the Minister of Justice. The military police have to carry out the investigation according to military law, the ordinary police according to KUHAP (art. 89(2) and (3)). A pretrial hearing is possible.¹¹⁴ The results of the investigation are studied jointly by the prosecutor or prosecutor-general and the military prosecutor or prosecutor-general, in order to decide to which court the case has to be submitted and to report to the prosecutor general and the auditor general (art. 90). If there are differences of opinion, the opinion of the prosecutor general is determinant (art. 93(3)). Also, the courts to which the cases are to be submitted must be of a mixed composition. When the civil interest is prevalent, the chairman and one judge must be civilian judges and the other judge a military one; if the military interest prevails, it is the contrary (art. 94(1) and (2)). These provisions are rather vague and discretionary. The investigating team has both military and civilian criminal authorities. The decision before which court the cases will be tried depends on the appreciation by government officials. The military say is very strong in the investigation and in the decision on prosecution and trial of civilians even when the civilian interest prevails.

4.6.5. Death Squads

A very brutal way of making 'war on crime' are the so-called 'mysterious killings', extra-judicial murders of thousands of suspected criminals, gang leaders, juvenile delinquents, repeated offenders etc. by military and police death squads in different Indonesian regions—Java, Sumatra, and elsewhere since 1983 and in East Java since 1982. The Indonesian government first reacted by banning public discussion in the Press.¹¹⁵ Statements by high ranking officials, such as the Foreign Minister Mochtar Kusumaatmadja and the Commander-in-Chief of Indonesia's armed forces General L.B. Murdani, were contradictory. While Mochtar referred in veiled terms to the rising level of crime and the need to give people a greater sense of security, Murdani explained the murders as the result of inter-gang clashes. Those who were

found to have died from gunshot wounds were said to have resisted officials. A degree of involvement of the government could also be deduced from statements of the Minister of Justice Lieut.-General Ali Said, and the former Minister of Information, Lieut.-General Ali Murtopo. In December 1983 the Jakarta lawyer and former chairman of LBH, Adnan Buyung Nasution, at a meeting of the Asian Regional Council for Human Rights at Jakarta, openly accused the Indonesian government of carrying out the extra-judicial killings.

This view of the situation was endorsed by an article in Review No. 31 (December 1983) of the International Commission of Jurists and by Amnesty International who said that the killings are part of an officially sanctioned campaign against crime, the 'Operation Combat Crime' (OPK).¹¹⁶ Some of the executions are even said to have concerned persons in police or military custody. Indonesian authorities have denied these statements.¹¹⁷ According to Buyung Nasution, the way to stop the killings would be by pressure from other countries, particularly members of the international aid consortium (Inter-Governmental Group on Indonesia, IGGI). In fact, several western governments have expressed their concern about the killings. The question became a formal item during the visit of the Dutch Foreign Minister Van den Broek to Jakarta in January 1984, after a resolution had been passed by the Dutch parliament instructing the government to raise the issue of the killings at the next IGGI meeting. Although there were some assertions towards the end of 1984 that these executions had ceased,¹¹⁸ they appear to continue.

4.7. CONCLUSIONS AND RECOMMENDATIONS

It would be too pessimistic to deny the improvements, from a human rights point of view, brought about by the new KUHAP. Of special practical importance are the formalities such as warrants and the various duties to provide information to the defendant on such matters as arrest and detention, time limits, the possibility to question the validity of arrest and detention in a pretrial and in legal aid, compensation and rehabilitation. On the other hand, as there is a lack of sanctions in most provisions and as there are various special laws conferring wide executive powers, many provisions and many rights given to suspects and defendants turn out to be largely cosmetic, presenting Indonesia to the world as a constitutional state under the rule of law, while in reality the government and its officials have not renounced much of their power. When a case is considered to be of real importance to the authorities, there are too many opportunities to avoid the restrictions brought about by KUHAP and to exercise large powers under special laws, or simply not to observe the code at all. Judges are prone to accept these infringements and even to collaborate under the pressure of military and other government officials.

To hope to re-open the political and parliamentary debate in order to evaluate the situation under KUHAP, revise the code and provide sanctions to its prescriptions, is far from political reality. Moreover, in the present day situation it is doubtful whether a re-opening of political discussion on KUHAP would result in reinforcement of its human rights content. The reaction to the period of guided democracy and the political will to return to the rule of law have gradually faded away. The original intention to extend the provisions of KUHAP to all special laws and to have only one code of procedure and executive power in criminal cases, is probably no longer realizable; the temporary exception for special laws, under art. 284(2), seems to be a permanent one. The best chances for improving human rights in the criminal process are probably at the level of further implementation of the laws and their interpretation and application. Also procedural provisions, even without legal sanctions, can be used by Indonesian lawyers and human rights activists for public and legitimate criticism of officials in case of violations, and to challenge the courts to respond.

The structural conditions for realizing improvements remain unfavourable. First there has to be brought about a change of mentality. When the KUHAP obtained legal force, starting in 1982, many officials of all ranks were not mentally prepared for the due process model of legal thinking.

The continuous and courageous actions of LBH and other defence counsel may have some general success transcending individual cases, but its reach could be limited or even swept away easily by implementing regulations, restricting the rights of the defence and changing the basic ideas of the new code. Another structural obstacle is the lack of independence and impartiality of the judiciary: in this respect the situation is far from giving confidence and hope. Corruption, linked with both the very bureaucratic government system and the general structure of low salaries of officials, is deeply rooted in Indonesia as in many other countries in the so-called Third World.

In the present climate of increasing and overwhelming executive power, a change to a real independence of the judiciary as a forceful counterbalance is hardly to be expected.

NOTES

1. T. Mulya Lubis and Fauzi Abdullah (eds.), *Annual report on fundamental human rights in Indonesia 1979*, LBH, Jakarta 1979; P. Moedikdo, 'Lembaga Bantuan Hukum' (LBH), in *Recht en Kritiek*, 1982, pp. 336-63.
2. On the territorial dualism in criminal law after World War II and its unification since 1958, see Han Bing Sion, *An outline of the recent history of Indonesian criminal law*, Verhandelingen van het Koninklijk Instituut voor Taal-, Land- en Volkenkunde, dl. XXXII, 's-Gravenhage 1961.

3. See chapter 2.10.
4. For a general survey, see chapter 2.9.
5. If not otherwise indicated, articles quoted in this text are KUHAP articles.
6. Basic Law on Prosecution, No. 15/1961, art. 8.
7. Cf. the Elucidation of KUHAP, General Explanation, No. 1.
8. ICCPR art. 14(3)(a).
9. ICCPR art. 14(2).
10. ICCPR art. 14(3)(g).
11. ICCPR art. 14(3)(e).
12. See chapter 4.3.2. and 4.3.3.
13. See chapter 4.5.2.
14. See chapter 4.5.5.; ICCPR art. 10(2)(a).
15. ICCPR art. 7; cf. UD art. 5. Also Indonesia has joined in the consensus adoption of specific UN Resolutions forbidding torture.
16. See chapter 4.5.2.
17. See chapter 4.5.4.
18. See chapter 4.3.1.
19. Witnesses were examined under oath by the public prosecutor, as in subversion cases it is for the prosecution office to investigate. See chapter 4.6.1. The Anti Subversion Law however does not contain any exception to the general rule, that witnesses can be examined under oath only in court session.
20. See chapter 4.6.1.
21. Pernyataan Bersama November 10, 1978: Ketua Mahkamah Agung; Menteri Kehakiman; Jaksa Agung; Wapangab/Pangkopkamtib; Kaskopkamtib & Kapolri.
22. The formal status of this joint statement is uncertain, as these statements do not have the authority of laws which are binding upon the judges.
23. See chapter 4.4.4.
24. ICCPR art. 17(1) and (2); UD art. 12.
25. UD art. 17(1); cf. European Convention on Human Rights, First Additional Protocol, art. 1.
26. See chapter 4.6.1.
27. See chapter 4.2.1.
28. See chapter 4.2.2. and 4.5.2.
29. Country Reports on human rights practices for 1984, Report submitted to the Committee on Foreign Relations U.S. Senate and Committee on Foreign Affairs U.S. House of Representatives by the Department of State, February 1985, p. 776.
30. ICCPR art. 14(3)(b); cf. ECHR art. 6(3)(c).
31. P. van Dijk, The right of the accused to a fair trial under international law, SIM Special No. 1, Utrecht 1983, p. 28.
32. KUHAP, Elucidation, 3.
33. See chapter 2.8.
34. Regulation of the Minister of Justice, M.02-UM.09.08, Tahun, 1980. Rp. 100,000 is equivalent to approximately US \$89.
35. CIJL Bulletin, No. 12, Centre for the Independence of Judges and Lawyers, October 1983, pp. 1-2.
36. Regulation of the Minister of Justice, M.14-PW.07.03, Tahun 1983, 17.
37. Regulation of the Minister of Justice, M.04-UM.01.06, Tahun 1983, 20.

38. See chapter 4.5.2.
39. Ibid.
40. ICCPR art. 9(1); cf. UD art. 3 and 9.
41. See chapters 4.4.2.; 4.4.4.
42. See chapters 4.6.1.; 4.6.2.
43. I. van den Heuvel, 'Countries of Asia and Australasia', *Human Rights Law Journal*, July 1983, pp. 42-4; Country Reports on human rights practices for 1983, Report submitted to the Committee on Foreign Affairs U.S. House of Representatives and the Committee on Foreign Relations U.S. Senate by the Department of State, February 1984, pp. 777-9; *Idem* for 1984, February 1985, pp. 773-5. See chapter 3.
44. See chapter 4.4.1.
45. See chapter 4.5.4.
46. ICCPR art. 9(3).
47. For an exception to time limits in cases of serious physical or mental disturbance, or in cases where the defendant is liable to a prison term of nine years or more, see KUHAP art. 29.
48. ICCPR art. 9(4).
49. Circular letter of the supreme court no. SE-MA/15 Tahun 1983, date December 8, 1983. Cf. chapter 4.2.2.
50. See chapter 4.5.4.
51. ICCPR art. 9(3).
52. ICCPR art. 9(5) and 14(6).
53. Government Regulation No. 27 Tahun 1983, art. 12. These amounts are equivalent to approximately US \$4.50 and US \$2,670.
54. ICCPR art. 17.
55. Government Regulation No. 27 Tahun 1983, art. 9.
56. See chapter 4.5.3.
57. ICCPR art. 14(1); UD art. 10.
58. ICCPR art. 14(3)(c).
59. See chapter 4.4.3.
60. See chapter 2.7.2.
61. ICCPR art. 15(1) and (2); UD art. 11(2).
62. ICCPR art. 14(7).
63. It has to be dated and signed and has to contain the personal particulars of the suspect and an accurate, clear and complete explanation of the criminal act charged, specifying the time and the place of its occurrence. Copies of the letter referring the case to the court and of the indictment must be sent to the suspect, his proxy or his counsel and to the investigator (art. 143; on amendment of the indictment, see art. 144 and also chapter 4.3.2.)
64. ICCPR art. 14(3)(a); cf. Basic Law on Judiciary Power No. 14/1970, art. 16.
65. See chapters 4.3.2. and 4.4.2.
66. ICCPR art. 14(3)(d).
67. ICCPR art. 14(1).
68. ICCPR art. 14(1) and (4).
69. ICCPR art. 14(2).
70. ICCPR art. 14(3)(g).

71. ICCPR art. 14(3)(e).
72. See chapter 4.5.2.
73. See chapter 4.2.2.
74. See chapter 4.3.2.
75. See chapter 4.2.1.
76. See chapter 4.3.1.
77. See chapter 4.3.2.
78. ICCPR art. 14(5).
79. Case Raden Sonson Natalegawa, No. 275 K/PID/1983 (Jakarta); cf. Case Jos Sutomo (Samarinda).
80. Regulation of the Minister of Justice No. M14-PW.07.03 Tahun 1983, 27.
81. ICCPR art. 7, 8.
82. ICCPR art. 6(2), which limits but does not outlaw the death penalty.
83. However, see also chapter 3.3.3.
84. I.e. when the act is proved but does not constitute an offence, and when there is not sufficient proof of the act.
85. See chapter 4.4.5.
86. ICCPR, art. 14(1); UD art. 10
87. E. Damian and R.N. Hornick, 'Indonesia's formal legal system', reprint from *American Journal of Comparative Law*, Vol. 20, No. 3, Summer 1972, pp. 37-8.
88. P. van Dijk, The right of the accused to a fair trial under international law, SIM Special No. 1, Utrecht 1983, pp. 39-40.
89. See chapter 2.7.1. (court system) and 2.7.2 (weaknesses).
90. See chapter 4.6.4.
91. Cf. CIJL Bulletin No. 12, Centre for the Independence of Judges and Lawyers, Geneva, October 1983, p. 3.
92. See chapter 2.7.2. and 3.3.2.
93. Damian and Hornick, *ibid.*, p. 39.
94. See chapter 2.7.2.
95. Bahrudin Suryobroto, Institutional treatment of offenders and non-custodial treatment of offenders, a paper to the Seminar on Prevention of Crime and Treatment of Offenders, Jakarta, January 1984.
96. On the Directorate General, see the Regulation of the Minister of Justice No. M-28.PR-07.03 Tahun 1981.
97. This paragraph deals with with common prisons and institutions, not with internment centres (concentration camps), of which reliable data are hard to obtain.
98. Standard Minimum Rules for the Treatment of Prisoners 1955, 1st UN Congress on the Prevention of Crime and the Treatment of Offenders; approved by ECOSOC 31-7-1957, 13-5-1977.
99. See chapter 4.5.3.
100. Soeharto Soerodibroto, in *Hukum dan Keadilan*, No. 3, September-October 1978.
101. ICCPR art. 15(1); UD art. 11(2).
102. Keputusan Mahkamah Agung No. 20K/Kr/1969, July 17, 1971.
103. Adnan Buyung Nasution, quoted in *Tempo*, August 12, 1978.
104. See chapter 4.4.4.; ICCPR art. 9(3) and (4).
105. ICCPR art. 9(4) and art. 14(3)(c).

106. ICCPR art. 9(5).
107. On KOPKAMTIB in general, see chapter 2.9.3. On LUKSASDA in common criminal cases, see chapter 4.2.2.
108. Indische Staatsregeling, art. 37–8. According to art. 35–6, persons not born in Indonesia could be detained and expelled.
109. Penetapan kewenangan melakukan penawanan/pengusiran, Penpres. No. 3/1962.
110. P. Sieghart, *The international law on human rights*, Oxford 1983, pp. 274–6.
111. See chapter 3.1.2.
112. See chapters 3.2.2. and 3.2.3.
113. See chapter 4.5.2.
114. Government Regulation No. 27, Tahun 1983, art. 16.
115. See chapter 3.2.3.
116. Amnesty International, Annual Report, 1984, pp. 225–6.
117. E.g. General L. B. Murdani, Reuters, December 28, 1984.
118. Death squads end grisly campaign, *New Straits Times*, September 18, 1984.