

Special Report
**ASSESSING INDONESIA'S HUMAN RIGHTS PRACTICE
IN THE POST-SOEHARTO ERA: 1998-2003**

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INTRODUCTION

Under the Soeharto administration, Indonesia had been considered as having a poor human rights record. The resignation of Soeharto as President in May 1998 sparked hopes of improvement in this field.

This report seeks to assess human rights practice in Indonesia in the post-Soeharto administrations. It is divided into two parts. Part I addresses four issues. The first section deals with the commitment demonstrated towards human rights by the three succeeding Presidents, namely, the Habibie administration (May 1998 to October 1999), the Wahid administration (1999 to July 2001), and lastly the incumbent Megawati administration that is expected to run its full course until 2004. Each of these three Presidents espoused varying levels of commitments towards the human rights cause. Here, it will be argued that a fundamental shift from an authoritarian to democratic government coupled with personal commitments from individuals in high-level government positions do not automatically bring about to the improvement in human rights practice. Indonesia is on the path towards developing a democratic society in which change will not rest alone on the government alone, but will depend on society at large. The second section deals with the legal framework with respect to human rights. This has, it is argued, seen significant improvements although this has not translated into practical effect at the level of society. The third section assesses human rights institutions. Post-Soeharto Indonesia has seen the emergence or development of many institutions, both government and private, working in the field of human

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rights. However, it is argued that the myriad human rights institutions have not contributed much to human rights conditions. The fourth section will assess the perception of the public towards human rights practice in Indonesia. Here, it will be argued that at a certain juncture, the practice of human rights is perceived as excessive with negative consequences. Part II assesses in greater detail the response towards past human rights abuses and how the government has sought to uphold human rights through the legal framework. It also examines the policies and measures of war against terror on the state of human rights. Government policies and measures appear to have caused a negative perception on the part of the public towards government efforts to promote and protect human rights.

PART I

1. *Assessment on Government's Commitment towards Human Rights*

In developing countries such as Indonesia, an individual who assumes high government office is considered to be an important factor for bringing about significant change to the country. Many developed countries, international organizations, business communities, even political elites within the country seem to subscribe to this view when change is expected. The head of the executive thus wields an influential position and his or her policies will influence policy towards human rights.

Thus, the international community has sought to influence the head of the executive in efforts to promote human rights in Indonesia, dating back to the Soeharto regime. One notable example of international influence during the Soeharto era was the successful campaign leading to the establishment of the National Commission of Human Rights or *Komisi Nasional Hak Asasi Manusia* (hereinafter referred to as "Komnas HAM") in 1993.

The following discussion assesses whether the commitment of the three Presidents in promoting human rights have brought about significant improvement to the human rights record, or not.

A. *The Habibie Administration*

Under the Habibie administration, freedom of speech had been improved significantly. However, this was not a result of intentional government policy. Rather, it is because people were not afraid of voicing their concern even if that meant violating laws and regulations. This attitude became manifest when President Soeharto was about to

resign. The public and university students staged continuous demonstrations, despite official attempts to clamp these down. The protests reflected a display of people's power, which was a decisive factor in causing Soeharto to leave office.

With this improvement of freedom of speech, the public could express freely almost anything without any anxiety, including sensitive issues such as the demand that Soeharto be tried;¹ protests against government policies were also made as were demands that corrupt public officials be removed; there were even calls to ban the previous ruling party, Golkar.²

Unfortunately, some of the public demonstrations were violent, resulting in the destruction of public facilities and private property.³ These caused public inconveniences, stirring resentment. Large-scale demonstrations, resulting in face to face confrontation with the police and military has resulted in casualties and deaths.⁴

To curb and avoid further chaotic demonstrations, the government felt it had to regulate such activities. The government passed a regulation known as Government Regulation in Lieu of Law or *Peraturan Pemerintah Pengganti Undang-undang* (hereinafter abbreviated as "Perpu") concerning the Freedom to Express Opinion before the Public.⁵ This measure was heavily criticised by human rights activists and Non Governmental Organizations (NGOs) on two counts. First, the policy was seen as an attempt to restrict, not regulate, the freedom of speech. Second, the form of regulation utilized was criticized as Perpu is only issued when the nation is in a state of emergency.⁶ It was questioned whether the time the Perpu was issued qualified

1 "Student Actions Demand Soeharto Trial, Clash Near Parliament," *Kompas Online*, May 22, 1999 available at <http://www.kompas.com/kompas%2Dcetak/9905/22/english/stud.htm> (last visited Sept 14, 2003).

2 "Students Commemorate Parliament Occupation, Call for Dissolution of Golkar," *Kompas Online*, May 19, 1999 available at <http://www.kompas.com/kompas%2Dcetak/9905/19/english/stud.htm> (last visited Sept 14, 2003).

3 One demonstration, for example, had blocked the toll road, see: "Workers stage protest on toll road", *The Jakarta Post*, May 26, 1999 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=19990526.L09> (last visited Oct 23, 2003).

4 These usually involve demonstration held by students who demanded former President Soeharto to face trial or demand that Megawati resigned as President. Casualties cannot be avoided.

5 Government Regulation in Lieu of Law of the Republic of Indonesia, No. 2 of 1998, Government Regulation in Lieu of Law Concerning the Freedom to Express Opinion before the Public (*Kemerdekaan Menyampaikan Pendapat di Muka Umum*).

6 The Government Regulation in Lieu of Law as a form of legislation is enacted by the President under emergency circumstances only. Under Indonesia's legislation hierarchy, this kind of Government Regulation is one rank below of a Law or Act (*Undang-undang*). Under the Constitution it is required for the Perpu to be brought to the parliament within one year after its promulgation to be confirmed or rejected as Law.

as a state of emergency. To avoid further debate, effort was made to make the Perpu into a legal regulation. For this purpose, the government was quick in obtaining endorsement from the parliament or *Dewan Perwakilan Rakyat* (hereinafter "DPR"). The DPR swiftly gave its endorsement that same year and the Perpu became Law with some changes (hereinafter referred to as "Freedom to Express Law").⁷

Initially, the police faced difficulty in enforcing the Freedom to Express Law.⁸ People were not willing to see restrictions imposed on their newly found freedom and were willing to break the Law to keep this freedom. In addition, the police were reluctant to take harsh measures as they were outnumbered and afraid of being accused of violating human rights.⁹ The Jakarta Post noted this in reporting that the standard excuse for the police when standing by and witnessing a menacing armed crowd ransack someone's property or burn somebody alive, "We don't want to be accused of human rights abuse."¹⁰ Furthermore, these unpopular harsh measures were unpopular and seemed to undermine the government's dire need for public acceptance and support. Consequently, the legal regulations were ignored in that many demonstrations were staged without complying with the Law.

Habibie had placed human rights as a high agenda item for his administration, pursuant to demonstrate to the public that his administration was different from that of Soeharto's. It was a public knowledge that Habibie was Soeharto's favoured successor.¹¹ The public atmosphere at that time was such that to gain public favour,

7 Law of the Republic of Indonesia, No. 9 of 1998, Law Concerning Freedom to Express Opinion before the Public, is available at http://www.dephan.go.id/hukum/keptni2/uu_9_99.htm (last visited Oct 23, 2003). The sharp different that can be seen is under the Perpu there are 17 articles, whilst under the Law there are 20 articles.

8 This was irrespective of Police warning to shoot demonstrators who perform anarchy. See: "Anarchistic demonstrators can be shot," *Kompas Online*, Feb 18, 1999 available at <http://www.kompas.com/kompas%20cetak/9902/18/english/anar.htm> (last visited Sept 14, 2003).

9 The non-assertive actions by the police is sometimes questioned whether they are really afraid of taking actions due to accusation of human rights violations or they intentionally do not take any action with the hope that people will see their important role in managing the holding of orderly demonstrations.

10 Carl Chairul, "Enough of democracy and human rights!," *The Jakarta Post*, April 8, 2001 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20010408.@05> (last visited Sept 14, 2003).

11 As a reflection of how public perceived of Habibie-Soeharto relationship, the Jakarta Post refer Habibie as the 'pet' cabinet of Soeharto. The article said, "At times, he (Habibie) was seen as Soeharto's pet in the cabinet, getting virtually any funding he sought for his many costly projects, including IPTN's ambitious plan to produce Indonesia's first jet." See: "Fickle fortunes of B.J. Habibie's rise and fall," *The Jakarta Post*, October 21, 1999 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=19991021.B02> (last visited Oct 23, 2003).

associations with Soeharto had to be eliminated. Therefore, Habibie tried very hard to demonstrate his own independent political stand and distinct pro-human rights policy to distance himself from his predecessor. The high priority given to human rights took the concrete form of passing human rights legislation and acceding to international human rights instruments.

One of the important achievements in this regard is the enactment of the Human Rights Law.¹² The Law has 106 articles and contains various basic human rights. It sets in detail provisions concerning the right to life and the right not to be abducted and/or killed, the right to establish a family and bear children, the right to self-development, the right to justice, the right to freedom of the individual, the right to security, the right to welfare, the right to participate in the government, women's right, children's right, and the right to religious freedom.

The Human Rights Law also strengthens the existing Komnas HAM which was established by the Soeharto administration.¹³ Under the Law, the members of Komnas HAM are appointed by the Parliament and sanctioned by the President.¹⁴

Another achievement of this administration is the revocation of Anti Subversive Law of 1963¹⁵ which circumscribed basic human rights, such as freedom of speech.¹⁶ Under the Soeharto

12 Law of the Republic of Indonesia, No. 39 of 1999, Law Concerning Human Rights Court, available at http://www.asiamaya.com/undang-undang/uu_pengadilan_ham/uu_pengadilan_ham_index.htm. (last visited Oct 23, 2003).

13 Soeharto established Komnas HAM under Presidential Decree 50 of 1993. The establishment was not the result of the administration come to term with human rights protection and promotion. It was more for the purpose of appeasing international pressure who demanded improvement in Indonesia's human rights practice, in particular human rights abuses by the military.

14 Previous Komnas HAM members were appointed by the President.

15 Law of the Republic of Indonesia, No. 26 of 1999, Concerning Revocation of Law 11 of 1963, available at http://www.ri.go.id/produk_uu/isi/produk_99/uu1999/uu-26-99.htm. (last visited Oct 23, 2003).

16 Under Article 1 par (1) of the Anti Subversive Law an act of subversion includes:
1. 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 can: (a) distort, undermine or deviate from the ideology of the Pancasila state or the broad policy lines of the State; or (b) overthrow, destroy or undermine the power of the State or the authority of the lawful government or the machinery of the State; or (c) disseminate feelings of hostility or arouse hostility, cause splits, conflicts, chaos, disturbances or anxiety among the population or broad sections of society or between the State of the Republic of Indonesia and a friendly State; or (d) disturb, retard or disrupt industry, production, distribution, commerce, co-operatives or transported conducted by the Government or based upon a decision of the Government or which exerts widespread influence on the livelihood of the people; 2. Anyone who carries out a deed or activity which demonstrates sympathy with an enemy of the Republic of Indonesia or with a State that is unfriendly towards the Republic of Indonesia; 3. Anyone who damages or destroys installations which serve the public interest or

administration the Anti Subversive Law had been employed extensively to silent government opposition.

A decision equally important made by the Habibie administration was the abolishment of a ministerial decree that gives power to the minister of information to ban media,¹⁷ which allowed for broader press freedoms.

In addition, the administration had issued a Presidential Decree outlining plan of actions to improve human rights practice.¹⁸ Apart from that, Habibie had released 200 political prisoners and rehabilitated those who were accused without trial of having been involved in a 1965 communist coup.¹⁹

The Habibie administration made decisions with respect to separatist movements which would have been unconceivable under the Soeharto administration. On August 1998 Habibie's Minister of Defence announced the termination of Aceh as an Area of Military Operation (*Daerah Operasi Militer*) status. In addition, in 1999 Habibie endorse the right of the East Timorese people to self-determination, primarily in the form of popular consultation. The self determination process and an independence referendum eventuated in East Timor's independence in 2000, after 25 years of Indonesia rule.

Indonesia under the Habibie administration also acceded and ratified a number of international human rights treaties.²⁰ The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment was ratified in 1998,²¹ followed by the ratification of the Convention on the Elimination of All Forms of Racial Discrimination

large scale destruction of possessions, the property of individuals or organizations; 4. Anyone who engages in espionage; 5. Anyone who engages in sabotage. In addition under article 1 par (2) anyone who encourages the subversion activities shall also be convicted of engaging in subversive activities. Law of the Republic of Indonesia, No. 11 of 1963, Concerning Eradication of Subversive Acts, *available at* <http://www.law.qub.ac.uk/humanrts/emergency/timor/ti4.htm> (last visited Oct 24, 2003).

17 Under the Soeharto administration there had been a number of newspapers and weekly magazines banned due to censorship policy conducted by the government.

18 Presidential Decree of the Republic of Indonesia, No. 129 of 1998, Presidential Decree Concerning National Plan of Actions of Human Rights. The plan of actions has four main pillars: (i) preparation for ratification of international human rights instruments; (ii) dissemination of information and education of human rights; (iii) implementation of priority issues on human rights; and (iv) implementation of the international human rights instruments that have been ratified by Indonesia. The plan of actions run until 2003, but it has not been followed by Wahid and Megawati administration.

19 "Sebanyak 10 NAPOL PKI Dibebaskan", Kompas Daily, Saturday Edition, March.6, 1999, <http://www.kompas.com/kompas%20cetak/9903/06/nasional/seba190.htm>, (last visited Dec 22, 2003).

20 This will be discussed extensively later.

21 Law of the Republic of Indonesia, No. 5 of 1998 *available at* http://www.ham.go.id/pdf/uu_no5_th1998.pdf (last visited Oct 23, 2003).

in 1999.²² During the Habibie administration three International Labor Organizations conventions ratified: ILO Convention No. 105 concerning The Abolition of Forced Labor,²³ the ILO Convention No. 138 concerning Minimum Age for Admission to Employment,²⁴ and the ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation.²⁵

All in all, shortly after a year since Habibie became president, his administration was successful in reforming the legal framework that deals with human rights. Unfortunately, such success did not mean there was a significant improvement in human rights practice at the society level in terms of practical effect. Human rights violations still occurred. There were incidents where students were shot dead when holding demonstrations, such as the Semanggi tragedy.²⁶ The East Timor popular consultation resulted in violence and deaths after the result, an overwhelming vote for independence, was announced.

The positive measures taken by Habibie administration to promote and protect human rights unfortunately coincided with extreme euphoria and excitement in the once repressed society. The administration did not adequately provide measures to deal with the implications of a pro-human rights policy. For example, the government was unable to foresee the implications of the independence option for East Timor, particularly the eruption of violence. Another example is the growth of mass media that was not followed by strict regulations on ethics and their enforcement. This has resulted in some case of irresponsible exercises of press freedom, involving pornography and the pervasive phenomenon of unfounded and inaccurate reporting.

B. *The Wahid Administration*

Under President Wahid, human rights were put on special agenda because of his personal belief that human rights should be respected. His personal belief may have come from the fact that he had been

22 Law of the Republic of Indonesia, No. 29 of 1999 available at http://www.ri.go.id/produk_uu/isi/produk_99/uu1999/uu-29-99.html (last visited Oct 23, 2003).

23 Law of the Republic of Indonesia, No. 19 of 1999 available at http://www.ri.go.id/produk_uu/isi/produk_99/uu1999/uu-19-99.html (last visited Oct 23, 2003).

24 Law of the Republic of Indonesia, No. 20 of 1999 available at http://www.ri.go.id/produk_uu/isi/produk_99/uu1999/uu-20-99.html (last visited Oct 23, 2003).

25 Law of the Republic of Indonesia, No. 21 of 1999 available at http://www.ri.go.id/produk_uu/isi/produk_99/uu1999/uu-21-99.html (last visited Oct 23, 2003).

26 There were two Semanggi tragedies. The first occurred on November 1998 and the second occurred on September 1999. The two tragedies were the results of student demonstration around Atmajaya University which is near to the Semanggi flyover. These demonstrations turned into violence when the authorities fired arms.

human rights activist before assuming office.²⁷ As a Muslim and head of the biggest Islamic organization, Nahdatul Ulama (NU), he had shown great tolerance towards other religions. His administration's commitment towards human rights had its roots in Wahid's personal determination to uphold human rights.

Under the Wahid administration, a ministry that exclusively dealt with human rights issues was established for the first time, known as the Ministry of Human Rights. This had four responsibilities, namely, policy formulation, coordination, people's empowerment, and reporting and evaluation in the field of human rights.²⁸ However, in the August 2000 cabinet reshuffle, the ministry was merged with the Department of Justice.²⁹ The ministry is different from Komnas HAM as it is part of the executive branch and under the direction of the President. Although a government institution, Komnas HAM is not part of the executive branch and is independent from the government.

President Wahid promoted equal rights for the Indonesian Chinese minority. He advocated that Indonesian Chinese should be allowed to keep their Chinese names, in a reversal from the policy under the Soeharto administration which did not allow Indonesian Chinese to use their Chinese names, Chinese script and to promote their culture. In addition, Wahid revoked a regulation that required Chinese Indonesians to obtain special permission from the government authorities when conducting religious, beliefs and customs activities.³⁰ He had even suggested that Confucianism should be recognized as one of the religions of the state.³¹ Furthermore, under the Wahid administration, the Chinese Lunar New Year for the first time was declared as an optional state holiday.³²

In dealing with the Aceh separatist issue, Wahid had called for a peaceful solution through dialogue between the government and the

27 Under Soeharto administration, Wahid and his friends established a forum dubbed as ProDem or Pro Democracy.

28 Presidential Decree of the Republic of Indonesia, No. 134 of 1999.

29 Presidential Decree of the Republic of Indonesia, No. 234/M of 2000.

30 Presidential Decree of the Republic of Indonesia, No. 6 of 2000 Concerning the Annulment of Presidential Instruction No. 14 Year 1967 concerning Chinese Religion, Belief, and Customs, available at http://www.ri.go.id/produk_uu/isi/keppres2000/no.1sd10-2000/no6-2000.htm (last visited Oct 24, 2003).

31 "Confucianism in favor with tolerant Wahid," South China Morning Post.com, Jan 30, 2001 is available at <http://special.scmp.com/wchal/news/ZZZ1GV7SNJC.html> (last visited Oct 23, 2003).

32 "Chinese New Year Becomes Holiday for Ethnic Chinese in Indonesia," *People's Daily.com*, Jan 19, 2001, available at http://fpeng.peopledaily.com.cn/200101/19/eng20010119_60895.html (last visited Oct 23, 2003). The optional holiday was made as national holiday under the Megawati government.

separatist movement of Aceh Independent Movement (*Gerakan Aceh Merdeka*). He even proposed a referendum for Aceh.³³ Wahid had to face strong opposition to this idea from some members of his cabinet and military. Wahid also called for parliamentary investigation into human rights abuses in Aceh.³⁴

Under the Wahid administration, a Law was passed to establish a Court to specifically examine gross violation of human rights. The Law is referred to as the Law on Human Rights Court (Human Rights Court Law) and consists of 51 articles.³⁵ There are two kinds of gross human rights violations defined under the Law, namely, crimes of genocide and crimes against humanity.³⁶ These two crimes are in fact international crimes recognized under the Rome Statute of the International Criminal Court.³⁷ The Human Rights Court Law sets out the power of the Court, the law of procedure for arrest, detention, investigation and prosecution. It deals also with examination before the court, witness protection, and rehabilitation.

The Law has been a landmark for human rights protection, even for past abuses, as it can be applied retroactively.³⁸ Under the Law, the Court that examines past human rights violations is referred to as the Ad Hoc Human Rights Court.³⁹ The Ad Hoc Human Rights Court will only be instituted if certain past human rights violation is recommended to be examined by the DPR to the President. The President will then issue a Presidential Decree to that effect.⁴⁰ To date, there are only two incidents, namely, the East Timor and the Tanjung Priok incidents which have been referred.

In hindsight, the Human Rights Court Law was a compromise between international pressures which demanded the establishment of an international tribunal and Indonesia which rejected the idea but favoured prosecuting the culprit. The government had been

33 "Wahid Backs Aceh Ballot", <http://news.bbc.co.uk/1/hi/world/asia-pacific/504973.stm>, (last visited Dec 23, 2003).

34 "Renewed Independence After Suharto's Resignation (1998-1999)" is available at <http://www.db.idpproject.org/Sites/idpSurvey.nsf/wViewCountries/7902CA26F75C7D4AC12569670046313C>, (last visited Dec 23, 2003).

35 Law of the Republic of Indonesia, No. 26 of 2000, Law Concerning Human Rights Court Law is available at http://www.ri.go.id/produk_uu/isi/uu2000/uu-26-00.html (last visited Oct 24, 2003).

36 Article 7 (a) and (b) of the Human Rights Court Law.

37 Article 5 (a) and (b) of the Rome Statute of International Criminal Court, for a full text see: <http://www.un.org/law/icc/statute/romefra.htm> (last visited Oct 23, 2003).

38 Article 43 of the Human Rights Court Law.

39 *Id.*, art. 43 (1).

40 *Id.*, art. 43 (2).

successful in convincing the international community that such trials should take place in Indonesia. The then foreign minister, Alwi Shihab, as quoted by the Jakarta Post said that, "It would be counter-productive (to have an international tribunal) because it would trigger a xenophobic response and allow violators to wrap themselves in the flag in an excessive spirit of nationalism."⁴¹

Wahid's determination to uphold human rights was shown when one of his ministers was investigated for human rights abuse.⁴² He suspended his Minister for Security and Political Affairs, General (ret.) Wiranto, to allow further investigation on his alleged role in human rights violations committed in East Timor.

Another of Wahid's achievement in the field of human rights during his term of office is his continuation of Habibie's policy of releasing political prisoners accused of subversion, defaming government and rebellion during the Soeharto administration.⁴³ At one point he suggested that the People's Consultative Assembly or the *Majelis Permusyawaratan Rakyat* (hereinafter abbreviated as "MPR") Decree banning communism and Marxism be revoked.⁴⁴ However, such proposal failed as the majority of MPR members opposed it.

Although Wahid had a high commitment to human rights and many had expected that human rights practice would improve significantly under his leadership, however the bureaucracies and top-level government officials were unable or reluctant implement what the President had in mind. Changing the mindset of bureaucrats was difficult and consequently, human rights practice did not significantly achieved progress.

In addition, the Wahid administration had to contend with human rights abuses in the form of communal clashes. In Maluku and Poso

41 "U.S. gives Indonesia more aid, time on human rights", *Jakarta Post* Jan. 22, 2000, available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20000122.A10> (last visited Dec 22, 2003).

42 "Wiranto faces sack over Timor," *BBC News*, Jan 31, 2003, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/625644.stm> (last visited Sept 13, 2003).

43 "Govt to free 80 political prisoners," *The Jakarta Post*, Oct 26, 1999 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=19991026.A05> (last visited Oct 23, 2003); "Government frees 91 political prisoners," *The Jakarta Post*, Dec 11, 1999 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=19991211.@02> (last visited Oct 23, 2003); "More political prisoners to be freed," *The Jakarta Post*, Dec 15, 1999 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=19991215.A06> (last visited Oct 23, 2003).

44 "Gus Dur: TAP MPRS XXV/1966 Dibuat Karena Hawa Nafsu (Gus Dur: TAP MPRS XXV/1966 was made due to Temptation)", *Kompas Daily*, April 1, 2000 available at <http://www.kompas.com/kompas%20cetak/0004/01/nasional/gusd06.htm>, (last visited Dec 22, 2003).

there were inter-religious violence.⁴⁵ In the island of Kalimantan, there had been ethnic conflict.⁴⁶

C. *The Megawati Administration*

Unlike Habibie and Wahid who had identified human rights promotion as important government agenda items, this approach was not adopted under the current Megawati administration. Human rights have been treated equally as, and sometimes overshadowed by, other issues of national concerns. Under Megawati, the government has been preoccupied with separatist movements and the war against terrorism.⁴⁷ The government has been criticized for favoring territorial integrity and national security concerns over human rights.

Megawati was criticized for launching military operation and imposing martial law in Aceh province. The military operation was launched after the government deadline requiring GAM to renounce independence and disarm of May 12, 2002 passed.⁴⁸ Martial law took effect on May 19, 2003.⁴⁹ The government had previously entered into a peace deal with GAM in the form of the Cessation of Hostilities Agreement (COHA) signed in 2002.⁵⁰ The deal broke off when further negotiation between the government and leaders of GAM in Tokyo had failed.⁵¹

45 In Maluku Christians and Muslims engaged in mutually destructive violence which resulted in houses of worship were damaged or destroyed and people were killed. In Poso, Central Sulawesi, there have been religious riots and violence between Muslims and Christians which resulted in numerous deaths and widespread destruction.

46 In Kalimantan interethnic clashes resulted in killings. The ethnic involved in the clashes are the indigenous Dayaks and Madurese migrants (originally from the island of Madura near Java). There have also been clashes between ethnic Malay and Madurese.

47 The noted separatist movements are the Aceh Independent Movement or *Gerakan Aceh Merdeka* (GAM), the separatist movement in Papua and the separatist movement in Maluku. As for the war against terror, the government had taken serious effort after the Bali bombing occurred.

48 "War looms large in Aceh," *The Jakarta Post*, May 13, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030513.@01> (last visited Dec 23, 2003).

49 Presidential Decree of the Republic of Indonesia, No. 28 of 2003.

50 Cessation of Hostilities Framework Agreement between Government of the Republic of Indonesia and the Free Aceh Movement signed on Dec 9, 2002. Document is available at <http://www.hdcentre.org/Programmes/aceh/aceh%20COH.htm> (last visited Dec 23, 2003). The agreement contains 9 articles. Under article 1 of the agreement states that both sides will work towards the next phase of the peace process which is building further confidence and demonstrating a commitment to peace and eliminating suspicion, and clearing the way for humanitarian assistance. Article 2 calls for both sides to express commitment to the process and to call on all their forces to immediately cease all hostilities.

51 "Peace in doubt after Aceh talks canceled," *The Jakarta Post*, April 25, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030425.@01> (last visited Dec 23, 2003).

The martial law was imposed for a six months period. However, on November 4 the government decided to extend this for another six months,⁵² a move criticized by many.⁵³ Journalists criticized the imposition of martial law as it limited their ability to cover events in Aceh.⁵⁴ The military has placed limits on what journalist can report.⁵⁵ Foreign journalists are prohibited from covering military campaign.⁵⁶

Megawati also received criticism⁵⁷ when her government passed two Government Regulations in Lieu of Law to combat terrorist acts.⁵⁸ The Perpu was submitted to DPR for endorsement.⁵⁹ The DPR approved this and since then, the Perpu became Law (hereinafter referred to as "Anti Terrorism Law").⁶⁰

The Law has been criticized for not giving due consideration to human rights issues. The Law is seen as the revival of the former Anti Subversive Law that has been revoked.⁶¹ Under this Law, the

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- 52 "Government extends martial law in Aceh," *The Jakarta Post*, Nov 4, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20031104.@02> (last visited Dec 23, 2003).
- 53 "Govt criticized over martial law in Aceh," *The Jakarta Post*, Nov 5, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20031105.@05> (last visited Dec 23, 2003).
- 54 There had been incident to which a journalist was dismissed by his TV station due to an interview he did with a victim of a past military operation in Aceh, see: "Journalist dismissed after Aceh interview," *The Jakarta Post*, June 16, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030616.B04> (last visited Dec 23, 2003); There was also incident which journalist was assaulted by military personnel, see: "Military troops' brutal assault on journalist in Aceh revealed," *The Jakarta Post*, July 5, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030705.B01> (last visited Dec 23, 2003).
- 55 "Military limits media coverage in Aceh," *The Jakarta Post*, June 21, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030621.@02> (last visited Dec 23, 2003).
- 56 "Aceh military tells foreign journalists to leave the province," *The Jakarta Post*, June 24, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030624.B01> (last visited Dec 23, 2003).
- 57 "NGOs against anti-terrorism bill," *The Jakarta Post*, Jan 19, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020119.G07> (last visited Oct 24, 2003).
- 58 The two Perpus are the Perpu on the Eradication of Terrorism Acts (*Pemberantasan Tindak Pidana Terorisme*) and the Perpu on the Eradication of Terrorism Acts for the Bali Bombing (*Pemberantasan Tindak Pidana Terorisme pada Peristiwa Peledakan Bom di Bali pada tanggal 12 Oktober 2002*). The Perpus are available, respectively, at http://www.ri.go.id/produk_uu/isi/perpu2002/perpu1'02.htm and http://www.ri.go.id/produk_uu/isi/perpu2002/perpu2'02.htm (last visited Oct 24, 2003).
- 59 "House vows to finalize terror law this month," *The Jakarta Post*, Nov 13, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021113.A04> (last visited Dec 23, 2003).
- 60 Law of the Republic of Indonesia, No. 16 of 2003, Law Concerning the Endorsement of Perpu No. 1 and 2, available at http://www.ri.go.id/produk_uu/produk2003/uu2003/uu16'03.htm (last visited Oct 23, 2003).
- 61 "Human rights and terrorism," *The Jakarta Post*, Dec 21, 2001 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20011221.C01> (last visited Oct 23, 2003).

police have extensive powers to arrest and detain terrorist suspect. The Law has legalized preemptive actions of arrest based on intelligence information instead of legal evidences.⁶²

Many have criticized Megawati for lacking a strong commitment to human rights. The criticisms have been voiced persistently since Megawati took office until the end of 2003.⁶³

The government has disregarded these criticisms on its human rights policy, aided by the negative public perception towards the value of human rights practice identified with the Habibie and Wahid administration. One example of the negative repercussion of human rights is with respect to free speech. This freedom has shifted from purely voicing concern to becoming a business in its own right. There have been 'demonstration organizers' who can gather crowds and stage demonstration in return for money. As a consequence there was a feeling of public disillusionment bred out of years of human rights practice that did not deliver any practical benefit. People have become indifferent towards the issue of human rights between the various government administrations with different levels of commitment towards protecting and promoting human rights.

Taking advantage of the negative public perception towards the value of human rights, the government has been challenging some aspects of human rights considered to be practiced excessively. The police have been more assertive in clamping down on demonstrations not complying with the Freedom to Express Law. There have

62 Article 26 (1) of the Anti Terrorism Law.

63 Various NGOs have produced a general statement for the evaluation of Megawati's government in 2001. The report stated that progress had been insignificant in the field of human rights, see: Catatan Akhir Tahun Bersama (General Note at the End of the Year) is available at <http://www.infid.be/catatanakhirtahunbersama121.html> (last visited Oct 24, 2003); In the year of 2002 the same disappointment was voiced, see: "Komitmen HAM Rezim Mega Mengecewakan (Mega's Human Rights Commitment Disappointing)," *Asasi Newsletter*, May-June 2002 is available at http://www.elsam.or.id/txt/asasi/2002_0506/01.html (last visited Oct 24, 2003); At the end of 2002 various newspaper had interviewed various people on Megawati's commitment on human rights. One of those is what was reported by Suara Merdeka that Megawati had disappointed the victim families of people grossly abused their human rights, see: "Rapor Pemerintahan Mega Merah (Mega's Government Report Card is Red)," *Suara Merdeka*, Dec 29, 2002 available at <http://www.suaramerdeka.com/harian/0212/29/nas1.htm> (last visited Oct 24, 2003); Also Komnas HAM and PBHI in its 2003 evaluation stated that the Government has failed in human rights protection and promotion. See: "Rezim Mega Belum Miliki Komitmen Tegakkan HAM (Mega Regime has yet have Commitment to Uphold Human Rights)," *Kompas*, Dec 31, 2003 is available at <http://www.kompas.co.id/kompas-cetak/0312/31/nasional/776114.htm> (last visited Dec 31, 2003); also "Catatan Akhir Tahun PBHI: Pemerintah gagal di Bidang HAM (A year end note of PBHI: The Government fail in the human rights field)" *Hukumonline*, Dec 23, 2003 available at <http://www.hukumonline.com/detail.asp?id=9377&cl=Berita> (last visited Dec 31, 2003).

been cases in which individuals were arrested and charged with holding unlicensed demonstrations, disturbing public order, smearing or stamping on pictures of the President and Vice President to the substance of demonstrations that is against the law, such as insulting the head of state.⁶⁴ The government even warned protesters not to dream of toppling the Megawati legitimate government as it would confront them.⁶⁵

The excesses of press freedom have also been challenged by the government. Recently editors of mass media have been brought to courts to face criminal charges, such as in *Rakyat Merdeka* case.⁶⁶

To this end, human rights defenders and NGOs have criticized Megawati's administration of restoring laws that suppress freedom of speech and freedom of the press.

The promotion of human rights has also been weakened lately due to disproportionate foreign government and NGOs involvement. Such involvement has created the public perception that human rights promotion are actually a tool of neo-colonialism.⁶⁷ In a similar vein, the Chief of Staff of the Indonesian army said that human rights and democracy would constitute a future threat to Indonesia as a state.⁶⁸ In this sense, the concept of human rights is considered as a foreign ideological or political imposition.

64 "Two protesters jailed for insulting state leaders," *The Jakarta Post*, Oct 25, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021025.A08> (last visited Oct 23, 2003); "Police fire warning shots, beat anti-CGI protesters," *The Jakarta Post*, Jan 20, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030120.@01> (last visited Oct 23, 2003); "Mega reacts emotionally to stomping protesters," *The Jakarta Post*, Jan 29, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030129.A04> (last visited Oct 23, 2003).

65 "Protesters told not to think of toppling govt," *The Jakarta Post*, Jan 7, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030107.@02> (last visited Oct 23, 2003).

66 *Rakyat Merdeka* is a daily newspaper. In one case one former editor of the newspaper is found guilty for insulting the chairman of Golkar political party who is currently serving as speaker of DPR, Akbar Tanjung. The case was brought after the paper published a caricature depicting Akbar Tanjung shirtless and dripping with sweat trying to appeal his corruption conviction. In another case, one editor is prosecuted for insulting Megawati as Indonesia's President. This is after the newspaper run a series of headlines concerning controversial government policies related to fuel and basic commodity price increase. One headline said the President's mouth smells like diesel.

67 Former Chairman of Golkar Party, Pinantun Hutasoit, said that the human rights promotion has become an instrument for new colonialism. See "Pinantun: HAM Dijadikan Alat Neo Kolonialis," *Republika Online*, Oct 13, 2003 is available at <http://www.republika.co.id/berita/online/2003/10/13/142911.shtm> (last visited Oct 14, 2003).

68 "Ada Upaya Gagalkan Pemilu (There is Effort to Make General Election Fail)," *Kompas*, Nov 12, 2003 is available at <http://www.kompas.com/kompas-cetak/0311/12/utama/684560.htm> (last visited Dec 23, 2003).

2. *Assessment on Human Rights Legal Framework*

One may argue that legal frameworks can be useful to bring about changes in society as law introduces certain values to the regulation of society. Many have subscribed to this argument, including foreign governments and political leaders in Indonesia. To this end the government has been encouraged to introduce laws and ratify international instruments relating to human rights. The expectation is human rights conditions in Indonesia will improve. Unfortunately, this has not been the case for Indonesia within the five years span.

The present section first assesses the legal framework and then discusses why the legal framework has not worked properly, where laws are more symbolic than effective.

Indonesia's legal framework dealing with human rights during the post-Soeharto administrations has improved significantly. There have been copious statutory enactments, government regulations and even the ratification of international treaties.

The major change to the legal framework relating to human rights occurred in 2000 when the Constitution was amended for the second time.⁶⁹ The amendment has inserted important human rights provisions into the Constitution.⁷⁰ Provisions that deal directly with human rights are placed under Chapter X A. The chapter contains 9 paragraphs. The first-eight paragraphs, referred to as article 28 (a) to (i), contain the basic human rights, while the last paragraph contains a basic duty.

The basic human rights are the right to live,⁷¹ the right to establish a family and for a child to have the right to live, grow and develop,⁷² the right to prosper and improve,⁷³ the right to be recognized and protected before the law and the right to work, equal opportunities

69 To date the Constitution has been amended for four times. The second amendment took place on August 18, 2000.

70 The original Constitution only contains six provisions that explicitly provide human rights issues.

71 Every person shall have the right to live and to defend his/her life and existence.

72 (1) Every person shall have the right to establish a family and to procreate based upon lawful marriage.

(2) Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.

73 (1) Every person shall have the right to better him/herself through the fulfillment of his/her basic needs, the right to education and to benefit from science and technology, art and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.

(2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

in government and right to citizenship status,⁷⁴ the right to choose religion and the right of association and expression,⁷⁵ the right to communicate and obtain information,⁷⁶ the right to protection and right to be free from inhuman treatment,⁷⁷ the right to live in physical and spiritual prosperity, the right to receive facilitation and the right to social security and the right to own personal property,⁷⁸ the right to life and right to be free from discriminative treatment.⁷⁹

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- 74 (1) Every person shall have the right to recognition, guarantees, protection and certainty before a just law, and to equal treatment before the law.
 (2) Every person shall have the right to work and to receive fair and proper recompense and treatment in employment.
 (3) Every citizen shall have the right to obtain equal opportunities in government.
 (4) Every person shall have the right to citizenship status.
- 75 (1) Every person shall be free to embrace and to practice the religion of his/her choice, to choose one's education, to choose one's employment, to choose one's citizenship, and to choose one's place of residence within the state territory, to leave it and to subsequently return to it.
 (2) Every person shall have the right to the freedom to hold beliefs (*kepercayaan*), and to express his/her views and thoughts, in accordance with his/her conscience.
 (3) Every person shall have the right to the freedom to associate, to assemble and to express opinions.
- 76 Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.
- 77 (1) Every person shall have the right to protection of self, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.
 (2) Every person shall have the right to be free from torture or inhuman and degrading treatment, and shall have the right to obtain political asylum from another country.
- 78 (1) Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.
 (2) Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.
 (3) Every person shall have the right to social security in order to develop oneself fully as a dignified human being.
 (4) Every person shall have the right to own personal property, and such right may not be arbitrarily interfered with by any party.
- 79 (1) The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances.
 (2) Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.

Article 28 also provides duties under article 28 (j), namely the duty to respect human rights of others and the duty to accept restriction in exercising rights and freedoms.⁸⁰

There have also been MPR decrees that require all high level state and government institutions to respect, uphold and disseminate information concerning human rights to the general public. The decree also mentioned that the government would immediately ratify a number of United Nations' human rights instruments, without any specific reference, as long as these were consistent with Pancasila, the state ideology, and the Constitution.⁸¹

Here are also some draft laws related to human rights currently being discussed. One which is considered to be important is the draft law of the Truth and Reconciliation Commission or *Komisi Kebenaran dan Rekonsiliasi* (hereinafter referred to as "KKR"). The KKR is considered to be a method to address transitional justice for the past human rights abuse, borrowing from the South African model. The draft law is intended to deal with past human rights abuses committed during both the Soekarno and Soeharto regimes, offering pardons to the suspects who are ready to be reconciled with their victims and pay them compensation.⁸² The draft law was initially prepared by the Institute for Policy Research and Advocacy or *Lembaga Studi dan Advokasi Masyarakat* better known as ELSAM, a human rights NGO.⁸³

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- (3) The cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.
 - (4) The protection, advancement, upholding and fulfillment of human rights are the responsibility of the state, especially the government.
 - (5) For the purpose of upholding and protecting human rights in accordance with the principle of a democratic and law-based state, the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations.

- 80 (1) Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation and state.
- (2) In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

81 MPR Decree No. XVII/MPR/1998 on Human Rights, available in Indonesian language at <http://www.geocities.com/CollegePark/Hall/1981/tap17.htm> (last visited Dec 23, 2003).

82 "Bill on Truth, Reconciliation drafted," *The Jakarta Post*, Jan 5, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020105.A03> (last visited Oct 23, 2003).

83 Agung Yudhawanata, *Menyelesaikan Pelanggaran Hak Asasi Manusia di Masa Lalu: Masalah Indonesia Pasca-Transisi Politik (Dealing with the Past Gross Human Rights Violations: Problem of Indonesia After Transition)*, 1 *Dignitas* 1 (2003): 42.

Apart from Laws that deal directly with human rights there are Laws that indirectly have provisions to protect and improve human rights conditions in Indonesia. The Laws, among others, are the Labor Law,⁸⁴ the Press Law⁸⁵ and the Child Protection Law.⁸⁶ Furthermore, there are Laws that made reference to human rights such as the Advocate Law,⁸⁷ the National Education Law,⁸⁸ the Police Law,⁸⁹ and the Broadcasting Law.⁹⁰ To take an example, under the Police Law it is stated that the Police has to respect human rights,⁹¹ and the Advocate Law mentions that the advocate's task, among others, is to uphold human rights.⁹²

In addition to domestic legislations, Indonesia has ratified various international instruments that deal with human rights as discussed earlier.

With the numerous laws that have been passed and international treaties ratified dealing directly and indirectly with human rights, the question is whether this has made significant improvement to human rights practice in Indonesia. Unfortunately, a wide gap between what is provided under the Law and reality persists. There are five main reasons for the failure.

Firstly, the laws were passed with the intent of only satisfying international pressure, domestic NGOs pressure, even political elites who had interest of holding on to their power, rather than a genuine attempt to improving human rights condition.

Secondly, such laws overlooked the necessary supporting infrastructure for effective implementation. Those in legal departments

84 Law of the Republic of Indonesia, No. 13 of 2003, Law Concerning Labor, *available at* http://www.ri.go.id/produk_uu/produk2003/uu2003/uu13'03.htm (last visited Oct 23, 2003).

85 Law of the Republic of Indonesia, No. 40 of 1999, Law Concerning the Press, *available at* http://www.asiamaya.com/undang-undang/uu_pers/uu_pers_index.htm (last visited Oct 23, 2003).

86 Law of the Republic of Indonesia, No. 23 of 2002, Law Concerning Child Protection, *available at* http://www.ri.go.id/produk_uu/isi/uu2002/uu23'02.htm (last visited Oct 23, 2003).

87 Law of the Republic of Indonesia, No. 18 of 2003, Law Concerning Advocate, *available at* http://www.ri.go.id/produk_uu/produk2003/uu2003/uu18'03+pjls.htm (last visited Oct 23, 2003).

88 Law of the Republic of Indonesia, No. 20 of 2003, Law Concerning National Education, *is available at* http://www.ri.go.id/produk_uu/produk2003/uu2003/uu20'03.htm (last visited Oct 23, 2003).

89 Law of the Republic of Indonesia, No. 2 of 2002, Law Concerning the Police, *is available at* http://www.ri.go.id/produk_uu/isi/uu2002/uu2'02.htm (last visited Oct 23, 2003).

90 Law of the Republic of Indonesia, No. 32 of 2002, Law Concerning Broadcast, *is available at* http://www.ri.go.id/produk_uu/isi/uu2002/uu32'02.htm (last visited Oct 23, 2003).

91 Article 4 of the Police Law.

92 General Elucidation of the Advocate Law.

lack understanding on the concept of human rights. Many, for example, have confused the concept of command or superior responsibility as a facet of administrative responsibility.

Thirdly, the leniency extended by law enforcement agencies to human rights violators resulted in little incentive for compliance. In addition, some provisions in the laws are difficult to enforce since they are the result of political compromise.

Fourthly, the new legislation encountered difficulties in enforcement as it involves changes in the legal culture and mindset of the general public. Also, these laws have not been adequately publicized.

Fifthly, the international instruments ratified by Indonesia have not been translated into domestic obligations. For example, human rights that protect labor have remain unchanged at society's level even though a number of international treaties have been ratified to ensure labors are protected. Despite the fact that Indonesia has ratified ILO Convention No. 138, it has yet succeeded in abolishing completely child workers. Furthermore, forced and bonded children continue to exist even though Indonesia had ratified ILO Convention No. 105 concerning the Abolition of Forced Labor.

Sixth, if provisions of international treaties are transformed to national laws, problems arise at the implementation level. Caning in open places has been introduced in Aceh province irrespective of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment which was ratified in 1998.⁹³ National legislation that discriminate against Indonesian Chinese⁹⁴ still exist even though the Convention on the Elimination of All Forms of Racial Discrimination has been ratified.⁹⁵

93 "Aceh to implement caning punishment," *The Jakarta Post*, Sept 28, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020928.D03> (last visited Oct 23, 2003); "Caning comes into effect in Aceh on 1st day of Ramadhan," *The Jakarta Post*, Oct 28, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021028.D04> (last visited Oct 23, 2003).

94 The Indonesian Chinese are discriminated against since the time their birth certificate is issued with a mandatory stamp denoting their ethnicity. They are forced to prove their citizenship at many stages throughout their lives. They also have to provide additional certification, and pay higher fees, for identification cards, passports and other legal documents. See: "Chinese-Indonesians continue to suffer from discrimination," *The Jakarta Post*, Feb 18, 2002, is available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020218.A07> (last visited December 23, 2003). In 2002 it was reported that Hendrawan top shuttler who saved the country in the Thomas Cup championship had to struggle to get his citizenship certificate before heading to China for badminton tournament. See: "Chinese-Indonesians still discriminated against," *The Jakarta Post*, May 21, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020521.@03> (last visited Dec 23, 2003).

95 The Convention was ratified in 1984 based on Law 7 of 1984 under the Soeharto administration.

From Indonesia's experience, it is clear that merely becoming parties to international human rights treaties does not in itself improve human rights conditions. The improvement to Indonesia's legal framework only provides ideal benchmark standards, which has as yet not been translated into concrete reality.

3. *Assessment on Human Rights Institutions*

An important aspect of human rights promotion and protection is the existence of institutions to implement and oversee human rights obligations.

There are both government and private institutions dealing with human rights in Indonesia.

During the Soeharto administration there was only one government institution that promotes and deals with human rights issue, namely, the Komnas HAM,⁹⁶ which was highly regarded during the Soeharto administration which had been consistent in following up upon the recommendations of that human rights body.

Surprisingly as the government becomes more democratic, in the last two years, Komnas HAM recommendations have not been followed up seriously by state institutions.⁹⁷ Komnas HAM has been complaining of this condition. For example, the Indonesian Military refused to answer a summons by Komnas HAM's Commission of Inquiry into Human Rights Violations during the down fall of Soeharto and the beginning of Habibie government in relation to the Trisakti, Semanggi I and Semanggi II incidents.⁹⁸ In addition, the Chairman of Komnas HAM, Abdul Hakim Garuda Nusantara, questioned the government's and DPR's commitment to keep Komnas HAM in charge of human rights. According to him, since Komnas HAM will rely on the Attorney General Office for prosecution, it will be difficult to prosecute those accused of abusing

96 Komnas HAM establishment was the result of workshop jointly conducted by Indonesian Foreign Ministry and the United Nations. Komnas HAM maintain website at <http://www.komnasham.go.id/index.html> (last visited Sept 8, 2003).

97 Recommendations have been issues with respect to imposition of martial law in Aceh, the Trisakti and Semanggi incidents, the Bulukumba incident, abuse of human rights in Papua, eviction in City of Jakarta and many others.

98 "Rights activists slam TNI over summons," *The Jakarta Post*, Jan 10, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020110.A04> (last visited Sept 8, 2003); "TNI, Komnas HAM gripped in legal battle," *The Jakarta Post*, July 26, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030726.A02> (last visited Sept 8, 2003).

human rights if the Attorney General's office ignores Komnas HAM's recommendations.⁹⁹

After the Soeharto administration there have been many government institutions dealing with human rights. To this end, within the government there are institutions, sections or desks which deal with human rights. The institutions include the defunct Ministry for Human Rights which was currently been restructured and placed as part of the Ministry of Justice. Currently within the Ministry of Justice there are two agencies dealing with human rights issues.¹⁰⁰ Apart from that, certain ministries have section that deals with human rights issue.

Under a more democratic government and having sound legal basis, the many government institutions dealing with human rights unfortunately have not been able to improve human rights practice in Indonesia. And this has been worsened by another problem, namely, the lack of coordination among those institutions. Each institution has its own sectoral ego in dealing with human rights.

There were only a few private human rights related institutions during the Soeharto administration. One of the leading human rights institutions is the Legal Aid Institute (LBH), founded in the 1970s. The LBH has been very critical of human rights perpetrated by the government or the military.

In the post Soeharto era, there are many private institutions working on human rights issues in the form of NGOs. Apart from the LBH, there is the Commission for Disappearances Persons and Victims of Violence (Kontras),¹⁰¹ Imparsial,¹⁰² ELSAM,¹⁰³ PBHI,¹⁰⁴ and Centers for Human Rights attached to universities. There have been a new generation of pro-democracy and human rights groups—such as INFIGHT (Indonesian Front for the Defense of Human Rights), GENI (a human rights group based in Salatiga, Central Java), PIPHAM (Center for Human Rights Information and Education).¹⁰⁵ Against

99 "Hakim pledges to fight for human rights," *The Jakarta Post*, Sept 14, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020914.A04> (last visited Sept 14, 2003).

100 One agency is referred to as the Directorate General for Protection of Human Rights which succeeded the former Ministry of Human Rights after its liquidation. The other is the Human Rights Research and Development Agency.

101 Kontras maintains website at the following address <http://www.desaparecidos.org/kontras/>

102 Imparsial maintains website at the following address <http://www.imparsial.org/>

103 ELSAM maintains website at the following address <http://www.elsam.or.id/>

104 PBHI maintains website at the following address www.pbhi.or.id

105 Anders Uhlin, *Indonesia and the Third Wave of Democratization: the Indonesian-Pro-democracy Movement in a Changing World* (Surrey: Curzon, 1997) pp. 113–114.

these many NGOs, LBH has been forced to renew its role in advocating and protecting human rights.¹⁰⁶

It is interesting to note that some of the NGOs involved in human rights work have been established under the sponsorship of officials from the government. These officials had encouraged their acquaintances to establish NGOs in order to present opposing views to those of existing NGOs who have been critical against the government. These kind of 'government' sponsored human rights NGOs were short-lived, usually lapsing into inactivity when the officials have left the office.

In addition, it cannot be denied that some of human rights NGOs have been established with the aim of commercial and other purposes which deviate from upholding human rights.¹⁰⁷

There have been problems recently faced by private institutions. One of the fundamental problems is funding. Funding has been substantially made by foreign donors. Once these donors pull out, the NGOs slowly collapse. For example, LBH was reportedly on the brink of financial collapse as all of their international funding agencies had reportedly ceased assistance.¹⁰⁸

NGOs with foreign sponsors have faced problems as their viability rests on the interest of their foreign sponsors.¹⁰⁹ The NGOs have been unable to act on the basis of local initiative. The fact that NGOs have been struggling financially only attests to their dependency on foreign financial contributions, thus undermining their credibility.

Funding to NGOs has also raises the question on foreign donor(s) commitment on promotion of human rights in Indonesia.¹¹⁰ The question is whether the contribution was intended for a 'one-off' goal

106 "Alumni call on YLBHI to renew mission," *The Jakarta Post*, Sept 28, 2002 is available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020928.C03> (last visited Sept 8, 2003).

107 Muyanja Ssenyonga discussed the various reasons for people to establish and join NGOs. See: Muyanja Ssenyonga, *NGOs, a chance for employment*, *The Jakarta Post*, April 21, 2001 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20010421.C02> (last visited Sept 8, 2003).

108 "LBH offices across the country on the brink of collapse," *The Jakarta Post*, Oct 9, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021009.A04> (last visited Sept 8, 2003).

109 LBH's financial difficulty has become worsened when it decided to sever ties with funding organizations from the United States, Australia and Britain in protest against these countries' involvement in the attack on Iraq. See: "LBH offices permitted to raise fund," *The Jakarta Post*, April 12, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030412.C13> (last visited Sept 9, 2003).

110 LBH, for example, had been supported by Holland-based NOVIB, Sweden-based SIDA and Belgium-based Triple Eleven. See: "Alumni urge YLBHI to introspect and change," *The Jakarta Post*, July 7, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030707.C01> (last visited Sept 8, 2003).

to bring down an authoritarian regime or a long-term objective of promoting human rights in Indonesia.

The second problem is the proliferation of NGOs has resulted in overlapping efforts to improve human rights conditions. The public has been confused with the many NGO human rights agendas of human rights. The government has also been baffled with the many recommendations from the NGOs. However, the government has been taking advantage of the existence of many NGOs, in particular when certain policy is decided. Government will ask NGOs who support its policy to go against NGOs who are against the policy.

The third problem stems from the fact that human rights issues have been taken up more by government institutions and as a result NGOs no longer possess the pull or influence they had under the more oppressive Soeharto administration.

In sum, as human rights institutions have increased in number, this unfortunately does not necessarily mean the improvement of human rights conditions. It would be wrong to conclude that having many NGOs automatically strengthens civil society's awareness on human rights.

4. *Assessing the Public's Perception towards Human Rights*

Public perception towards human rights is crucial as this will influence popular and government commitments towards upholding human rights. A positive public perception toward human rights practice will promote rather than retard the progress on human rights. The converse is true.

After the fall of Soeharto, human rights were praised and valued by the public. However, as human rights were practice excessively, causing disorder and instability, the public begun to show its discontent and resentment,¹¹¹ having enjoyed political stability under Soeharto administration.

Perceived excessive attention to human rights issues has been challenged by the public who addresses its dissatisfaction and directs its discontent towards human rights activists. There have been incidents where human rights activists and their offices were attacked by certain people and organizations.¹¹²

111 Such resentment can be read in Carl Chairul article, *see: Ibid.*, "Enough of democracy and human rights!"

112 "Human rights activists targeted in terror attacks," *Jakarta Post*, March 14, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020314.G06> (last visited Sept 13, 2003); "Unidentified men shoot human rights lawyer's car," *Jakarta Post*, Nov. 13, 2001 available

Under the Habibie and Wahid administration, freedom of press was exercised as if there were no boundaries and laws. This freedom has been demonstrated by the birth of new newspapers, magazines, radios and televisions.¹¹³ The mass media can report on almost anything without any government censorship, in contrast with the situation under the Soeharto administration. However, members of the public have brought lawsuits, for example, for libel, against the excesses of press freedoms.¹¹⁴

Of course, from the perspective of human rights activists and journalists the many cases against the press have been seen as threat to freedom of the press.¹¹⁵

The same reservations apply to how free speech has been exercised. The holding of demonstrations in the business district areas in big cities have been the subject of complaints by the public due to the inconveniences caused. Long traffic jams, closed road and public transportation not operating are examples.

The negative public perception towards the over-emphasis on human rights has undoubtedly affected the fervour with which the government has sought to promote and protect human rights.

PART II

1. *Assessment on Domestic Trials for Gross Violations of Human Rights*

Two incidents of past human rights violations have thus far been brought to trial. Firstly, the East Timor incident and secondly, the Tanjung Priok incident. The trials were mainly instituted to appease

at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20011113.E02> (last visited Sept 13, 2003).

113 There are 289 Private Printed Media Company, 6 (six) Television Company including the TVRI as the National TV Institution, and 740 Radio Broadcast Company during the Former-Suharto administration. But soon after the Suharto regime step down and the promulgation of the Press Law, there are 1687 private printed media Companies, 10 private television company and one public, and 1.100 privately run radio companies and one public radio. *Source*: "The Indonesian Press Directory 2002-2003", (Jakarta: Serikat Penerbit Surat kabar, 2003), 10-18.

114 There are two most noted lawsuits. First is the case involving Tomy Winata, a controversial businessman with powerful friends, who sued *Tempo* Weekly Magazine for US\$ 22 million. Such case is still ongoing and there has yet been any decision. The second case involves Texmaco and its former owner, a leading textile company in the verge of bankruptcy, who sued *Kompas* daily newspaper and *Tempo*. Texmaco and *Kompas* had reached out of court settlement eventhough the court had started examining the case. However, in the case of Texmaco against *Tempo* there are two decided cases. One against *Tempo* weekly magazine which resulted in the Court rejecting Texmaco's claim. The other one against *Tempo* newspaper where the Court found *Tempo* guilty of libelous articles.

115 "Press Freedom," *The Jakarta Post*, Sept 12, 2003 *available at* <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030912.E01> (last visited Dec 23, 2003).

international demand, such as that emanating from the UN Security Council who urged Indonesia to bring to justice those responsible for atrocities in East Timor.¹¹⁶ The Tanjung Priok trials were intended to counter the impression that the establishment of Ad Hoc Human Rights Court was purely the result of Indonesia's surrendering to international demand, apart from responding to domestic pressure.

Technically, the establishment of the Ad Hoc Human Rights Court begun with the report of the commission of gross violations of human rights by Komnas HAM.

On 22 September 1999 Komnas HAM created a Commission for Human Rights Violations in East Timor or *Komisi Penyelidik Pelanggaran HAM di Timor Timur* (abbreviated as 'KPP HAM'). KPP HAM is composed of government officials and human rights activists. On January 31, 2000, it produced a comprehensive report naming Indonesian and East Timorese officials and military leaders responsible for flagrant violations of human rights.¹¹⁷

Amongst those prosecuted include the Chief of Military Command overseeing East Timor, the Chief of East Timor Police, the Governor and other high-ranking officials in the military, police and civil service. However, the report excluded the Commander in Chief of the Armed Forces. The exclusion of such officials was criticized by both the international community and domestic human rights watchdogs.¹¹⁸

The report was submitted to DPR and subsequently the DPR had recommended to the President that the incident be examined before the Ad Hoc Human Rights Court. President Wahid at the time issued Presidential Decree 53 of 2001 for the establishment of Ad Hoc Human Rights Court.¹¹⁹ It should be noted that the East Timor incident referred to in Decree 53 does not relate to all human rights violations that have occurred in East Timor since 1976. The Incident was limited to those occurring in East Timor between April 1999 to September 1999.¹²⁰ The Presidential Decree was amended by Presidential Decree 96 of 2001 when Wahid was replaced by Megawati

116 *The Jakarta Post*, Feb 25, 2000 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20000225.@05> (last visited Dec 23, 2003).

117 The report entitled Indonesian "Commission of Investigation into Human Rights Violations" is available at <http://www.jsmp.minihub.org/Reports/KPP%20Ham.htm> (last visited Dec 29, 2003).

118 "Conspiracy by Generals led to East Timor Killings: UN" *Sydney Morning Herald*, April 12, 2001 available at <http://www.globalpolicy.org/security/issues/etimor/2001/0412wct.htm> (last visited Dec 23, 2003); "KPP Ham Not on the Prowl for a Suspect," *Kompas*, Feb 16, 2000 available at <http://www.kompas.com/kompas-cetak/0002/16/english/kpp.htm> (last visited Dec 23, 2003).

119 Presidential Decree 53 of 2001 available at http://www.ri.go.id/produk_uu/isi/keppres2001/kp-53-01.html.

120 Presidential Decree 96 of 2001 available in Indonesian language at http://www.ri.go.id/produk_uu/isi/keppres2001/kp96'01.html.

as President. The amendment narrowed down the jurisdiction by limiting its application to only certain East Timor provinces: Liquica, Dilli, dan Suai.

The Attorney General's Office followed up the report by Komnas HAM but did not prosecute all those named by KPP HAM. Only 18 defendants were prosecuted over the course of 12 cases.¹²¹ The defendants from the military and police were charged in a single case, in particular those who were above the rank of Lieutenant Colonel above. Two civilians had also been charged in a single case.

When naming those prosecuted, the Attorney General Office was criticized for not prosecuting the many high ranking military and civilian officials who were in the central government. The Attorney General Office had defended this by stating that the exclusion is due to the limited jurisdiction under Presidential Decree 96 of 2001.

In most cases, the defendants were all charged by the prosecutors with crimes against humanity under Article 7(b) and Article 9 of the Human Rights Court Law.¹²² This is based on the fact that the defendant assumed their capacity as superiors having responsibility under Article 42 of the Human Rights Court Law.¹²³

The Ad Hoc Human Rights Court found six guilty while acquitting the other 12. The six, among others, are the former Dili military commander who was sentenced to five years in jail and the former Chief of Military Command overseeing East Timor province who was sentenced for 3 years. The latter was found guilty by the Court irrespective of the prosecutor seeking for an acquittal.¹²⁴ Two of East Timorese origins have also been found guilty. The former Governor was sentenced to 3 years,¹²⁵ and the former leader of Red and White militia was sentenced to 10 years and 6 months. All six appealed their conviction and have not served jail sentences pending their appeal. At the time of this article, none of the appeal decisions have been delivered.

121 "Defendants of East Timor mayhem," *The Jakarta Post*, Dec 26, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021226.O03> (last visited Sept 8, 2003).

122 Article 7 of the Human Rights Court Law provides two gross violations of human rights (international crimes), namely, genocide and crimes against humanity. Article 9 provides the detail of crimes against humanity.

123 Article 42 of the Human Rights Court is a direct translation of Article 28 of the Rome Statute.

124 "Unexpected three year jail sentence for Damiri," *The Jakarta Post*, Aug 6, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030806.A04> (last visited Sept 8, 2003).

125 "Abilio gets three years in jail for rights violations," *The Jakarta Post*, Aug 15, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020815.@01> (last visited Sept 8, 2003); A translation in English of the judgment is available at http://www.bimun.org/download/soares_judgement.pdf

For human rights activists, the prosecution and decision of the court have been called a sham.¹²⁶ The local human rights watchdogs, such as PBHI and ELSAM, said that the trials were a complete failure because it was defective from the outset and intended only to save face.¹²⁷ The main perpetrators of abuses, such as the Chief of the Armed Forces, have not been tried.¹²⁸ Foreign analysts and NGOs have voiced concerns in similar vein.¹²⁹ Countries like the US have also expressed disappointment.¹³⁰

The Tanjung Priok incident took place on Sept. 12, 1984, when soldiers opened fire on anti-government protesters outside the Tanjung Priok Mosque. Relatives of the Tanjung Priok victims said the incident claimed over 400 lives, while the military said only 18 people were killed.¹³¹ An investigation by Komnas HAM, however, found there were 24 killed and 55 injured.¹³²

The trials of Tanjung Priok proceeded after a report from Komnas HAM was issued on 11 October 2000.¹³³ Based on the report, there were 23 individuals named who occupied various military positions as being responsible in the incident, including the Chief of the Armed

126 "Justice Denied for East Timor Indonesia's Sham Prosecutions, the Need to Strengthen the Trial Process in East Timor, and the Imperative of U.N. Action," Human Rights Watch available at <http://www.hrw.org/background/asia/timor/etimor1202bg.htm> (last visited Oct. 14, 2003).

127 "East Timor human rights trials: All just a game," *The Jakarta Post*, Dec 26, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021226.O01> (last visited Dec 23, 2003); "Human rights tribunal fails to uphold justice," *The Jakarta Post*, Jan 29, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030129.C03> (last visited Sept 14, 2003); also "Pengadilan HAM Jauh dari Standar Internasional (The Ad Hoc Court is Far from International Standard)," *Kompas*, May 6, 2002 available at <http://www.kompas.com/kompas%20cetak/0205/06/nasional/peng07.htm> (last visited Oct 24, 2003).

128 *Id.*

129 *See*: "Intended to Fail: The Trials before the Ad Hoc Human Rights Court in Jakarta," David Cohen available at <http://www.ictj.org/downloads/IntendedtoFailwithAnnexes-FINAL.pdf> (last visited Nov 23, 2003). Also "International Scrutiny Looms over Right Trials," *The Jakarta Post*, Dec 11, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021211.C04> (last visited Dec 23, 2003); "Indonesia's Court for East Timor a 'Whitewash,'" *Human Rights News*, Dec 20, 2002 is available at <http://www.hrw.org/press/2002/12/etimor1220.htm> (last visited Sept 8, 2003).

130 "Indonesia—Human Rights Tribunal for East Timor," available at <http://www.state.gov/r/pa/prs/ps/2002/12810.htm> (last visited Oct 23, 2003).

131 "Suspects named in the Tanjung Priok case," *The Jakarta Post*, Nov 14, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021114.C01> (last visited Dec 23, 2003).

132 The Executive Summary of KPP HAM report on Tanjung Priok in Indonesian language is available at http://www.komnasham.go.id/PD_arsip_kasus/KPP/tanjungpriok.htm (last visited Dec 23, 2003).

133 *Id.*, the Executive Summary of KPP HAM report on Tanjung Priok.

Forces and Jakarta Military Commander. However, the two were not named when the Attorney General Office filed for prosecution.¹³⁴

At the time this article is written the trials are still on-going and verdicts are expected to be delivered around February–March of 2004. There are four trials involving a total of 17 defendants.¹³⁵ Fourteen defendants were tried on a single case. The other three cases prosecuted single defendant respectively with a rank of major general, one still active and the other two have retired. However, it should be noted that these three at the time of the incident were still middle ranking military officials.

Although verdicts have yet been issued, however, NGOs have been skeptical of the results. It should be noted that the trials did not attract foreign attention, either government or NGOs.

Looking at the trials of East Timor and Tanjung Priok incidents, many have been dissatisfied with the result, for various reasons.

To begin with, those who are the main perpetrators, whom the public want to see stand trial, have not been prosecuted by the Attorney General Office. The most culpable among those named by the Komnas HAM reports, NGOs and even international community were spared. This is mainly due to Indonesia's cultural norms that protect social elites from prosecution.

In addition, the culpability of the defendants sometimes hinges on unforeseeable political outcomes. In the East Timor trials, if East Timor were still part of Indonesia, those prosecuted will be considered—national heroes rather than criminals. The same applies to the Tanjung Priok trials, the individuals have to stand trials for something which were considered wrong today, but not at the time when the incident occurred.

The trials seem to be carried out to appease international and domestic pressures rather than to uphold human rights standards and restore justice.¹³⁶

Although prosecutors and judges involved in the East Timor and Tanjung Priok trials had undergone a special human rights course,¹³⁷ it is doubtful whether the short duration of the course imparted

134 "Tanjung Priok rights tribunal to begin," *The Jakarta Post*, Aug 29, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030829.C04> (last visited Dec 24, 2003).

135 "Tanjung Priok rights trial eventually start," *The Jakarta Post*, Sept 15, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030915.A01> (last visited Dec 24, 2003).

136 *Ibid.*, "East Timor human rights trials: All just a game."

137 The course lasted for six days and attended by 75 judges and prosecutors. See: "Human rights course for judges," *The Jakarta Post*, Nov 6, 2001 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20011106.E05>

a comprehensive understanding of international criminal law. The unfamiliarity and inexperience of the prosecutors and judges raised doubts as to the professionalism and fairness of the trial as justice can be denied because of lack of understanding when examining a case that require particular expertise.

The lack of resources for legal research coupled with the time constraints on the judges to render decisions on time further undermines the authoritativeness of the judgments.¹³⁸ If the judges were previously afraid of the powerful elite, they now tend to bow to public outcry for revenge and international pressure to find the defendant guilty. This finds expression in two forms: conviction even when there is insufficient evidence,¹³⁹ and sentencing in contravention of legislative minimum.¹⁴⁰

The other reason for failure is the shortcomings of the legal system. The law is insufficient in protecting witnesses; consequently, witnesses are reluctant to testify.

To conclude, it is fair to say that it is not an easy task to do justice with respect to past human rights abuses. Bringing those responsible in the East Timor and Tanjung Priok incidents are different from bringing those responsible in the Second World War aftermath or atrocities in former Yugoslavia and Rwanda. Japanese and German's policy makers and soldiers had to stand trials because they lost the war. Leaders from former Yugoslavia and Rwanda had to stand trials because there were drastic changes in the government. As for Indonesia, it had not lost the war in East Timor nor had its government changed drastically.

Political considerations have been the dominant factor for the successful prosecution of those responsible in gross human rights violations. The culprits of the Second World War would have not stood trial if they had won the war. American policy makers and soldiers were able to get away from being charged with international crimes committed during the Vietnam war¹⁴¹ because of insufficient international

138 See: Progress Report VII Ad Hoc Court for East Timor by ELSAM (Indonesian), Oct 7, 2002 available at <http://www.elsam.or.id/publikasi/padhoc/progress%20report%20VII.PDF>

139 Winarno Yudho, a lecturer at University of Indonesia who became a judge at the Ad Hoc Human Rights Court, was quoted by the Jakarta Post, "The absence of key witnesses, a failure to perceive the seriousness of crimes against humanity and the failure to use videoconferencing technology to present witness testimonies all prove that the court has not been treated seriously and has operated well below international standards," See: "East Timor human rights trials: All just a game."

140 All defendants convicted, except for Eurico Guttres, received sentence less than the minimum requirement of 10 years. To take example, Abilio Soares 3 years sentence.

141 "Pentagon refuses to reopen probe into alleged Vietnam War atrocities," *Channelnewsasia.com*, Oct 20, 2003 is available at http://www.channelnewsasia.com/stories/afp_asiapacific/view/53102/1/.html (last visited Oct 21, 2003).

and domestic pressure for such trials. This applies also to the US attack on Iraq in 1991,¹⁴² and another attack in March 2003.¹⁴³

2. *Assessment on Promotion of Human Rights in the Midst of War against Terror*

The momentum for the promotion and protection of human rights in Indonesia has recently lessened due to the war against terror. The US and Australia have lost their persuasiveness and moral authority in influencing Indonesia government policy as their own anti-terror efforts are perceived to be inconsistent with their prior human rights sermons to Indonesia. This has provided an excuse for the Indonesian public to attack the US and Australia for their human rights practices at home, fuelled by the perception that US and Australian foreign policy has in the past harassed Indonesian human rights practices.

In addition, the Indonesian public believes that the war against terror should not be fought at the expense of human rights. To take an example, the Chairman of Indonesia's second largest Muslim organization, Muhammadiyah, has said that the war against terror has confused the government, but it should not ignore human rights.¹⁴⁴

The Megawati government has been criticized for bowing to the US and its allies in the fight against terrorism,¹⁴⁵ despite the fact that Indonesia fell victim to terrorism itself.¹⁴⁶ Since the launch of the war against terror, Indonesia's human rights cause has become one of its casualties through the revival of legislation legitimizing human rights abuses from what was thought to be a bygone era. Another contentious matter is the perception that the US-led war against terror has been seen as discrediting Islam. This has offended the public since Indonesia has the world's largest Muslim population. Furthermore, it

142 Ramsey Clark issued a report entitled "War Crimes: A Report on United States War Crimes Against Iraq to the Commission of Inquiry for the International War Crimes Tribunal" which list George Bush, J. Danforth Quayle, James Baker, Richard Cheney, William Webster, Colin Powell, Norman Schwarzkopf and others charged with international crimes. Document available at <http://www.deoxy.org/wc/wc-index.htm> (last visited Dec 23, 2003).

143 "Former congressman asks court to decide if Bush committed war crimes," *Associated Press*, April 11, 2003 available at <http://www.impeach-bush-now.org/Articles/Bush/restraining.htm> (last visited Dec 23, 2003).

144 "Religious leaders want police to respect human rights," *The Jakarta Post*, Nov 13, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021113.A03> (last visited Oct 29, 2003).

145 "Legal, human rights experts worried about dangerous trend," *The Jakarta Post*, Sept 21, 2001 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020921.A04> (last visited Sept 23, 2003).

146 Indonesia had been experiencing numerous bomb attacks. A notable attack occurred in Bali on October 2002 and in Jakarta at hotel JW Marriot on August 2003.

has tarnished the image of many Islamic boarding schools known as *pesantren*.¹⁴⁷ *Pesantren* has been suspected by the US government as a place where Islamic terrorists are trained.¹⁴⁸

From the public perception, the war against terror has had a negative impact on the promotion and protection of human rights in Indonesia, for the following reasons.

Firstly, the Indonesian government has been criticized for not protecting its nationals abroad where they may have suffered human rights violations in terrorist-related situations. For instance, Australian authorities went to the house of Indonesian Muslims residing in Australia with guns drawn and sledgehammers to break down doors.¹⁴⁹ They were suspected of having connections with Abu Bakar Ba'asyir. This was considered by public in Indonesia to be not in accordance with human rights. The DPR, for example, urged the government to lodge a protest against what they call human rights violations.¹⁵⁰ To appease the public, the Ministry of Foreign Affairs lodged a protest to the Australian government through its Embassy in Jakarta,¹⁵¹ but shunned away from DPR's demand to establish investigation team to look into the matter in Australia.¹⁵²

The public has also demanded that the government inquire of the Philippines government as to the unnatural death of terrorist

147 "Police negotiating with 'pesantren' over suspects," *The Jakarta Post*, Nov 20, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021120.@01> (last visited Oct 23, 2003).

148 According to Virtual Information Center, there were many reports indicating that the children at *Pesantren* spend their entire childhood, in many cases, learning to hate the West and to blame it for all the ills of their society. Many of these graduates return home, committed to running jihads and to creating Islamic states governed by *sharia* (Islamic law), see <http://www.vic-info.org/RegionsTop.nsf/0/43dd40e1787c7bfd0a256d98001231b5?OpenDocument> (last visited Dec 23, 2003). The US government for this purpose has been funding the Indonesian government to insert anti-terrorism in *Pesantren*'s curriculum. See: "Anti-terrorism now part of curriculum," *The Age*, Aug 30, 2003 available at <http://www.theage.com.au/articles/2003/08/29/1062050665721.html?from=storyrhs> (last visited Oct 23, 2003).

149 "Australian police raid terror suspects," *BBC News*, Oct 30, 2002 available at <http://news.bbc.co.uk/2/hi/asia-pacific/2374505.stm>. Also: "Eye-witness describes violent police raid in Australia," *World Socialist Web Site*, Nov 2, 2002 available at <http://www.wsws.org/articles/2002/nov2002/raid-n02.shtml>

150 "Rights abuses occur in Australian raids: House," *The Jakarta Post*, Nov 20, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021120.C01> (last visited Oct 23, 2003).

151 "Australian envoy summoned over antiterrorism raids," *The Jakarta Post*, Nov 2, 2002 is available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021102.@03> (last visited October 23, 2003).

152 "Legislator wants probe into raids in Australia," *The Jakarta Post*, Nov 18, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20021118.A02> (last visited Oct 23, 2003).

suspect Al-Ghozi, who is believed to have been executed extrajudicially by the Philippines military on the eve of US President Bush's visit to the country.¹⁵³ As for Al-Faruq and Hambali who are currently in US custody, there is concern as to their exact whereabouts, their having access to legal advice during interrogations, as well as calls for their extradition back to Indonesia for trial.¹⁵⁴ The Minister of Foreign Affairs defended government inaction on the grounds of terrorism being 'non-traditional criminal acts' that does not warrant protection.¹⁵⁵ Moreover, there are doubts as to the nationality of some of these suspects that may render protection inappropriate.¹⁵⁶

Second, international pressure is mounting on the government to arrest several Muslim leaders, such as Abu Bakar Ba'asyir who is considered by US and Australia as the leader of the Jemaah Islamiyah terrorist group. The police and prosecutors did so even they have no solid ground for prosecution. The lower Court found Abu Bakar Ba'asyir guilty of treason in a plot to overthrow Indonesia's secular government but cleared him of charges of being the leader of the Jemaah Islamiyah.¹⁵⁷ On appeal, his sentence was reduced from four to three years and he was also later found guilty of forging identity documents.

Third, a number of persons have reportedly disappeared or have been forcibly taken into custody by the police due to their alleged terrorist links.¹⁵⁸ The police have apprehended without due process persons considered to have been trained in Afghanistan during the Afghan war. Human rights watchdogs and the Muslim community

153 "Philippine president denies JI bomb-maker was executed," *AFP*, Oct 14, 2003 available at http://quickstart.clari.net/qs_se/webnews/wed/bl/Qphilippines-attacks.Rcn4_DOE.html (last visited Dec 23, 2003).

154 "RI interested in interrogating Hambali," *The Jakarta Post*, Aug 17, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030817.@01> (last visited Oct 23, 2003).

155 "Hassan seeks U.S. permission to question Hambali," *The Jakarta Post*, Aug 27, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030827.B02>

156 For example Hambali and al-Ghozi's nationality were doubted by Indonesian authorities as Indonesian as they were using several passports. See: "Police say al-Ghozi is Canadian national," *The Jakarta Post*, Jan 22, 2002 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20020122.G10> (last visited Oct 23, 2003).

157 "Indonesian appeals court reduces sentence of militant leader," *Associated Press*, Dec 1, 2003 available at <http://www.startribune.com/stories/1576/4241535.html> (last visited Dec 23, 2003).

158 "Arrested or disappeared? Families, police at odds," *The Jakarta Post*, Sept 16, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030916.C01> (last visited Oct 23, 2003).

have criticized these police actions as violations of basic human rights.¹⁵⁹ The police denied accusations that it had detained Muslim activists by using the Anti Terrorism Law.¹⁶⁰

The war on terror has relieved external pressure on Indonesian government to respect human rights. Foreign countries like the US are ready to overlook Indonesian's human rights abuses so long the government remains cooperative in the war against terror.

The public in Indonesia has resented international NGOs silence when it comes to human rights abuses of Indonesian nationals abroad suspected of terrorist act. In this sense, the Indonesian public has felt that international NGOs have acted unfairly in being selective over which human rights issues to highlight. While criticizing the Indonesian government's human rights conduct, they are silent when it comes to Indonesians abroad whose human rights are abused.

The negative impact of the war against terror towards human rights has caused the public in Indonesia to question whether human rights are only an instrument to weaken Indonesia as a country, including its government and military.

The war on terror has encouraged abuses of human rights, this time with the blessing of countries who have traditionally been referred to as the 'defender of human rights.' In fact, the international community expects Indonesia to disregard human rights consideration. For instance, Australia announced in August a plan to resume ties with the Indonesian special force, Kopassus, which were broken off in 1999 when the latter was accused of orchestrating mass violence in East Timor.¹⁶¹ Cooperation with Kopassus had been seen as necessary since Kopassus provides Indonesia's main counter-terrorism capability. The steps had received criticism from within Australia.¹⁶² To this end, the Australian Foreign Minister argued that the ties will be qualified and limited.¹⁶³ However, the cooperation was put on hold as

159 "Police arrests human rights," *The Jakarta Post*, Sept 17, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030917.G04> (last visited Oct 23, 2003). *Id.*

160 "Police meet Muslim leaders over arrests of activists," *The Jakarta Post*, Sept 20, 2003 available at <http://www.thejakartapost.com/Archives/ArchivesDet2.asp?FileID=20030920.@01> (last visited Oct 23, 2003).

161 "Canberra renews Kopassus ties," *CNN.com*, Aug 11, 2003 available at <http://edition.cnn.com/2003/WORLD/asiapcf/auspac/08/10/australia.kopassus/> (last visited Oct 24, 2003).

162 "Aust Defence-Kopassus ties questioned," *ABC Online*, Aug 1, 2003 available at <http://www.abc.net.au/worldtoday/content/2003/s915466.htm> (last visited Oct 24, 2003).

163 "Kopassus cooperation 'limited': Downer," *ABC News online*, Aug 13, 2003 available at <http://www.abc.net.au/news/newsitems/s922681.htm> (last visited Oct 24, 2003).

Kopassus were reluctant to undertake the joint exercise as its Chief was refused entry into Australia.¹⁶⁴

The above assessment leads to a conclusion that human rights protection and promotion in Indonesia can be undermined if powerful states are willing to turn a blind eye on abuses in return for securing co-operation with the Indonesian government on other pressing matters. Hence, foreign governments do not have the sincere intention of upholding human rights in Indonesia. Rather, human rights issues have been used by foreign governments as a political instrument against Indonesia.

CONCLUSION

From 1998–2003, the protection and promotion of human rights in Indonesia did not meet hopeful expectations. The downfall of Soeharto did not free Indonesia from human rights abuses. The efforts of successive administrations to improve the legal framework and to establish institutions have had minimal effect in contributing to the protection and promotion of human rights. In addition, recent negative public perception towards the excesses associated with promoting human rights at the expense of public goods like security have further hampered the human rights cause.

The main cause of this failure is the fact that many are unaware of the fact that Indonesia is undergoing a transitional period and as such, a bottom-up or grassroots approach towards promoting human rights is imperative. The conventional top-down approach of governance, improving the legal infrastructure, even establishing new institutions, alone is not a panacea to human rights abuses.

164 "Kopassus chief's trip to Perth vetoed," *The Age*, Oct 13, 2003 available at <http://www.theage.com.au/articles/2003/10/12/1065917273113.html?from=storyrhs> (last visited Oct 24, 2003). Also: "Kerjasama Kopassus-SAS Australia Dibatalkan Sampai Waktu Tidak Terbatas (Cooperation Kopassus-Australia's SAS Delayed for Unlimited Period)," *Republika Online*, Oct 16, 2003 available at <http://www.republika.co.id/berita/online/2003/10/16/143277.shtm> (last visited Oct 24, 2003).