

INDONESIA



INDONESIA

Deasy Simandjuntak

Part 1: Overview of Indonesia

A. Country Background

Indonesia Facts	
Geographical size	5,180,053 sq km
Population	267.21 million ¹
Ethnic breakdown ²	Main ethnic groups: Javanese (40.05%) Sundanese (15.50%) Malay (3.70%) Batak (3.58%)
Official language	Indonesian (Bahasa Indonesia)
Literacy rate (aged 15 and above)	95.38% ³
Life expectancy	69.19 ⁴
GDP	US\$1015.54 billion ⁵ (per capita US\$4,130.7) ⁶
Government	A unitary constitutional republic with three branches of government (executive, legislative, and judicial). Elected for a 5 year term, the President appoints all members of the cabinet. The People's Consultative Assembly consists of the People's Representative Council and the Regional Representative Council. Supreme Court judges are appointed by the President. The Constitutional Court may review laws for their constitutionality and resolve disputes over the power of state institutions.
Political and social situation	The post-Soeharto democratization era is marked by decentralization with local governments being given more autonomy. Direct elections were also introduced for the posts of president, vice-president, governors, and district-heads.

¹ Data from 2018. 'Indonesia population 2018' World Population Review, available at <http://worldpopulationreview.com/countries/indonesia-population/>, accessed on 12 August 2018.

² Data from 2015. Based on the 2010 Population Census. Ananta, Aris, et al. *Demography of Indonesia's Ethnicity*, Institute of Southeast Asian Studies, 2015, at 78.

³ Data from 2016. 'Literacy rate, adult total (% of people aged 15 and above)' The World Bank, available at <https://data.worldbank.org/indicator/SE.ADT.LITR.ZS?locations=ID&view=chart>, accessed on 12 August 2018.

⁴ Data from 2016. 'Life expectancy at birth, total (years): Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=ID&view=chart>, accessed on 12 August 2018.

⁵ Data from 2017. 'GDP (current US\$): Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ID&view=chart>, accessed on 12 August 2018.

⁶ Data from 2017. 'GDP per capita: Indonesia' The World Bank, available at <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=ID&view=chart>, accessed on 12 August 2018.

A transcontinental unitary state located between the Indian and Pacific oceans and sprawling over more than 17,000 islands, the Republic of Indonesia is the world's largest archipelagic nation. In terms of combined sea and land area, it is the world's seventh largest country, with inland waters comprising 2/3 of its total geographical size. It is comprised of six main islands, namely Java, Sumatra, Kalimantan (which borders Malaysia in the north), Sulawesi, and Papua (which borders Papua New Guinea in the east). Java, the home of 57% of Indonesia's total population, is the most populous island. In 2017, partly as a response to the growing tension in the South China Sea, Indonesia counted and registered the 17,504 islands under its sovereignty with the United Nations.⁷ To further assert its sovereignty and protect its offshore natural resources, to China's dismay, Indonesia also renamed the exclusive economic zone (EEZ) area bordering the South China Sea as the North Natuna Sea – the sea overlaps with China's so-called “nine-dash-line.”⁸

Indonesia is home to more than 300 ethnic groups of which the most numerous are Javanese, Sundanese, Malay, Batak, and Madurese. Bahasa Indonesia, a standardized register of Malay, is the official language that is used in formal education, governance, and mass media. In addition to the official language, most Indonesians are also fluent in any of the more than 700 indigenous languages that are mostly used in local communities and at home.

With an economic growth rate of around 5% under President Joko Widodo (Jokowi)'s government, the country has been able to prioritize its infrastructure development which had been neglected in the “New Order” authoritarian era of Soeharto, resulting in wide economic inequality between Java and the outer regions. The largest economy in Southeast Asia and the world's tenth largest economy in terms of purchasing power parity, Indonesia relies on its domestic market, government spending, and its state-owned enterprises. Its largest sectors are industry, agriculture, and service. Its GDP per capita, although still below the world average, increased from US\$780 in 2000 to US\$4,130 in 2018, a rise of 529.5%. The country's unemployment rate stands at 5.13%, a decrease from 5.50% in 2017. Despite such improvement, 10% of its 267 million population still live below the national poverty line. In UNDP's ‘2016 Human Development Index,’ Indonesia ranked 113 out of 188 countries or in the medium category, lower than both Malaysia (ranked 59) and Thailand (ranked 87).

System of governance

Post-Soeharto Indonesia, which began in 1998, was marked by democratization and decentralization. In the democratization period, many new political parties were

⁷ ‘16,000 islands registered at UN’ The Jakarta Post, 21 August 2017, available at <http://www.thejakartapost.com/news/2017August/21/16000-indonesian-islands-registered-at-un.html>, accessed on 13 August 2018.

⁸ Connolly, AL, ‘Indonesia's new North Natuna Sea: What's in a name?’ The Interpreter, 19 July 2017, available at <https://www.lowyinstitute.org/the-interpreter/indonesia-s-new-north-natuna-sea-what-s-name>, accessed on 13 August 2018.

established, indicating people's aspiration to participate in more open and representative politics. Among them was the National Awakening Party (PKB) established by Abdurrahman Wahid, a prominent Islamic scholar and cleric who also led Indonesia's largest moderate organization, the Nahdlatul Ulama (NU). Wahid became Indonesia's fourth president in 1999-2000. Another new party was the nationalist Democratic Party for Struggle (PDI-P) which was led by former President Soekarno's daughter, Megawati Soekarnoputri. She became the country's fifth president in 2001-2004. Following establishment of the Democratic Party (in 2001), retired general, Soesilo Bambang Yudhoyono, became Indonesia's sixth and first directly-elected president in 2004.

Currently, 12 political parties are represented in Parliament. Having divided themselves into coalitions, the largest, led by PDI-P, supports President Jokowi's government. Gerindra Party (nationalist) and the Prosperous Justice Party (Islamist) comprise the main opposition. Presently, Soesilo Bambang Yudhoyono's Democratic Party holds the balance of power.

Decentralization also resulted in the direct elections of the president/vice-president, governors, and district-heads. In addition, regional autonomy allowed provinces and districts to govern administrative territories, create local ordinances, and manage their own finances. However, the central government still assists in local budgeting by the use of inter-governmental transfers.

Political and social situation

2016-2017 marked a crucial juncture in Indonesian politics. Some of the most important events were: the imprisonment of a former Jakarta governor for "blasphemy;" the involvement of the speaker of parliament in a major graft case; the attacks on the Corruption Eradication Commission (KPK); the ratification of a new law on mass organizations; and finally, a string of terrorist attacks.

Imprisonment of former governor for blasphemy. The two rounds of Jakarta's gubernatorial elections in 2016 and 2017 were overwhelmingly marked by rancorous sectarian campaigning launched by Islamist groups such as the Islamic Defender Front (FPI) which stood against incumbent Chinese-Christian governor, Basuki Tjahaja Purnama (also known as Ahok). FPI has long been known for discriminatory tactics such as forcing the closure and ransacking of minority religions' places of worship. Despite Ahok's relatively successful government programs and 'clean' image,⁹ a massive mobilization calling for his imprisonment on blasphemy charges ultimately prevented his re-election. Accordingly, in May 2017, under Art 156(a) of the Criminal Code, the

⁹ Simandjuntak, D, 'Faced with a troubling blasphemy verdict, Ahok at least left Jakarta a legacy of reform' Channel News Asia, 11 May 2017, available at <https://www.channelnewsasia.com/news/asia/commentary-ahok-left-jakarta-legacy-of-reform-8836708>, accessed on 13 August 2018.

North Jakarta court sentenced Ahok to 2 years' imprisonment. To many observers, the former governor's electoral defeat and subsequent imprisonment mark the triumph of sectarianism in Indonesian politics, highlighting the frailty of its legal system against pressure from Islamist groups.¹⁰

The many scandals of Setya Novanto. Speaker of Parliament, Setya Novanto, resigned in December 2015 due to alleged misuse of the names of President Jokowi and Vice-President Jusuf Kalla to extort a 20% stake from Freeport, the US mining giant operating in West Papua. Despite this, in November 2016, to the dismay of many, he was reappointed as Speaker. In the same month, Novanto was examined by anti-graft agency, KPK, as a witness in a major case involving electronic identity cards, or E-KTP. Incurring state losses of IDR2.3 trillion (US\$157.4 million), the E-KTP case is one of the largest graft cases ever handled by the agency.¹¹ In January 2017, fourteen people, many of whom were members of parliament, returned a total amount of IDR30 billion (US\$2.05 million) which they had allegedly received from the project. In July 2017, Novanto became a suspect in the mega graft-case, but was cleared in September after winning a pretrial motion challenging his suspect status.¹² After repeatedly missing KPK's summons and dodging arrest by engineering an accident and hospital internment, Novanto was finally charged in December 2017 for allegedly receiving IDR100.4 trillion (US\$7.3 million) in kickbacks from funds earmarked for the E-KTP project.¹³ He was sentenced to 15 years' imprisonment in April 2018.¹⁴

Attacks on the KPK. However, KPK's pursuit of the co-conspirators in the E-KTP case has opened a Pandora's box. In retaliation, Parliament mounted an inquiry against the anti-graft agency under Law No 17/2014 in July 2017 by requesting an audit of

¹⁰ Cochrane, J, "Rot at the core": Blasphemy verdict in Indonesia dismays legal experts' The New York Times, 11 May 2017, available at <https://www.nytimes.com/2017/05/11/world/asia/indonesia-blasphemy-governor-jakarta-ahok.html>, accessed on 13 August 2018.

¹¹ 'E-KTP case goes to trial' The Jakarta Post, 5 March 2017, available at <http://www.thejakartapost.com/news/2017/03/05/e-ktp-case-goes-to-trial.html>, accessed on 13 August 2018. Prior to this, another KPK case involved the Hambalang Sport Centre which incurred IDR1.2 trillion (US\$48.28 million) in state losses. See also, 'BPK: Kerugian negara proyek Hambalang Rp706 miliar' CNN Indonesia, 31 March 2016, available at <https://www.cnnindonesia.com/nasional/20160330205132-12-120654/bpk-kerugian-negara-proyek-hambalang-rp706-miliar>; and the procurement of driving licence simulators which squandered IDR128 billion (US\$8.4 million) of state money in 2012: 'Corruption SIM simulator, IDR121.8 billion loss country' [in Indonesian], Tempo.co, 19 July 2013, available at <https://nasional.tempo.co/read/498017/korupsi-simulator-sim-negara-rugi-rp-1218-miliar>, both accessed on 13 August 2018.

¹² 'Setya cleared as suspect after winning pretrial motion against KPK' The Jakarta Post, 29 September 2017, available at <http://www.thejakartapost.com/news/2017/09/29/setya-cleared-as-suspect-after-winning-pretrial-motion-against-kpk.html>, accessed on 13 August 2018.

¹³ 'Former Indonesian Parliament Speaker, Setya Novanto, charged for taking kickbacks' The Straits Times, 13 December 2017, available at <https://www.straitstimes.com/asia/se-asia/indonesian-speaker-setya-novantos-corruption-trial-delayed-by-his-diarrhoea>, accessed on 13 August 2018.

¹⁴ 'Jail for top Indonesian politician 'turning point' in war on graft, say observers' The Straits Times, 27 April 2018, available at <https://www.straitstimes.com/asia/se-asia/jail-for-top-indonesia-politician-turning-point-in-war-on-graft-say-observers>, accessed on 13 August 2018.

its budget and threatening to reduce its 2018 allocation of the state budget.¹⁵ KPK also had to disclose documents related to the E-KTP probe. Significantly, this was not Parliament's first attempt to curb the anti-graft agency as it had pushed to revise the 2002 anti-graft law in 2010. This was postponed due to public protests.

Upon mounting its inquiry in 2017, Parliament therefore claimed the investigation could form a basis from which to revise the 2002 anti-graft law. Protests by 132 legal experts led by former Chief Justice of the Constitutional Court, Mahfud MD, could not even deter it. As a result, in February 2018, Parliament made several recommendations including the creation of an independent body to monitor KPK's activities. The anti-graft agency "respected" yet rejected some of the recommendations, including the call for a monitoring body.¹⁶

Law on mass organizations. In October 2017, Parliament passed a stricter law on mass organizations (Law No 16/2017, amending Law No 17/2013). Under the original decree, Government Regulation No 2/2017 had allowed the government to disband groups opposing the state ideology of Pancasila. The new law was signed by President Jokowi in July, two months after Islamist groups succeeded in their campaign to imprison former Jakarta governor, Basuki Tjahaja Purnama. As such, the government was able to disband Hizbut Tahrir Indonesia, a local branch of the international Islamist group which aimed to establish a caliphate.¹⁷ The law expands the power of the government in three ways. First, it gives the government sole power to assess whether a civil society organization (CSO) opposes Pancasila. While Law No 17/2013 identified atheism, communism, and Marxism-Leninism as ideologies contradicting Pancasila, the new Law No 16/2017 added "other ideologies which aim to challenge Pancasila and the 1945 Constitution" to the list (Explanation to Art 4(c)).

Second, Law No 16/2017 drops the need for court approval before the government may disband an offending organization. By contrast, the 2013 law had required the government to issue multiple warnings, suspend subsidies, and impose a 6-month freeze on the organization's activities, among other measures, before it could revoke its legal status with the approval of the court. The new legislation only requires the Minister of Law and Human Rights to issue one written warning, after which he can

¹⁵ Simandjuntak, D, 'The Indonesian House of Representatives confronts the Corruption Eradication Commission (KTK): Will it blink?' ISEAS Commentary, 7 July 2017, available at <https://www.iseas.edu.sg/medias/commentaries/item/5708-the-indonesian-house-of-representatives-confronts-the-corruption-eradication-commission-kpk-will-it-blink-a-commentary-by-deasy-simandjuntak>, accessed on 23 August 2018.

¹⁶ 'KPK tolak rekomendasi pansus soal pembentukan lembaga pengawas' Liputan 6, 14 February 2018, available at <https://www.liputan6.com/news/read/3287004/kpk-tolak-rekomendasi-pansus-soal-pembentukan-lembaga-pengawas>, accessed on 13 August 2018.

¹⁷ Simandjuntak, D, 'Jokowi's ban on radical groups and Pancasila's uncomfortable past' Channel News Asia, 22 July 2017, available at <https://www.channelnewsasia.com/news/asia/commentary-jokowi-s-ban-on-radical-groups-and-pancasila-s-9047670>, accessed on 13 August 2018.

subsequently freeze the organization's activities for seven days, and move to revoke its legal status should it fail to comply with the suspension (Art 62).

Third, while the 2013 law ruled that members of the organization involved in criminal or civil offences be prosecuted under existing laws, the new law introduces criminal penalties for members committing acts of violence, vigilantism, vandalism, or hostility (Art 82A). In addition, it broadly defines acts of hostility as any speech, statement, attitude, or aspiration, conveyed either through verbal or written forms, via electronic or non-electronic media, that stirs up hate against a group or a person, including Indonesia's state administration (Explanation to Chapter I: General, at 4). As such, the decree gave rise to many protests. For example, the National Human Rights Commission (Komnas HAM) expressed concern that the decree could be used by the government to restrict freedom of association as regulated by the ICCPR, Law No 15/2005, and Art 29 of the 1945 Constitution.¹⁸

Terrorist attacks. 2016-2017 marked a string of terrorist attacks in the capital city of Jakarta and Samarinda in East Kalimantan. The attacks began in Jakarta in January 2016 when militants reportedly detonated explosives around the area of a Starbucks at a mall in the city centre. A nearby police post was also destroyed. The incident, which killed seven, was claimed by ISIS.¹⁹ The mastermind of the attack was Aman Abdurrahman, the leader of Jamaah Ansharut Daulah, a group linked to ISIS. Aman was sentenced to death in June 2018 for his role in inciting others to commit terrorist attacks.²⁰ Likewise, in September 2016, a bomb was detonated at a church in Samarinda, killing a toddler and injuring three other children.²¹ In May 2017, twin suicide bomb blasts at a bus terminal in Jakarta killed three policemen and wounded dozens. The perpetrator, who was formerly a student of JAD's leader, Aman Abdurrahman, was sentenced to 9 years in April 2018.²²

A more gruesome string of terrorist attacks began in May 2018, when several terrorism convicts in a high-security detention centre in Jakarta staged a riot which killed five

¹⁸ 'Komnas HAM rejects the provision of dissolution of mass organizations' [in Indonesian], VOA, 15 July 2017, available at <https://www.voaindonesia.com/a/komnas-ham-tolak-perppu-pembubaran-ormas/3945435.html>, accessed on 14 August 2018.

¹⁹ 'ISIS officially claims responsibility for Jakarta blasts: Report' The Straits Times, 14 January 2016, available at <https://www.straitstimes.com/asia/se-asia/isis-officially-claims-responsibility-for-jakarta-blasts-report>, accessed on 13 August 2018.

²⁰ 'Indonesian cleric Aman Abdurrahman sentenced to death for inciting terror attacks' The Straits Times, 22 June 2018, available at <https://www.straitstimes.com/asia/se-asia/indonesian-cleric-aman-abdurrahman-sentenced-to-death-for-inciting-terror-attacks>, accessed on 13 August 2018.

²¹ Kwok, Y, 'A terrorist attack at an Indonesian church has killed a toddler and wounded three others' Time, 14 November 2016, available at <http://time.com/4569333/indonesia-terrorism-church-east-kalimantan-attack-children/>, accessed on 13 August 2018.

²² 'Indonesia jails bus terminal mastermind for nine years' Channel News Asia, 9 April 2018, available at <https://www.channelnewsasia.com/news/asia/indonesia-jails-bus-terminal-bombing-mastermind-for-nine-years-10119944>, accessed on 13 August 2018.

policemen. Several days later, suicide bombers in the form of a family (a father, mother, two adult boys, and two girls under twelve years of age) launched concerted attacks at churches in Surabaya, killing 14 and injuring more than 40.²³ This was followed by a bomb blast at Sidoarjo which killed the perpetrating family. Another family suicide bombing took place the next day at Surabaya's police headquarters in which the perpetrators were killed and ten people in the vicinity were injured. In Riau, a failed attempt to bomb a police-headquarters killed one policeman and the four perpetrators.

The attacks precipitated debate on the anti-terrorism law revisions which were proposed in 2016 yet whose deliberation was put on hold following disagreement on the definition of terrorism and the extent of military involvement in combatting it. In May 2018, Parliament finally passed a new anti-terrorism law allowing authorities to make pre-emptive arrests and detain terror suspects longer based on preliminary leads. As with any expansion of state power, there are concerns of potential abuse, such as Art 13(a) regulating hate speech as this could be misused to target critics. Similarly, longer detention times could increase the risk of torture in custody.

Concerns have also been voiced about the involvement of the military in combatting terrorism. To be fair, even before the new law was enacted, the military had already participated in the successful 2016 Tinombala operation in Central Sulawesi which killed Santoso, the leader of East Indonesia Mujahidin (Mujahidin Indonesia Timur or MIT). MIT was an ISIS-affiliated terror group involved in the religious riots of Maluku in 1999-2002 which also repeatedly attacked police headquarters in Poso, Central Sulawesi.²⁴ Some observers are concerned that the law would seal the military's permanent involvement in the sphere of law enforcement. Another risk concerns strengthening military territorial command of specific areas where operations take place over a long period of time. Accordingly, deployment of military personnel and resources may influence state-society relations in such areas, as happened in Aceh and Papua.

B. International Human Rights Commitments and Obligations

As mentioned in a previous edition of this series, Indonesia has ratified most of the international human rights treaties over the course of more than two decades, the earliest being the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984 and the last one being the International Covenant

²³ Simandjuntak, D, 'The Surabaya bombings highlight urgency to ratify the revisions to Indonesia's anti-terrorism law' ISEAS Commentary, 17 May 2018, available at <https://www.iseas.edu.sg/medias/commentaries/item/7615-the-surabaya-bombings-highlight-urgency-to-ratify-the-revisions-to-indonesias-antiterrorism-law-by-deasy-simandjuntak>, accessed on 13 August 2018.

²⁴ Zenn, J, 'East Indonesian Islamist militants expand focus and area of operations' Terrorism Monitor XI, 11 May 2013, available at https://jamestown.org/wp-content/uploads/2013/05/TM_011_Issue11_04.pdf?x87069, accessed on 23 August 2018.

on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) in 2012 (see Table 1 below). However, it has not accepted any of the individual complaints procedures or most inquiry procedures attached to the conventions – with the exception of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT).

Table 1: Ratification Status of International Instruments – Indonesia²⁵

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)	23 Oct 1985	28 Oct 1998
Optional Protocol of the Convention against Torture		
International Covenant on Civil and Political Rights (ICCPR)		23 Feb 2006 (a)
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		
Convention for the Protection of All Persons from Enforced Disappearance (CED)	27 Sep 2010	
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	29 July 1980	13 Sep 1984
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)		25 Jun 1999 (a)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		23 Feb 2006 (a)
International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)	22 Sep 2004	31 May 2012
Convention on the Rights of the Child (CRC)	26 Jan 1990	5 Sep 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	24 Sep 2001	24 Sep 2012
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	24 Sep 2001	24 Sep 2012

²⁵ ‘Ratification’ status for Indonesia’ United Nations Human Rights Office of the High Commissioner, available at https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx, accessed on 14 August 2018.

Treaty	Signature Date	Ratification Date, Accession (a), Succession (d) Date
Convention on the Rights of Persons with Disabilities (CPRD)	30 Mar 2007	30 Nov 2011

Also mentioned in a previous edition, Indonesia introduced several national laws to protect human rights and enforce international obligations, including the Human Rights Act (Law No 39/1999), which played a crucial role in the creation of the National Commission on Human Rights (Komnas HAM). However, some consider it fails to adequately protect human rights defenders despite containing provisions on them (Chapter VIII, ss.100-103).²⁶

C. Recent Court Cases Relating to Human Rights

In July, the Constitutional Court rejected a judicial review petition to strike down the blasphemy law. This petition was filed by followers of the Ahmadiyah group who claimed that the law violated their constitutional right to freedom of religion. The court ruled that the blasphemy law did not violate the Constitution and that complaints were “merely a matter of implementation and not a matter of the constitutionality of the law’s norms.”²⁷

Part 2: Outstanding Human Rights Issues

A. Attacks on Freedom of Expression

Although Art 28 of the 1945 Constitution guarantees freedom of expression, exercise of such freedom should respect the human rights of others and be in accordance with the law so as to acknowledge and respect the rights and freedom of others (Explanation to Art 28J). However, this restriction should not contradict provisions of international human rights instruments such as the ICCPR.

Mass organizations. In July 2017, President Jokowi issued a decree on mass organization, which was later passed into Law No 16/2017. The Legal Aid Institute and its fifteen branches across the archipelago launched an immediate stern protest, highlighting six problems surrounding the decree.²⁸ First, that its issuance did not fulfil the necessary conditions of, e.g. “an urgent situation” requiring a quick solution to

²⁶ Wiratraman, HP, ‘Indonesia’ in Sharom, A (ed), *Human Rights Outlook in Southeast Asia 2016*, Thailand: SHAPE-SEA, 2017, at 20.

²⁷ ‘Blasphemy law’s victory’ The Jakarta Post, 27 July 2018, available at <http://www.thejakartapost.com/academia/2018/07/27/blasphemy-laws-victory.html>, accessed on 14 August 2018.

²⁸ ‘LBH se-Indonesia Sebut Perppu Ormas Mengandung 6 Kesalahan’ Hukum Online.com, 14 July 2017, available at <http://www.hukumonline.com/berita/baca/lt596751c1608b5/lbh-se-indonesia-sebut-perppu-ormas-mengandung-6-kesalahan>, accessed on 13 August 2018.

a legal problem or “legal vacuum,” due to an absence of applicable law which cannot be solved by a normal procedure of law-making, as stipulated in the decision of Constitutional Court No 38/PUU-VII/2009.

Second, the decree restricts freedom of association, which is one of the citizen rights stipulated in the 1945 Constitution and other laws, and which should be protected by the government. Article 22(2) of the ICCPR stipulates that “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”²⁹

Third, the decree neglects legal process in the disbanding of offending organizations. Fourth, the decree introduces “religious blasphemy” (penistaan agama) in the penal provisions despite the absence of such terminology in either Art 156(a) of the Criminal Code or Law No 1/PNPS/1965 on the “desecration of religion” (penodaan agama) from which Art 156(a) is derived. Fifth, the decree could perpetuate the misuse of laws by intolerant and radical groups. Sixth, the decree increases jail-terms for the misuse and desecration of religion offences from a maximum of five years to a minimum of five years and a maximum of twenty years.

Hate speech law. According to the Institute for Policy Research and Advocacy (ELSAM), the article on online defamation and hate speech in Law No 11/2008 on Electronic Information and Transactions (ITE), amended into Law No 19/2016, has been used to restrict freedom of expression. Throughout 2017, ELSAM found at least 87 reports of the ITE law being used thus, indicating numerous breaches of the right to free speech.³⁰

In December 2016, on the morning of the ‘212’ Islamist mobilization against former Jakarta governor, Ahok, the police arrested 11 people, charging eight with planning to commit treason, including retired Major General Kivlan Zen and Megawati Soekarnoputri’s sister, Sukmawati Soekarnoputri, two under the ITE Law, and one for defamation. The police claimed they were inciting the crowd to call for the impeachment of President Jokowi by marching toward Parliament in order to occupy the building.³¹ Following a police investigation, all the suspects were released.

²⁹ ‘International Covenant on Civil and Political Rights’ OHCHR, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, accessed on 23 August 2018.

³⁰ ‘Membesarnya potensi ancaman terhadap kebebasan sipil dan memudarnya peran negara dalam perlindungan HAM’ Human Rights Report 2017, ELSAM.

³¹ ‘Polri duga sejumlah orang ingin belokkan aksi 212 jadi aksi makar’ DW, available at <https://www.dw.com/id/polri-duga-sejumlah-orang-ingin-belokkan-aksi-212-jadi-aksi-makar/a-36639736>, accessed on 14 August 2018.

In September 2017, the Indonesian Democratic Party of Struggle (PDI-P) reported journalist, Dandhy Dwi Laksono, for online defamation. The charge involved a Facebook post in which he intimated that PDI-P chairwoman and former president, Megawati Sukarnoputri, had mishandled conflicts in Papua by claiming that arrests of Papua residents had increased since Megawati regained power (through the victory of President Jokowi).³²

Blasphemy. In March 2017, the East Jakarta court sentenced three leaders of banned religion, Gafatar, to jail for blasphemy. The group blends Islamic, Christian, and Jewish doctrine.³³ In 2016, a mob ransacked and burnt the residence of followers of this group. Likewise, in May 2017, the North Jakarta District court sentenced former Chinese-Christian governor, Basuki Tjahaja Purnama, to two years in jail for blasphemy. The five-month trial took place during a gubernatorial election, in which the incumbent ran against a candidate supported by Islamist groups. The case stemmed from an incident in September 2016 when the governor cited verses from the Quran, thereby angering some conservative Islamic leaders.³⁴

The 1965-1966 massacres. In August 2017, police forced the cancellation of a public workshop for planning events related to the 1965-66 massacres (in which military-backed militias allegedly killed an estimated 500,000-1 million people as suspected communists or members of the banned Communist Party of Indonesia (PKI)). Similarly, in September 2017, authorities prevented a seminar about the massacres hosted by the Jakarta Legal Aid Institute due to a lack of the requisite permits. The organizing committee admitted the offence, claiming they believed permits to be unnecessary as the planned event had been a closed seminar attended by less than 50 people.³⁵ Media reports indicated that hard-line groups in the mob had also disrupted events.³⁶ Significantly, the disruptions took place in the aftermath of President Jokowi's statement that he would "clobber" the Communist Party of Indonesia in response to concerns about the party's possible resurrection.³⁷

³² 'Dandhy dwi laksono dipolisikan oleh repdem' *tirto.id*, 6 September 2017, available at <https://tirto.id/dandhy-dwi-laksono-dipolisikan-oleh-repdem-cv7H>, accessed on 14 August 2018.

³³ 'It was stated that the religion of the ex-Gafatar figure was sentenced to 3-5 years' BBC, 7 March 2017, available at <https://www.bbc.com/indonesia/indonesia-39189909>, accessed on 14 August 2018.

³⁴ Lamb, K, 'Jakarta governor Ahok sentenced to two years in prison for blasphemy' *The Guardian*, 9 May 2017, available at <https://www.theguardian.com/world/2017/may/09/jakarta-governor-ahok-found-guilty-of-blasphemy-jailed-for-two-years>, accessed on 14 August 2018.

³⁵ 'The police and mass organizations prevented the 1965 seminar at LBH Jakarta' BBC, 16 September 2017, available at <https://www.bbc.com/indonesia/indonesia-41290897>, accessed on 14 May 2018.

³⁶ 'The reason for the police disbanding the 1965 seminar at LBH Jakarta' [in Indonesian], *Rappler*, 17 September 2017, available at <https://www.rappler.com/indonesia/berita/182427-alasan-polisi-bubarkan-seminar-1965>, accessed on 14 August 2018.

³⁷ 'Jokowi: Show me where the PKI is, I will break!' [in Indonesian], *detik news*, available at <https://news.detik.com/berita/3519225/jokowi-tunjukkan-pada-saya-mana-pki-saya-akan-gebuk>, accessed on 14 August 2018.

B. Attacks on Sexual Orientation Rights

While homosexuality is not illegal at the national level, many local regulations across the country criminalize same-sex sexual activity. For example, in South Sumatra province a local law on “eradication of immorality” categorizes same-sex sexual activity as immoral akin to prostitution, gambling, and the consumption of alcohol. Likewise, in Padang Panjang municipality, West Sumatra province, a local ordinance was passed to prevent, eradicate, and enforce action against “social diseases,” which again had the effect of criminalizing homosexuals and lesbians.³⁸

Similarly, Art 63 of Aceh province’s Sharia Penal Code criminalizes homosexual activities which are punishable by up to 100 lashes, a 100-month jail term, or a fine of up to 1,000 grams of pure gold. In May, two gay men, aged 20 and 23, were found in bed together by people who entered their home. The Sharia court of Banda Aceh sentenced the men to 83 strokes of the cane.³⁹ This constituted the first instance of individuals being punished for their sexuality and was also the first time gay men had been caned in Indonesia. Indeed, research conducted by LGBTIQ organizations, Arus Pelangi and Outright Action International Plan, from October 2015-March 2016 indicated that 56% of LGBT people had experienced violence against their bodies or property. A researcher noted that positive trends at the international level had not improved the situation in Indonesia.⁴⁰ In addition to violence, this community also experiences discrimination at work. Around 80% of the group were of working age, yet only 24% worked in the formal sector; 45% could only find odd jobs. The research also showed that only 38% of the group had an income of IDR1-2.5 million (US\$69-171) per month and 31% earned less than IDR1 million (US\$69) a month. Meanwhile, 41% did not even have health insurance.

Transgenders also experience multiple problems relating to the procurement or use of identity-cards which are vital to access public services, seek employment, own property, etc. Aside from basic personal data, the cards also contain such information as gender, religion, employment, and address. As such, transgenders are forced to choose between male or female identities which may not coincide with their personal preferences. In addition, due to the difference between their physical appearance and the data on their ID cards, or between data in different personal documents, their ID cards have, at times, been deemed invalid. As a result, many transgenders do not even own ID cards.⁴¹

³⁸ ‘Stop homophobia in Indonesia from now on’ [in Indonesian], Kompas.com, 17 May 2015, available at <https://megapolitan.kompas.com/read/2015/05/17/13460721/Stop.Homofobia.di.Indonesia.Mulai.Sekarang>, accessed on 14 August 2018.

³⁹ ‘First in Aceh, gay couples were punished with 85 lashes’ [in Indonesian], BBC, 17 May 2017, available at <https://www.bbc.com/indonesia/indonesia-39944910>, accessed on 14 August 2018.

⁴⁰ ‘Researchers find 2016 published 40 regulations on violating the rights of women and LGBTIQ’ [in Indonesian], KBR, 12 January 2017, available at http://kbr.id/nasional/01-2017/peneliti_temukan_2016_terbit_40_perda_langgar_hak_perempuan_dan_lgbtiq/88116.html, accessed on 14 August 2018.

⁴¹ Siti Kurnia Widiastuti, Farsijana Adeney-Risakotta, and Siti Syamsiyatun, *Discourses and Practices of Muslim Transgenders in Yogyakarta and Central Java, Indonesia*, dissertation, Universitas Gadjah Mada, 2017.

C. Blasphemy Law

In September 2017, Indonesia rejected 58 human rights recommendations by UN member countries to improve its human rights record as part of its Universal Periodic Review before the UN Human Rights Council. Recommendations which were rejected included demands to scrap the blasphemy law and the death penalty.

Parliament is also deliberating on a bill to protect religious freedom. While some praise the government's aspiration to protect a citizen's right to practice his/her religion, others are wary due to the formulation of some of its articles. First, it does not scrap the blasphemy law. Article 156(a) of the Criminal Code defines blasphemy as "showing hostility, abuse, or desecration" toward a religion. The Bill expands this into seven criteria. Article 31 sentences those persuading others to convert from their original religion to five years' imprisonment. Article 32 penalizes those who "purposefully mak[e] noises near places of worship where people are conducting religious ceremonies" to six months in jail. Likewise, Art 34 punishes those "illegally tainting, destroying or burning a holy book, a worship house, or ritual tools" with five years' imprisonment. There are concerns these articles could be used by hard-line groups to pressure the court to prosecute religious minorities.

D. Criminal Code Bill

Currently, Parliament is deliberating the Criminal Code Bill (Kitab Undang-Undang Hukum Pidana) to update the 100-year-old law. Both the President and Parliament have reiterated a need to pass the Bill before the 2019 election. However, law-makers have been unable to reach consensus on two important articles.

Criminalization of couples who are not legally married. Article 495 of the current Criminal Code criminalizes same-sex relationships involving individuals under 18 years old. The new Bill expands this provision to include consensual same-sex relationships between adults. Such an offence will incur a prison-term of up to 9 years. In addition, Art 488 will criminalize co-habitation without legal marriage, incurring imprisonment of up to 1 year or a fine of up to IDR50 million (US\$3,424). Concerns have been voiced over people who either cannot afford to get married or whose marriages are not recognized, such as those involving indigenous communities. In addition, it is possible the proposed law could increase the likelihood of early marriages which could result in girls leaving education at a young age, early pregnancies which could be harmful to both mother and baby, and economic difficulties.

Defamation of the president and vice president. Under Arts 262, 263, and 264, defamation is punishable by up to five years' imprisonment and a fine of up to IDR500 million (US\$34,030). A similar provision in the existing Criminal Code was revoked in 2006 by the Constitutional Court as it was deemed to create legal uncertainty. However, it was

reintroduced in 2015. The article is contrary to the principle of equality before the law and may well restrict freedom of expression.

E. Papua and West Papua

In March, the government allowed a visit to Papua by Dainius Puras, the UN Special Rapporteur on the right to health, easing its tight control on visits by foreign observers. However, foreign journalists seeking to report from Papua continue to face problems and deportation even after Jokowi's May 2015 commitment to reduce restrictions.⁴² For example, in March, authorities deported French journalists from Timika while in May, Japanese journalists were deported from Wamena. However, on a more hopeful note, in September, a police ethics panel found four police officers guilty of "improper conduct" for deliberately firing on Papuan protesters in Deiyai district. They were demoted, relocated, and obliged to make public apologies.⁴³

F. Rohingya Crisis

In July, the government took the initiative of providing humanitarian aid to ethnic Rohingya refugees. President Jokowi stated that he deplored the violence against the Rohingya and saw a need for action, not merely statements of condemnation.⁴⁴ As such, the President sent Foreign Minister, Retno Marsudi, to discuss the situation with Myanmar State Counsellor, Aung San Suu Kyi.

Part 3: Conclusion

Throughout 2017, human rights issues were prominently interlinked with the political interests of various groups. This was particularly evident in the case of Basuki Tjahaja Purnama, a former Chinese-Christian governor of Jakarta, who failed to win an election due to his double-minority background. Thus, the Islamists succeeded in using blasphemy to dispatch a political rival, first, by preventing his re-election, and second, by pressurizing the court to imprison him. As such, the case paved the way for sectarianism in Indonesia's mainstream politics, triggering the government to retaliate by passing a new Law on Mass Organization allowing it to ban organizations deemed to oppose Pancasila and the Constitution. As a result, the government was able to ban the Islamist group, HTI. While the situation also prompted deliberation of a new bill on the "protection of religious rights," it is unfortunate that the blasphemy law will

⁴² 'Indonesia's 'opening' of Papua still needs to bridge the gap between reality and rhetoric' The Conversation, 17 November 2015, available at <https://theconversation.com/indonesias-opening-of-papua-still-needs-to-bridge-the-gap-between-reality-and-rhetoric-50399>, accessed on 14 August 2018.

⁴³ 'Penembakan di deiyai, empat polisi divonis minta maaf' CNN Indonesia, 31 August 2017, available at <https://www.cnnindonesia.com/nasional/20170831162855-12-238698/penembakan-di-deiyai-empat-polisi-divonis-minta-maaf>, accessed on 14 August 2018.

⁴⁴ Read more at: 'Indonesian President Jokowi deplores violence against Rohingya' Channel News Asia, 4 September 2017, available at <https://www.channelnewsasia.com/news/asia/indonesian-president-jokowi-deplores-violence-against-rohingya-9182930>, accessed on 14 August 2018.

not be scrapped. Further, Indonesia rejected 58 recommendations from UN members to improve its human rights record by, for example, repealing the blasphemy law and providing better legal protection to LGBT people. Meanwhile the 2016-2018 terrorist attacks hastened deliberation of an anti-terrorism law. However, the possibility of direct military involvement in counterterrorism operations is not universally supported with many objecting to the military's greater role in law enforcement.