



ARTICLE 19 Submission on Freedom of Expression in Indonesia

Universal Periodic Review Process

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Indonesia has seen a number of positive developments in the area of freedom of expression in the past few years including decriminalisation of some defamation provisions and a decrease in incidents of violence against journalists. However, defamation continues to exert a considerable chilling effect on freedom of expression, as do attacks on journalists. New broadcasting legislation also undermines the right to freedom of expression, while the right to information is still not guaranteed by law.

1) Defamation

Defamation remains a criminal offence in Indonesia. In the past twelve months, three rulings have resulted in a victory for freedom of expression in Indonesia. First, on 9 February 2006, the Supreme Court overturned the criminal defamation conviction of *Tempo* magazine's former editor-in-chief, Bambang Harymurti, on the basis that in cases involving the media, those complaining of defamation should first take advantage of remedies provided through the Press Law, which does not envisage criminal sanctions. Second, on 6 December 2006, the Constitutional Court annulled Articles 134, 136 and 137 of the Criminal Code, which provided special protection to the President and Vice-President. Finally, on 17 July 2007, the Indonesian Constitutional Court ruled that Articles 154 and 155 of the Penal Code, which criminalise defamation against the government, are unconstitutional and therefore void.

Despite these positive steps, both civil and criminal defamation laws are still being used as a tool for silencing dissenting voices. Between 2003 and April 2007, 41 defamation cases were filed against the country's media, threatening potential sentences of imprisonment, heavy fines and sometimes hugely disproportionate damage awards. In only six of these, or approximately 14 per cent, was the Press Law applied. In a severe setback for freedom of expression, the Indonesian Supreme Court in September 2007 ruled in favour of former dictator Suharto in a defamation case against *Time* magazine for their May 1999 article, which reported on the US\$15 billion fortune he and his family had amassed during his 32 years in power. *Time* was ordered to pay damages of US\$106 million and publish an apology. The magazine has pledged to appeal against the decision.

2) Violence Against Journalists

Violence against journalists in Indonesia has declined in recent years, probably in part due to the signing of the Aceh peace accord in 2005, following which the media in Aceh have suffered fewer attacks at the hands of both the security forces and the separatists.

Nevertheless, the level of violence against journalists remains unacceptably high. Between August 2006 and August 2007, the Alliance of Independent Journalists (AJI) recorded 58 cases of violence against journalists, an increase from 43 cases the year before. The assaults vary from verbal attacks and intimidation to physical harassment and, in some cases, murder. The murder in April 2006 of Herliyanto, a freelance journalist working for *Delta Pos*, apparently in reaction to his reporting on corruption, was the last killing of a journalist for his or her work.

Protests or attacks by mobs against the media or specific journalists because of anger about their reporting is also a common problem in Indonesia. Of the 58 cases noted above, the largest proportion – some fifteen – were committed by mobs. In April 2006, for example, a mob attacked the Jakarta offices of the newly launched *Playboy Indonesia* magazine, forcing the publication to move its offices to Bali. The government bowed to public pressure and took the magazine's editor-in-chief, Mr Ernada, to court for distributing indecent images. Ernada was cleared of the charges in April 2007.

3) Envelope Journalism

Envelope journalism, whereby journalists are bribed to report in a certain way or not to report on something of public interest, is common in Indonesia, causing serious damage to the integrity of the profession. It is, however, difficult to eradicate, partly because of the poor working conditions of journalists. A survey conducted by AJI in 2005, involving 400 journalists in 17 cities all over Indonesia, found that the average salary of Indonesian journalists is still very low, even compared to the stipulated Regional Minimum Wage (UMR). 25.3 per cent of journalists surveyed were paid between 1 million and 1.4 million rupiah (US\$111-155) a month, 10 per cent were paid less than US\$66 a month, and 1.5 per cent received less than US\$22 a month.

4) Broadcasting

Broadcast Act No. 32/2002 was adopted in 2002 to regulate broadcasting. Among other things, the law establishes an independent broadcast regulator, the National Broadcasting Commission (KPI), although there have been numerous attempts by the government to claw back its powers. The latest such attempt was the introduction of four new broadcasting regulations in February 2007, two months after they were postponed due to a public outcry. The regulations deal with programme monitoring, allocation of frequencies, licensing of broadcast stations and relaying foreign content. The latter prevents local private radio and television stations from directly relaying foreign broadcast content, confining this content instead to short-wave radio and cable television networks. Foreign broadcasts provide Indonesian audiences with a vital additional source of information. International guarantees of freedom of expression apply regardless of frontiers and, while this does not prohibit some rules in favour of local broadcasters, it does mean that access to foreign material should not be unjustifiably limited.

The regulations also grant the power to license broadcasters to the Ministry of Communications and Information, instead of KPI. This directly breaches clear international standards, which stipulate that licensing should be undertaken by a body which is independent of government. Commentators also see this move as a crackdown on the more than 2,000 television and radio stations, many of them community broadcasters, that conduct broadcasting operations without a license, largely due to oppressive licensing laws.

5) Right To Information: Legislation Still Pending

Despite an active civil society campaign since at least 1999 and the presentation to the House of Representatives of a draft law as long ago as 2004, Indonesia still does not have legislation guaranteeing the right to information. The draft law is languishing in parliament, and risks being trumped by other pending draft laws on secrecy and intelligence. In January 2007, a coalition of local non-governmental organisations criticised the government and lawmakers for what they deemed to be deliberate delays in finalising the legislation.

Recommendations

ARTICLE 19 urges the UPR to call on the Government of Indonesia to take urgent action to guarantee the right to freedom of expression and to address the problems noted above. Specifically, ARTICLE 19 recommends that the following measures be taken:

- Defamation should be completely decriminalised and the civil defamation laws should be amended to bring them into line with international standards and, in particular, to limit the size of damage awards and to bolster the defences available to defendants.
- The authorities should allocate adequate resources to ensure that all cases of violence against the media are investigated fully and that perpetrators are actively prosecuted whenever possible.
- The authorities should take steps to promote better working conditions and pay for journalists, for example, by amending and applying labour laws.
- The rules relating to broadcasting should be substantially revised. Licensing should be done by an independent body such as the KPI, special rules should be introduced to facilitate the licensing of community broadcasters and restrictions on broadcasting which do not conform to international standards, such as the blanket prohibition on relaying foreign broadcasts, should be removed.
- Right to information legislation in line with international standards in this area should immediately be introduced into parliament with full government support. The proposed draft laws on Secrecy and Intelligence should be amended as necessary to bring them into line with international standards.