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Press freedom under threat

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Legal cases recently brought against media professionals highlight continuing flaws in the Indonesian legal system and indicate disturbing attempts to restrict fundamental rights to freedom of expression and opinion and the public's right to access to information. Amnesty International believes that these cases represent the most serious threat to press freedom in Indonesia for almost a decade and is urging the Indonesian government to take the steps necessary to uphold fundamental rights and avert a backsliding into a more restrictive environment¹.

Greater media freedom has been one of the most promising aspects of the post-Suharto era. This freedom has been enthusiastically embraced as demonstrated by the birth of hundreds of new print and broadcast media throughout the country during the past five years. At present, in Indonesia the media is able to report and encourage lively debate on a range of topics previously off limits for fear of government recrimination. The passing into law of Press Law No. 40/1999 represented a positive move away from the formerly restrictive legislation governing the Indonesian media [see Appendix for selected extracts]. As such, it has been welcomed as a positive effort to regulate the media while simultaneously protecting the fundamental rights of freedom of expression and opinion and the public's right to information.

The positive aspects of greater media freedom have been countered to some extent by irresponsible reporting, and there have been examples of partisan, sensationalist and inaccurate reporting which has rightly led to criticism and calls for greater media accountability. Amnesty International believes that it is important for journalists to abide by the Code of Ethics published by Indonesia's Press Council. However, the organization is concerned that at times the measures against the media called for by both public officials and elements of civil society constitute a threat to freedom of expression and the right of the public to receive information, and that as such the media's role as a watchdog of government and other institutions and processes could suffer.

The court cases highlighted in this report are examples of what Amnesty International fears may constitute a concerted attempt to restrict those freedoms and that, as a result, the

¹ The New Order regime, headed by former President Suharto (1966-1998) was characterised by tight restrictions on freedom of expression and the repressive manner with which government critics were dealt with. In the early 1990s there was a slight relaxation in the restrictions until, in 1994, three major Indonesian publications – *Tempo*, *Editor* and *Detik*, were banned – an action that served to significantly inhibit media freedom and reverse the trend towards greater openness in reporting.

trend towards a return towards a less open and more repressive style of government risks gaining ground. It concludes with a set of recommendations to the Indonesian Government.

Legal Cases against *Rakyat Merdeka* and *Tempo*

A number of journalists in Indonesia are currently being tried on criminal charges in a series of defamation cases and are threatened with imprisonment for their professional activities. If convicted, Amnesty International would regard them as prisoners of conscience.² Although the charges against the journalist clearly relate to the media and the work of journalists, Law No. 40, 1999 that specifically concerns the regulation of the press is not being invoked. Instead, the legislation being applied is outdated, general and broadly defined legislation that was frequently used to inhibit freedom of expression in the past.

Amnesty International, like press freedom organizations such as the International Federation of Journalists (IFJ) and Article 19, believes that defamation and libel should not be dealt with under criminal law, but should be tried as civil matters, and that prison sentences and excessive fines should not be available as a sanction for breach of such laws. With respect to the *Tempo* cases, in a 3 October 2003 letter to President Megawati Sukarnoputri, the IFJ has pointed out that the level of criminal damages being sought by the businessman who has brought the charges are out of proportion with the alleged offences and will threaten the existence of the publication.³ The London-based freedom of expression organization, Article 19, stresses that “*the overriding goal of providing a remedy for defamatory statements should be to redress the harm done to the reputation of the plaintiff, not to punish those responsible for the dissemination of the statement*”.⁴ Public figures must recognize and accept that criticism of the government and public authorities, including individuals, is a legitimate role of the media, protected under international law.

Amnesty International is concerned that the imposition of criminal sanctions and excessive fines will without doubt lead to much greater caution and self-censorship from the media in their reports about influential figures which will, in turn, negatively impact upon the public’s right to know and the facilitation of open debate on issues of public interest.

The Rakyat Merdeka cases

Rakyat Merdeka is a daily tabloid owned by the country’s largest media group, Jawa Pos, that has gained prominence as a result of its gritty, often abrasive, style, with articles and caricatures that frequently strongly criticize the political establishment.

Two of the paper’s editors are facing legal sanctions for publishing material deemed insulting. In one case, the former editor has been tried and found guilty of defamation under Article 310 of the Criminal Code (KUHP), while the other is currently on trial and charged

² A prisoner of conscience is someone who is detained or imprisoned solely for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, who have not used or advocated violence.

³ International Federation of Journalists 3 October 2003 letter to President Megawati Soekarnoputri, “IFJ Protests Over Legal Proceedings Against *Tempo* in Indonesia”.

⁴ Article 19, *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, July 2000, Section 4: Remedies, p. 12.

under Article 134 of KUHP for insulting the President, an offence punishable by up to six years in jail.

In September 2003, *Rakyat Merdeka's* former chief editor, 50-year-old Karim Papatungan was sentenced by the Central Jakarta District Court to five months in jail, suspended for 10 months, for insulting the speaker of the lower house of parliament, the House of Representatives (*Dewan Perwakilan Rakyat*, DPR), Akbar Tandjung. The case was brought after the paper published a caricature depicting Akbar Tandjung, shirtless and dripping with sweat, trying to appeal his corruption conviction for embezzling US\$4.5 million from a state owned company, Bulog. Akbar Tandjung was found guilty of corruption and sentenced to three years' imprisonment, but is free pending an appeal to the Supreme Court. In addition to maintaining his position as the speaker of parliament, Tandjung is currently seeking to be selected by the Golkar political party as its candidate for President in next year's elections.

In a separate case another *Rakyat Merdeka* editor, Supratman, is currently on trial accused of insulting President Megawati Soekarnoputri. The charges against the 34-year-old, under Article 134 of KUHP, relate to a series of headlines that appeared in the paper in January and February 2003 concerning controversial government policies related to fuel and basic commodity price increases that led to demonstrations. One headline said the President's mouth smells like diesel, while another accused her of being more vicious than a man who had been found guilty of cannibalism. Supratman has stated that the paper was simply reporting what demonstrators had said when interviewed about the government's policies and, as such, constitutes legitimate criticism of the government. The trial, being held in South Jakarta District Court, is on-going.

In both cases, the law appears to be being used in order to restrict freedom of expression. Amnesty International believes that freedom of expression including free and open reporting on issues of public interest, even when this involves criticism of individuals, is a vital to Indonesia's continued development. Such reporting represents an important aspect of the media's role as a government watchdog and a means of promoting government accountability.

Charges of Defamation (Articles 310 – 321 KUHP) are increasingly being threatened and in some cases filed, not only against journalists, but also against human rights defenders and environmental activists. With respect to the charge of insulting the President, Amnesty International has long called for the repeal of all articles which criminalize insulting the President or Vice-President (Articles 134, 136 and 137 KUHP), as they do not conform to international human rights standards concerning the right to freedom of expression. These and other vaguely defined provisions were introduced by the Dutch colonial administration as a means of suppressing and punishing criticism of its rule, and were also widely used by former President Suharto against his critics. Amnesty International is concerned that under President Megawati Sukarnoputri they are being used once again against those peacefully exercising their right to freedom of expression to criticise the government. At least fourteen people have been sentenced to prison terms ranging from a few months up to three years under these provisions and those relating to "insulting the government". Others are currently facing charges under these provisions.⁵

⁵ For further information see: *Indonesia, Old laws – new prisoners of conscience*, AI Index (ASA 21/027)/2003, 10 July 2003.

Some of these articles were among the specific articles to which the United Nations (UN) Working Group on Arbitrary Detention (WGAD) drew particular attention, calling for them to be amended, following a visit to Indonesia in 1999.⁶

The Tempo Case

Tempo, a leading weekly news magazine, is one of Indonesia's most respected publications. First launched in 1971, *Tempo* has been banned twice during its history. On the first occasion, in 1982, the publication was banned for two months after publishing articles on riots that occurred during the election campaign. In 1994 the government of then President Suharto banned *Tempo* along with two other publications as a result of their increasingly bold political reporting. The magazine was only relaunched in 1998, after the fall of Suharto, although a daily online service, *Tempo Interaktif*, started running a few months after the ban. Since 2000, an English edition of the magazine has been published, and the following year saw the launch of a daily paper, *Koran Tempo*.

Several cases have been filed against *Tempo*, three *Tempo* staff, and one of its founders, by one of Indonesia's most powerful businessmen, Tomy Winata. The charges include both criminal and civil complaints, including criminal defamation which carries a sentence of up to four years' imprisonment, and up to eight years in prison under Article XIV of Law No. 1, 1946, for "publishing an article that could cause unrest".

The cases against *Tempo* centre around an article that appeared in *Tempo* magazine's 3 March 2003 edition. It cited allegations that Tomy Winata stood to profit from a fire that had razed part of the Tanah Abang textile market in Jakarta in February 2003 and raised questions about Tomy Winata's possible responsibility for it. The article also included a statement from Winata denying the allegation as well as a denial of a plan to build a shopping centre on the site by an official of the Jakarta administration.

Amnesty International is concerned that charges are being brought against *Tempo* Chief Editor, Bambang Harymurti; Editor, Iskandar Ali; and journalist, Ahmad Taufik⁷, even though the article in question does not appear to have violated journalistic ethics, *Tempo* having adhered to the journalistic norm of covering both sides of the story.

The seriousness of the charges against the *Tempo* journalists contrasts strikingly with the court's treatment of an attack on *Tempo* staff by Tomy Winata supporters who went to the *Tempo* magazine office to protest after the article's publication. Although two of the protesters were tried for assault and inciting violence, one was found not guilty and the other received a five month suspended sentence. By contrast *Tempo* staff, who were the victims of this violence, are facing prison terms of up to eight years simply for carrying out their journalistic duties. In a surprise decision, on 6 October 2003, a court ruled in favour of the Alliance of Independent Journalists (AJI) in a case filed by its Jakarta branch accusing the

⁶ Report of the Working Group on Arbitrary Detention on its visit to Indonesia (31 January - 12 February 1999) E/CN.4/2000/4/add.2, 12 August 1999. Paragraphs 50 - 51.

⁷ Ahmad Taufik is a former Amnesty International Prisoner of Conscience. He was one of four people arrested in 1995 as part of an attempt by the government to restrict further the activities of independent journalists and non-governmental organisations. Taufik, a founding member of the Alliance of Independent Journalists (AJI), was charged under two of the "Hate-sowing Articles", Article 154 and 155 of the Criminal Code, as well as Articles 55(1) and 134 of the Criminal Code, and Article 19(1) of the 1982 Press Law. He was sentenced to two years and eight months, subsequently increased to three years on appeal.

police of negligence for failing to stop the attack on the *Tempo* journalists and the offices on 8 March 2003. The police have been ordered to make a public apology.

In a related case, Tomy Winata has also filed charges of libel seeking substantial damages against Goenawan Mohamad, co-founder and former chief editor of *Tempo*, for a statement he made at a police station urging that the country not be allowed to fall into the hands of criminals.

The first hearing in the case took place in late September 2003, and on 29 September 2003 the court, in a dramatic move, ordered the sequestration, as collateral, of Goenawan Mohamad's private house. The sequestration order of the house is highly unusual in a case of this kind. A lawyer acting for *Tempo*, Todung Mulya Lubis, has pointed out that although assets can be frozen pending a trial's outcome, this generally only occurs in court cases concerning business disputes, not in libel cases.

The speed with which the order was carried out – just four days after the warrant was issued – is also unusual. The fact that Goenawan Mohamad is still allowed to live in the house – the order prohibits him from selling the property until there is a verdict in the libel case – does nothing to negate the chilling effect that the court's action will have on the media. As one of the country's best known media figures, there is no doubt that it will send a clear signal that if he can become the victim of this kind of treatment, then no one is safe.

The Chairman of the Press Council, Ichlasul Amal, was clear about where he thought the blame for this lay: "*It [the confiscation] has raised a big question mark. It's strange. How could they do it that fast? It simply confirms once again the suspicions of a conspiracy, that the court Mafia really exists*".⁸ Quoted in the same article, Djoko Susilo, a parliamentarian for the National Mandate Party, (*Partai Amanat Nasional*, PAN) was similarly concerned: "*Given the developments in this case, the public will assume that someone powerful out there is controlling our judicial system*".

A similar order issued by the court on 1 October 2003 to sequester the office building of *Koran Tempo* daily was cancelled the following day pending clarification over questions of the ownership of the paper's offices.

Recommendations:

Amnesty International urges the Indonesian Government to:

- Guarantee in practice the right of all citizens to peacefully exercise of their right to freedom of expression and opinion without fear of intimidation or arrest.
- Repeal all articles of KUHP that do not conform to international human rights standards, including the articles which criminalize "insulting the President or Vice-President" (Articles 134, 136 and 137 KUHP).
- Provide training for all members of the police, prosecution service, and judiciary in the practical implementation of the Press Law No. 40/1999.

⁸ The Jakarta Post, 2 October 2003, "*Use of Press Law urged in 'Tempo' case*"

- Ensure that Press Law No. 40/1999 is invoked in cases where complaints relate to the function of the media.
- Ensure that the Special Rapporteur on Freedom of Expression, who has been invited to visit Indonesia, can carry out this visit promptly.
- Disseminate to the general public information about the role and function of the Press Council, one of which's function is to settle complaints lodged by members of the public concerning news stories as an alternative to legal action.

Appendix

Unofficial translation of selected extracts of: National Law of the Republic of Indonesia Number 40/1999 on the Press

Considering :

- a. that freedom of the press is one of the embodiments of the sovereignty of the people and is a key element in creating a democratic civil society, nation and state so that freedom provides for expression of thought and opinion as guaranteed under Article 28 of the 1945 Constitution;
- b. that in a democratic society, nation, and state, freedom to express thoughts and opinions and the right to information, is a fundamental human right necessary to uphold truth and justice, advance welfare and inform national life;
- c. that the national press as a medium of mass communication, information dissemination, and as an opinion former must be able to carry out its fundamentals, functions, rights, responsibilities and role to the best of its ability based on a free press that is professional, guaranteed and protected by law, and free of any form of influence and pressure;...

Article 2

Freedom of the press is one of the embodiments of the sovereignty of the people based upon principles of democracy, justice, and legal supremacy.

Article 3

(1) The national press functions as a medium for information, education, entertainment and social control....

Article 4

- (1) Freedom of the press is guaranteed as the human right of citizens.
- (2) The national press will not be subject to censorship, banning or broadcast bans.
- (3) To ensure freedom of the press, the national press has the right to seek, acquire and disseminate ideas and information.
- (4) In terms of legal accountability, journalists enjoy the Right of Refusal.

Article 5

- (1) The national press is obliged to respect religious and moral norms including the presumption of innocence in reporting on events and opinions
- (2) The press is obliged to respect the Right of Reply.
- (3) The press is obliged to respect the Right to Confidentiality.

Article 6

The national press must carry out its role as follows:

- a. fulfill the public's right to know;
- b. uphold basic democratic values, promote the realization of legal supremacy and human rights, while also respecting diversity;
- c. develop public opinion based upon precise, accurate and correct information;
- d. control, criticize, correct, and offer advice on issues in the public interest;
- e. fight for truth and justice.

CHAPTER III- Journalists

Article 7

- (1) Journalists are free to choose a journalist's association.

(2) Journalist possess and adhere to a Journalistic Code of Ethics.

Article 8

In carrying out their profession, journalists are protected by the law.

CHAPTER V - THE PRESS COUNCIL

Article 15

- (1) In order to develop press freedom and increase the standards of the national media, an independent Press Council will be formed.
- (2) The Press Council has the following functions:
 - a. protect press freedom from outside interference;
 - b. conduct studies to develop the press;
 - c. establish and monitor implementation of Journalistic Code of Ethics;
 - d. give consideration to and seek to resolve complaints lodged by the public concerning press reports;
 - e. facilitate communication between the press, the public and the government;
 - f. assist press organizations to develop press regulations and increase journalism professionalism;
 - g. gather data on press companies...

CHAPTER VII-PUBLIC PARTICIPATION

Article 17

- (1) The public may conduct activities to develop press freedom and guarantee the right to access to information.
- (2) Activities referred to in point (1) above may include:
 - a. observing and analyzing reports of infringements of the law, as well as technical reporting errors made by the press;
 - b. providing suggestions and advice to the Press Council in the context of protecting and increasing the quality of the national press.

CHAPTER VIII- CRIMINAL PROVISIONS

Article 18

- (1) Anyone who violates the law by deliberately hindering or preventing the stipulations set out in Article 4(2) and 4(3) may face imprisonment for up to 2 (two) years or a fine of up to Rp. 500.000.000 (five hundred million rupiah).
- (2) A press company that violates the stipulations set out in Article 5(1) and Article 5(2), as well as Article 13, may be fined up to Rp. 500.000.000 (five hundred million rupiah).
- (3) A press company that violates the stipulations in Article 9(2) and Article 12 may be fined up to Rp. 100.000.000 (one hundred million rupiah).

KEYWORDS:

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