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Indonesia: Landmark ruling for freedom of expression

Amnesty International welcomes the decision of the Indonesian Constitutional Court to decriminalise the act of insulting the President or the Vice-President, as a significant step towards a comprehensive safeguard of the right to freedom of expression in the country. On 6 December 2006 the Constitutional Court voted to scrap Articles 134, 136 and 137 of the country's Criminal Code (*Kitab Undang-undang Hukum Pidana*, KUHP) which punished "insulting the President or Vice-President" with up to six years' imprisonment. Amnesty International considered these articles to be in violation of the right to freedom of expression and of Indonesia's obligations under the International Covenant on Civil and Political Rights (ICCPR), and has long campaigned for them to be repealed.

The Constitutional Court voted with a 5-4 majority to repeal the laws, ruling that they hampered the right to freedom of expression as it is guaranteed under the 1945 Constitution.

These articles, as well as the "Hate-sowing Articles" (154, 155 and 156 of KUHP) which criminalize public expressions of hatred towards the state, had been widely used under the regime of former president Suharto to silence and imprison political opponents, critics and human rights defenders. Following Suharto's resignation in 1998, over 230 prisoners of conscience and political prisoners were released in a series of presidential amnesties. The repressive legislation which limited freedom of expression – under which many of them had been imprisoned – fell out of use for a brief period of time. However, when Megawati Sukarnoputri came to power in 2001, the use of repressive legislation resumed against critics, including labour and political activists, journalists and independence activists in Nanggroe Aceh Darussalam (NAD) and Papua provinces. Since then, at least 22 people have been charged or imprisoned for insulting the President or the Vice-President.

On 25 September 2006, political activist Pandapotan Lubis and lawyer Eggi Sudjana had filed a request to the Constitutional Court to review the three articles. Both men had been charged with insulting the President: Pandapotan Lubis had been arrested during a peaceful demonstration at the Hotel Indonesia traffic circle in Jakarta in May 2006, while Eggi Sudjana had been charged with defaming President Yudhoyono in January 2006 when he reported the President and his staff to the country's Corruption Eradication Commission (KPK) for allegedly receiving a car as a gift from an entrepreneur.

The Constitutional Court stated that the three articles will no longer have binding legal power and ordered the decision to be published in the State Gazette. Former member of Indonesian parliament and also former Amnesty International Prisoner of Conscience Sri Bintang Pamungkas, who had agreed to testify at Pandapotan Lubis's trial in September, said the decision was a victory for all activists, as dozens had been arrested in the past because of those articles. Pamungkas himself was sentenced to two years and 10 months imprisonment in 1996 for insulting President Suharto. He had allegedly referred to Suharto as a dictator during a seminar at a university in Germany on 9 April 1995 (see AI Index: ASA 21/027/1996, 8 May 1996).

In light of Wednesday's decision in the Constitutional Court the government must urgently review the cases of those people who have been charged or sentenced under articles 134, 136 and 137 of KUHP and release them immediately.

Amnesty International further calls on the government of Indonesia, to support this important development by repealing all other articles in the KUHP which impinge on the right to freedom of expression, including the "Hate-sowing Articles" (154, 155 and 156 of KUHP), and any other articles which restrict the rights to opinion, belief and association, and to immediately release any persons imprisoned for the peaceful exercise of those rights.

