

Written Statement submitted by the International NGO Forum on Indonesian Development (INFID), a non governmental organisation in special consultative status

Item: 11 d  
Independence of the Judiciary

The International NGO Forum on Indonesian Development (INFID) would like to express its deep concern with the deterioration of the rule of law in Indonesia. The positive steps taken by the government such as the ratification of the ICCPR and ICESCR in the year 2005, cannot be implemented without a strong judicial system, which upholds independent judiciary, and the rule of law. As judicial branch of the government plays a pivotal role in promoting and protecting human rights of the people, impaired judiciary will significantly affect the promotion of rights. Furthermore, the deterioration of the rule of law will threaten the enjoyment of rights and preserving the culture of impunity in Indonesia.

The deterioration of the rule of law is also caused by the culture of impunity. With the lack of political support from the government, courts obviously become a whitewashing machine in which perpetrators can be easily acquitted and victims are left without any remedy. It also means that the government fails to fulfil the obligation to punish gross violation of human rights and provide an institutional guarantee as to prevent the crimes from occurring in the future.

1. terror to judges, police and prosecutors

Judges and prosecutors have continuously subjected to a number of terrors that threaten their life. Even though legal reform project has been carried out, those who work to uphold the supremacy of law are left without any adequate protection. The year 2005 recorded a number of cases related to the violence against the law enforcement officers such as judges and prosecutor. A prosecutor, Julius Tauf suffered from serious injury after a number of people beat him to express their disappointment to the court decision. Organised civilian groups have increasingly involved in the violence against law enforcement officers. This action often employed to pressure judges or prosecutors to have their decision in favour of their interest. Another case happened in Sidoarjo where a judge of religious court was stabbed and killed by a disappointed defendant in the courtroom after reading the court decision.

These two aforementioned cases represent the increase of violence against law enforcement officers. Most cases are committed by organised civilian groups, and thus far, none of them has been held accountable. In addition, the problem also affects the impartiality of judges in handling the case.

2. The increase of threats to the fair trial

The Jakarta District court rejected a class action submitted by victims of the 65 tragedy who suffer from a series of discrimination. The discrimination stems from a number of ministerial regulations and governmental decree that hinder them from full enjoyment of their economic, social and cultural rights, such as the right to work and the right to

adequate standard of living. Some organised civilian groups such as FPI (Front of Islamic Defenders), GPI (Islamic Youth Movement), PII (Indonesian Islamic Students) have flouted the impartiality of the hearing as they intimidated victims' lawyers, and judges. These groups also present in the courtroom to intimidate the hearing process, as well as intimidated the victims attending the hearing. In responding this action, the police failed to take adequate measures in protecting the court to uphold a fair trial.

Courts have continuously received serious threat, such as the prosecutor's office in Banten received a gunshot terror, while in Karanganyar, Central Java, a mass of people incited violence and vandalised the prosecutor's office. It is believed that the number of courts and prosecutors' office that were vandalised are higher than those have been reported.

### 3. Rampant corruption and the delay of justice

Amidst few initiatives launched by the new government such as the Judicial commission, commission against corruption, and commission on the elimination of corruption. However, courts continue to be one of the most corrupted institutions. As a result, court only serves those who afford to pay more, rather than to redress of an injustice. In this regard, judicial corruption causes a delay of justice that hinders the poor from gaining an adequate of redress.

A number of judicial corruption involving high ranking judges have been revealed in 2005. However, the attempts to eliminate the corruption both in the district court and the Supreme Court have not succeeded yet. Strong esprit de corps among judiciaries has made those involved in the corruption untouchable. Besides, there is no protection for the insiders and victims who willing to testify before the court. Instead, they often risk to be criminalised under the penal code provisions. Without adequate protection mechanism in place, rampant corruption will continue to impair the credibility of judicial institutions; which leads to the declining of public confidence toward judiciary.

### 4. The impunity of gross violations of human rights:

Human rights court and human rights court ad hoc have effectively function to preserve impunity. In East Timor case, out of 13 cases, only one found guilty (Eurico Gutierrez) and was sentence for 5 years in prison. Some cases were acquitted since the first level, while others were acquitted by the Supreme Court. The decisions on two other cases, namely Tanjung Priok case and Abepura case clearly show the continuation of impunity. In Abepura case, two high ranking officers from the Indonesian Nasional Police were acquitted amidst the mounting protest of victim groups. Further the court also denied the gross violation of human rights and victims's rights for reparation. The Tanjung priok case also ended up with an acquittal of all perpetrators. These certainly add long list impunity of gross violations of human rights in Indonesia. At the same time, other cases such as Trisakti Semanggi, Talangsari, and May riot, are halted at the DPR waiting for a decision to set up human rights court ad hoc.

In addition, the government also delayed the obligation to settle human rights atrocities in the past. Based on the Act No 27/2005 on the Truth Commission and Reconciliation, the

government should have established the commission, but the establishment of the commission has halted at the President's hand for the indefinite time. The establishment of this commission is also important as to be able to fulfil government's obligation under the Aceh Memorandum of Understanding, which obliged the Indonesian government to set up a truth commission in Aceh to peacefully settle the past abuses. The same obligation also applies to the government commitment for Papua, as stipulated in the OTSUS (special autonomy for Papua) in which the truth commission has to be established to settle the past atrocities.

#### 5. Impunity of crimes against human rights defenders

The decision of Jakarta's district court on Munir case also extends the list of impunity of human rights violations. The court has sentenced Pollycarpus Budyhary for 14 years in the prison; however, it failed to reveal the conspiracy behind the murder. The murder, which allegedly relates to the work of the National Intelligence service turns to be a simple criminal offence in the trial. This has closed the opportunity to conduct further inquiry of the case. The Police as an authorised prosecutor has no attempt to conduct further investigation, causing the family suffer in their quest of justice.

Munir case also represents the denial of protection toward human rights defender in the court. Few other cases such as the abduction of Jafar Siddiq, a human rights activist from Aceh have never been investigated. Law enforcement officers as well as the court has silenced to such cases, and failed to bring the perpetrator to justice. This also deny peoples' right to know of the truth about the murder of these prominence human right defenders, which further impedes the attempt to prevent the crime occurs in the future.

Therefore it is obvious that regaining the independent judiciary will need enormous reforms, and strong political support from the government. In this regard, INFID request the Commission to:

1. To urge the Government of Indonesia to implement the legal reform seriously, in particular, to support the initiative to eliminate judicial corruption that impaired the impartiality of the judiciary
2. To urge the Government of Indonesia to improve the accountability mechanism for gross violation of human rights. This includes the amendment of the Act No 26/2000 on the human rights court which failed to provide adequate mechanism to hold the perpetrator accountable, and to implement the Act No 27/2005 on the Truth commission and reconciliation, that provide an accountability mechanism for past human rights abuses.
3. Urge the government of Indonesia to invite the Special Rapporteur of the Independent Judiciary to visit Indonesia as follow up his of previous visit so as to be able to evaluate the implementation of his recommendation.

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