

# **SHRINKING CIVIC SPACE IN ASEAN COUNTRIES: INDONESIA AND THAILAND**

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# I. INTRODUCTION

Today, we live in a time of enormous global challenges where inequality is rising with the rich is getting richer, and the poor leave behind. We also witness growing extremism and populism, which are terrorizing our society.<sup>1</sup> The oligarchs and wealthy actors capture the governance system.<sup>2</sup> Democracy is adopted, but losing its values were implemented without rights.<sup>3</sup> In this situation, we notice a drastic shrinking and closing of civil society spaces across the world. Authoritarian, semi-authoritarian and other populist style regimes –including in Southeast Asia countries --adopt various measures and legislation that silent dissents and control civil society and therefore restrict or even obstruct civic space for engagement and activism.<sup>4</sup> The repression continues and expands to other fundamental rights and freedoms. Many reports showed that attacks on civic freedom and human rights are increasing and getting worse across the world.<sup>5</sup>

In the multipolar world, we also see that an old school “naming and shaming” human rights strategy and complying to international human rights standards was no longer relevant and losing its effectiveness to confront the populist regimes. Therefore, civil society is forced to find other effective strategies to adjust to these challenges.

In response to these challenges, understanding those narratives is crucial. Simplifying the description of shrinking civic space and or overconfident conclusion about the trends may not help civil society and human rights movement to maintain its hope and to response those challenges strategically.

This research, therefore, is part of our thoughtful effort to more understand the phenomenon, and we expect to come up with more comprehensive strategies to preserve and legitimize civil society spaces in Southeast Asia.

## A. The Objectives of the Research

The objectives of this study are to organise and systematically present, in the form of a synthesis report, findings from existing reports and evaluations of CSOs’ democracy and human rights work in selected Southeast Asia countries especially in Indonesia and Thailand.

1 Alston, Philip. 2017. “The Populist Challenge to Human Rights.” *Journal of Human Rights Practice* 9, no. 1 (February): 1–15.

2 Winters JA. “Oligarchy and Democracy in Indonesia”. In: Ford M, Pepinsky TB, editors. *Beyond Oligarchy: Wealth, Power, and Contemporary Indonesian Politics*. Ithaca, New York: Southeast Asia Program Publications (SEAP) Cornell University; 2014; Robison R, Hadiz VR. *Reorganizing Power in Indonesia: The Politics of Oligarchy in an Age of Markets*. London: Routledge Curzon; 2004.

3 Mounk, Yascha. 2018. *The People vs. Democracy: Why Our Freedom is in Danger and How to Save It*. Cambridge: Harvard University Press; see also Müller, Jan-Werner. 2016. *What is Populism?* Philadelphia: The University of Pennsylvania Press.

4 Editorial Board. 2015. “The Global War against NGOs.” *The Washington Post*, December 10, 2015. [https://www.washingtonpost.com/opinions/the-war-against-ngos/2015/12/10/2ce59002-992b-11e5-b499-76cbe161973\\_story.html?utm\\_term=.ef502813525b](https://www.washingtonpost.com/opinions/the-war-against-ngos/2015/12/10/2ce59002-992b-11e5-b499-76cbe161973_story.html?utm_term=.ef502813525b); see also Sidel, Marj and David More. *The Law Affecting Civil Society in Asia: Development and Challenges for Nonprofit and Civil Society Organisations*, ICNL, December 2016.

5 CIVICUS. 2017a. “People Power Under Attack: Findings from the CIVICUS Monitor.” CIVICUS, April 2017. Retrieved from [http://www.civicus.org/images/People\\_Power\\_Under\\_Attack\\_Findings\\_from\\_the\\_CIVICUS\\_Monitor.pdf](http://www.civicus.org/images/People_Power_Under_Attack_Findings_from_the_CIVICUS_Monitor.pdf); CIVICUS. 2017b. “People Power Under Attack: Findings from the CIVICUS Monitor.” CIVICUS, October 4, 2017. Retrieved from [http://www.civicus.org/images/CM\\_Findings\\_7Oct\\_v1.pdf](http://www.civicus.org/images/CM_Findings_7Oct_v1.pdf).

This research assessment identifies and analyses:

- 1) The environment created and accelerated-of shrinking civic space;
- 2) The main challenges – the new restrictions affect CSOs work --notably in the form of shrinking operating space – facing local and regional CSOs advocating for democracy, the rule of law and human rights in these countries;
- 3) The adaptation and respond of CSOs to those challenges including its relevance and effectiveness of CSOs work to deal with;

The target groups of this research are CSOs, trade unionists, journalists, anti-corruption activists, human rights defenders, academics, community leaders, and other pro-democratic activists.

### **B. Methodology, Sources, Analytical Approach**

The research questionnaire was formulated using the theoretical framework based on International legal standards relating to civil society work and open civic space. The questions were framed broadly, to allow for a wide range of information to be collected, and for diversity in country contexts, such as political organisation and legal cultures, to be taken into account. For uniformity and ease of referencing, researchers presented their research as answers to the questionnaire, adopting the questionnaire's structure. Based on the information collected in the country reports, the relevant issues for Southeast Asia were crystallised and more precisely defined. The synthesis report's content and structure reflect these formed issues.

We relied primarily on the information available in public and given by the respondents through in-depth interview and the series of focus group discussions. Also, we also relied on accessible sources such as publicly available legislation, official government data and statements, judicial decisions, and reports by credible third parties. In some cases, researchers were able to obtain information from written communications with officials or relevant organisations. Constraints were faced particularly concerning Southeast Asia countries where public databases, such as on court cases and investment agreements, are few, or completely absent. From this perspective, this report may be understood as semi-in-depth empirical research guided by its findings.

### **C. Structures**

This research is divided into five chapters. Following this introduction, the Chapter Two discusses the theoretical framework, which elaborates the various concepts and definition of the term of shrinking civic space, it includes the description of civil society, human rights defender, and civic freedom. The second part of this chapter presents a review of the international legal standards relating to civil society works and open civic space. Chapter Three in this research provide an overview of the condition of shrinking civic space in Southeast Asia countries. The summary presents the brief of political context, the growing trend of populism and semi-authoritarian style leadership in the region, including their common playbooks to suppress and restrict civil society, democracy and human rights movement. Next, chapter four present the findings in the Indonesian context. Opened by the brief introduction and analysis to the driver factors to the problem of shrinking civic space, the second part of this chapter also discusses the barriers and restrictive laws for civic freedoms. Further, the third and fourth part of this chapter describes the

recent challenges facing by CSOs, human rights and pro-democracy activists and their responses and strategies to protect democratic space for civil society. Lastly, chapter five of this report presents the situation of the shrinking civic space in Thailand.

#### **D. Limitations**

With the limitations of time and resources available to the researchers, this research assessment is not intended to present a comprehensive empirical survey of the situation of civic space in all ASEAN countries. Instead, it only focused on Indonesia and Thailand. However, this research will present a categorisation and analyses of the published material on the subject.

## II. THEORETICAL AND INTERNATIONAL LEGAL FRAMEWORK

This section surveys various concept and definition of the shrinking space. To cover broader and other related issues, this framework expands on different related themes like civic freedoms, civil society and a full definition of human rights defenders. This theoretical framework based on the previous literature and international legal standards governing civil liberties, human rights defenders and civil society.

### A. Definition of ‘Shrinking Civic Space’

The term “shrinking civic space” has become a globally familiar for human rights communities and often referred to as the closing democratic space for civil society. Some say that this phenomenon is not new, but it can be seen as a contemporary challenge in the struggle for human rights and democracy.

Influenced by Thomas Carothers and Saskia Brechenmacher’s report in 2014, the term ‘closing civic space’ is a bit narrow concept referred to restriction measures played by many governments to regulate and obstruct international support for the promotion of democracy and human rights.<sup>6</sup> Using various laws and regulations, the government restricts a cross-border collaboration between local democratic and human rights movements with its international allies, including international donor organisations.

In the next development, it quickly expanded to address the situation of a global trend of the increasing attack on civil rights as a new wave of repression.<sup>7</sup> Further, the concept of shrinking civic space is advanced by global civil society networks, like CIVICUS, which provides the status of global and some domestic political situation of human rights and civic space across the world.<sup>8</sup> Although it accepted as almost common understanding among human rights communities, the debate over the trend of repression remains continues whether it deteriorated or steady, especially when we look into more specific country or regions.

### B. Definition of Civic Freedoms

Civic freedoms refer to three main rights: 1) the right of association, 2) the right to peaceful assembly, and 3) the right to freedom of expression. Those rights are central for civil society works and serve as a vehicle for the exercise of much other socio, economic, and political rights. They empower women, men and children to engage in activities to bring about societal change for the better.

6 Carothers, Thomas, and Saskia Brechenmacher. 2014. Closing Space: Democracy and Human Rights Support Under Fire. Retrieved from [http://carnegieendowment.org/files/closing\\_space.pdf](http://carnegieendowment.org/files/closing_space.pdf).

7 Kinzelbach, Katrin, and Janika Spannagel, 2017. New Ways to address an Old Problem: Political Repression. Retrieve from César Rodríguez-Garavito and Krizna Gomez (eds.) Rising to The Populist Challenge: A New Playbook for Human Rights Actors, Bogota 2018

8 CIVICUS. 2017a. “People Power Under Attack: Findings from the CIVICUS Monitor.” CIVICUS, April 2017. Retrieved from [http://www.civicus.org/images/People\\_Power\\_Under\\_Attack\\_Findings\\_from\\_the\\_CIVICUS\\_Monitor.pdf](http://www.civicus.org/images/People_Power_Under_Attack_Findings_from_the_CIVICUS_Monitor.pdf); CIVICUS. 2017b. “People Power Under Attack: Findings from the CIVICUS Monitor.” CIVICUS, October 4, 2017. Retrieved from [http://www.civicus.org/images/CM\\_Findings\\_7Oct\\_v1.pdf](http://www.civicus.org/images/CM_Findings_7Oct_v1.pdf)



Freedom of expression constitutes the right to seek, receive and impart information and ideas of all kinds. It includes various information and opinions in political and religious discourse, public affairs, human rights, as well as cultural and artistic expression. All forms of freedom of expression and the means of their dissemination are protected, which covers speaking, writing or other types of language and non-verbal expression as images and objects of art. The expression is possible through various medium including books, newspapers, pamphlets, posters, cartoons, banners, dress and legal submissions and many more. It also includes all forms of audio-visual as well as electronic and internet-based modes of expression.

Freedom of association refers to the right any groups of individuals or entities, which, collectively, act, express, promote, pursue or defend a field of common interests. The example form of freedom of association may include freedom to join and participate - or choose not to participate - in civil society organisations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or on-line associations. Further, for the association, the ability to seek, secure and use resources is vital to the existence and productive activities of any organisation, no matter the size of the organisation. Moreover, freedom of association covers the right to generate any resources – human, material and financial – from not only domestic but also international sources.<sup>9</sup>

Freedom of peaceful assembly has a broad scope. It can be translated as “a temporary, non-violent gathering in a private or public space for a specific purpose. The variation form of this right includes demonstrations, strikes, processions, rallies or sit-ins.”

### C. Definition of Civil Society

The issue of civic freedom is beyond civil society organisations and human rights defender. It is essential to underline that every organ within society like journalist, trade union and human rights defenders are also targeted groups of the restrictions and attacks. The Declaration on Human Rights Defenders provide a clear definition for HRDs, and it declares that: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.”<sup>10</sup> Meanwhile, according to CIVICUS, civil society may be defined as “the arena, outside of the family, the state, and the market, which is created by individual and collective actions, organisations and institutions to advance shared interests.”<sup>11</sup>

Based on the conceptual framework as above, civil society actors include:

- Human rights defenders are not only grassroots activists but also on-line activists;
- Human rights organisations may consist of NGOs, associations, victim-support groups);
- Alliance, coalition, and networks (on, e.g. women’s rights, children’s rights, or environmental issues, land rights, LGBTQ, etc.);
- Persons with disabilities and their representative organisations;
- Community-based groups, indigenous peoples, minorities, rural communities;
- Faith-based groups, beliefs, religious groups;
- Unions (sales or labour unions)
- Professional associations: journalists’ associations, judges’ and lawyers’ or bar associations,

<sup>9</sup> A/HRC/23/39, para. 8

<sup>10</sup> Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly Resolution 53/144,

<sup>11</sup> CIVICUS Civil Society Index

- magistrates' associations, student unions);
- Social and Pro-democracy movements.
- Professionals contributing directly to the enjoyment of human rights, e.g. humanitarian workers, lawyers, doctors and medical workers;
- Families and associations of victims of human rights violations; and Public institutions that carry out activities aimed at promoting human rights, for example, schools, universities, research agencies.

#### **D. International legal standards relating to civil society work and open civic space**

Civil society does not request to be excluded from laws and regulations. Somewhat unregulated, civil society needs a robust national legal framework to preserve and protect their actions. International human rights instruments provide guidance and standards relevant to the protection of civil rights as follow:<sup>12</sup>

- 1) Article 19,20,21 of Universal Declaration of Human Rights;
- 2) Articles 19, 21, 22, 25 of International Covenant on Civil and Political Rights provides for the rights to freedom of opinion and expression, peaceful assembly and association, and participation in public life;
- 3) Articles 8, 15 of International Covenant on Economic, Social and Cultural Rights provides for the right to form or take part in a trade union and to participate in cultural life;
- 4) Article 3 Convention on the Elimination of All Forms of Discrimination against Women provides for the right of women to participate in political, economic and cultural life
- 5) Article 5 of the International Convention on the Elimination of Racial Discrimination prohibits discrimination concerning the expression, assembly and association, and in the conduct of public affairs;
- 6) Articles 13, 15 of Convention on the Rights of the Child provides for freedom of expression, association and peaceful assembly;
- 7) Articles 21, 29, 30 of Convention on the Rights of Persons with Disabilities guarantees the rights to freedom of opinion and expression, and access to information, participation in political and public life, as well as in cultural life;
- 8) Article 24 of International Convention for the Protection of all Persons against Enforced Disappearance provides for the right to form and participate freely in organisations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance;
- 9) Article 26 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families provides for the right to the association;
- 10) International Labour Organisation (ILO'S) Convention No. 87 on Freedom of Association and Protection of the right to organise
- 11) ILO's Convention No. 98 on The Right to Organise and Collective Bargaining
- 12) ILO's Convention No. 135 on Workers' Representatives
- 13) Article 5 of Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms;
- 14) Article 13 of the United Nation Convention Against Corruption (UNCAC)

<sup>12</sup> Human Rights Committee, General Comment No. 34, article 19: Freedoms of opinion and expression, CCPR/C/GC/34; and General Comment No. 25, article 25: The right to participate in public affairs, CCPR/C/21/Rev.1/Add.7. Reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27; and A/HRC/23/39, Civil Society space and UN Human Rights System

### III. OVERVIEW ON THE SHRINKING CIVIC SPACE IN ASEAN COUNTRIES

#### A. Current Political Context

Southeast Asia countries show that the general figure of local democracy has been one of institutional stagnation over the past three decades.<sup>13</sup> Authoritarianism and military rule remain endured in Vietnam, Lao PDR, Cambodia, Brunei and Thailand. Meanwhile, Myanmar, after the promising political liberalisation since 2011, is making progress, but it seems stuck after the Rohingya crisis and unresolved long-standing ethnic-armed conflict. Indonesia and Philippine, procedurally, remain bright spots for democracy in the region. But, in here, fundamental rights, civil liberties and human rights defenders remain under attack. Malaysia, after the victory of the opposition coalition, maybe the only one ASEAN countries that have brought hope for democracy. For the first time since 1957 independence, the election has resulted in a transfer of power in this country.

In human rights community circles, it is a general understanding that the main threats to liberal democracy and human rights have slightly shifted from old-fashioned authoritarian regimes to the populist and semi-authoritarian regimes and its typical forms.<sup>14</sup> Like in Europe, North America and now Brazil, Populism is growing in Southeast Asia countries. Together with the Philippine and Thailand, Indonesia already has semi-autocratic populist leaders and democracy has deteriorated. Unlike in Europe where the populist leaders focus on immigration, economic decline and trade, Southeast Asian populists focus on spurring religious and ethnic divides, countering drug trafficking, particularly of methamphetamines, and appealing to the working and lower-middle classes. The lower-middle classes, in particular, have become frustrated with democracy because they believe democratic politicians have not tackled inequality, addressed crime, or delivered effective state services.<sup>15</sup> More recently, there is a sign that conservative groups in Malaysia copy Islamic populism in Indonesia.<sup>16</sup>

Today, almost all Southeast Asia governments routinely commit serious human rights violations, crack down on civil society organisations and media, and undermine democratic institutions by silencing dissent and tolerating corruption. A lack of accountability for gross abuses committed by state security forces is the norm throughout ASEAN Countries. Hun Sen in Cambodia has banned political opposition and jailed its leaders. Prayut in Thailand rejected restoring democratic civilian rule. Military and Police under Duterte in the Philippine and Aung San Suu Kyi in Myanmar are involved in allegedly serious crimes. Vietnam, Lao PDR, Malaysia and Singapore remain restrict rights to freedom of expression and peaceful assembly. Indonesia under Jokowi, lately, joined the race to the bottom with series of new restriction and arrest to the opposition.<sup>17</sup>

13 [https://freedomhouse.org/sites/default/files/Feb2019\\_FH\\_FITW\\_2019\\_Report\\_ForWeb-compressed.pdf](https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf)

14 In between liberal democracies and full-blown authoritarian regimes, such hybrids have been variously called “democracies without rights” (Mounk 2018), “illiberal democracies” (Zakaria 1997), “semi-authoritarian regimes” (Carothers and Brechenmacher 2014), “competitive authoritarianisms” (Levitsky and Way 2010), “partially free democracies” (Abramowitz 2018), or simply “populist regimes” (Krastev 2007; Müller 2016).

15 <https://www.cfr.org/article/southeast-asias-populism-different-also-dangerous>

16 <https://thediplomat.com/2018/12/from-212-to-812-copy-and-paste-populism-in-indonesia-and-malaysia/>

17 Human Rights Watch report 2018

Meanwhile, the ASEAN human rights body-the AICHR almost useless, despite theoretically independence from government, they bound with ASEAN vague principle to be “non-confrontational and non-interference” in the domestic affairs of its members.<sup>18</sup>

**B. Top Five Human Rights Violations and People at Risk**

Southeast Asia region is one of the hotspots of human rights violations. While many abusive conducts to the fundamental freedoms and other civil rights, this report identified top five human rights violations in every Southeast Asia country based on the intensity of oppression the people’s resistances, dissents, democracy and human rights movement.<sup>19</sup>

COUNTRY	TOP 5 HUMAN RIGHTS VIOLATIONS	VICTIMS AND PEOPLE AT RISKS
Indonesia	<ol style="list-style-type: none"> <li>1. Freedom of Expression and Association</li> <li>2. Religious Freedom</li> <li>3. Military Past abuses and impunity</li> <li>4. Violent and abuse in Papua</li> <li>5. Police abuse and Extrajudicial killings</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Minority groups</li> <li>3. Poor and Marginalised people</li> <li>4. Pro-Independent Papuan</li> <li>5. HRDs</li> </ol>
Thailand	<ol style="list-style-type: none"> <li>1. Military abuse of powers (arbitrary arrest, torture and killings)</li> <li>2. Freedom of Expression</li> <li>3. Violent and abuse in Patani (Deep South Thai/Southern Border Provinces)</li> <li>4. Refugees, Asylum and Migrant Workers</li> <li>5. Attacks on Human rights defenders</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Minority groups</li> <li>3. Poor and Marginalised people</li> <li>4. Pro-Independent Patani</li> <li>5. HRDs</li> </ol>
Cambodia	<ol style="list-style-type: none"> <li>1. Attack on political opposition</li> <li>2. Press freedom</li> <li>3. Attack on Civil Society</li> <li>4. Impunity</li> <li>5. Land rights</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Journalist</li> <li>3. HRDs</li> <li>4. Poor and Marginalised people</li> <li>5. Peasants</li> </ol>
Myanmar	<ol style="list-style-type: none"> <li>1. Gross human rights violation of Rohingya</li> <li>2. Ethnic conflict and displacement</li> <li>3. Freedom of Press and Expression</li> <li>4. Religious freedom</li> <li>5. Human trafficking</li> </ol>	<ol style="list-style-type: none"> <li>1. Rohingya</li> <li>2. Ethnic minority groups</li> <li>3. Journalist and HRDs</li> <li>4. Poor and Marginalised people</li> <li>5. Workers</li> </ol>
Philippine	<ol style="list-style-type: none"> <li>1. Extrajudicial killings</li> <li>2. Attacks on human rights defenders</li> <li>3. Attacks on journalist</li> <li>4. Torture and Terrorism</li> <li>5. Sexual orientation and gender identity</li> </ol>	<ol style="list-style-type: none"> <li>1. Drug users and dealers</li> <li>2. Dissent and Political opponent</li> <li>3. Poor and Marginalised people</li> <li>4. Journalist and HRDs</li> <li>5. LGBTs</li> </ol>

18 Wahyuningrum, Yuyun, The Jakarta Post, 2018.

19 Summarized from many human rights reports from HRW, Forum Asia, Amnesty International and other local NGOs

Malaysia	<ol style="list-style-type: none"> <li>1. Freedom of Assembly and Expression</li> <li>2. Religious Freedom</li> <li>3. Attacks on Human rights defenders</li> <li>4. Police abuse and impunity</li> <li>5. Refugees, Asylum, Migrant workers and Trafficking victims</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Religious Minority groups</li> <li>3. HRDs</li> <li>4. Migrant Workers</li> <li>5. Poor and Marginalised people</li> </ol>
Singapore	<ol style="list-style-type: none"> <li>1. Freedom of peaceful assembly and expression</li> <li>2. Fair trial</li> <li>3. Migrant workers and labour exploitation</li> <li>4. Sexual orientation and gender identity</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Religious Minority groups</li> <li>3. HRDs</li> <li>4. Migrant Workers</li> </ol>
Vietnam	<ol style="list-style-type: none"> <li>1. Freedom of Expression</li> <li>2. Freedom of Assembly, association and Movement</li> <li>3. Religious Freedom</li> <li>4. Fair trial</li> <li>5. Labour rights</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. Religious Minority groups</li> <li>3. HRDs</li> <li>4. Workers</li> </ol>
Lao PDR	<ol style="list-style-type: none"> <li>1. Freedom of speech and Expression</li> <li>2. Freedom of association and assembly;</li> <li>3. Enforced disappearances;</li> <li>4. Abusive drug detention centers</li> <li>5. Repression of minority religious groups.</li> </ol>	<ol style="list-style-type: none"> <li>1. Dissent and Political opponent</li> <li>2. HRDs</li> <li>3. Poor and Marginalised people</li> </ol>

### C. Common Textbook: Draconian Laws in Southeast Asia Countries

Many Southeast Asian regimes have been using draconian laws to restrict people's rights, to arrest and imprison human rights defenders and to silence and suppress dissent, political opponents and people resistant.<sup>20</sup> Defamation law, sedition articles, religious blasphemy and laws dealing with hate speech are on the top list of draconian laws.

Majority of ASEAN countries have a problem with criminal defamation laws. The laws have been misused in Indonesia, Cambodia, Philippine, and of course, Thailand. Sedition provisions and treason article has been used to suppress dissent and critic in Malaysia, and imprison many pro-independent activists in Papua and West Papua, Indonesia. Both Indonesia and Malaysia have a similar problem with religious blasphemy law. Furthermore, in Indonesia, in the time closer to the presidential elections, laws dealing with hate speech have been misused to silence dissents and opposition.<sup>21</sup>

Most of these laws have the same type as unclear, vaguely worded, overbroad and prone to misuse. In the corruptive criminal justice system and lack of independent law enforcement agencies and judiciary, these laws have been misused and repeatedly used to stifle dissent and target political opponent.

<sup>20</sup> Forum Asia, Instruments of Repression, A Regional Report on the Status of Freedom of Expression, Peaceful Assembly and Association in Asia, 2018

<sup>21</sup> Thomas P. Power (2018) Jokowi's authoritarian turn and Indonesia's democratic decline, Bulletin of Indonesian Economic Studies, 54:3, 307-338

There is no single factor for the existence of those oppressive laws. A combination of the politically motivated, acute problem of corruption and lack of expertise has been contributed to the existence of those draconian laws in Southeast Asia countries.

COUNTRY	DRACONIAN LAWS
Indonesia	<ol style="list-style-type: none"> <li>1. Defamation law: Articles 207 and 310 to 321 of the Indonesian Penal Code;</li> <li>2. Hate Speech law -Articles 27 and 28 of the Law on Information and Electronic Transactions (IET), 2008</li> <li>3. UU PNPS No. 1/1965 on Blasphemy (Blasphemy law)</li> <li>4. Treason or Sedition Law</li> <li>5. The State Intelligence Law, 2011</li> <li>6. The Law on Freedom to Express an Opinion in Public, 1998</li> </ol>
Thailand	<ol style="list-style-type: none"> <li>1. The Head of the National Council for Peace and Order (NCPO) Order 3/2015,</li> <li>2. Article 116 of the Criminal Code on sedition</li> <li>3. The Computer Crime Act</li> <li>4. The lèse- majesté provision (Article 112) in the Criminal Code</li> <li>5. Martial Law</li> </ol>
Cambodia	<ol style="list-style-type: none"> <li>1. Law on Associations and Non-Governmental Organizations, or LANGO</li> <li>2. Law on Trade Unions</li> <li>3. Telecoms Law</li> <li>4. The Press Law 1995</li> </ol>
Myanmar	<ol style="list-style-type: none"> <li>1. The Printing and Publishing Enterprise Law, 2014,</li> <li>2. The Telecommunications Law, 2013</li> <li>3. The Peaceful Assembly and Procession Law, 2011.</li> <li>4. Article 505(b) and (c) of the Penal Code</li> </ol>
Philippine	<ol style="list-style-type: none"> <li>1. The Human Security Act of 2007</li> <li>2. Defamation laws -Articles 353- 359 of the 1930 Philippines Penal Code</li> <li>3. The Cybercrime Prevention Act of 2012</li> <li>4. Republic Act 10973 on March 1, amending the Republic Act 6975 also known as the Local Government Code</li> </ol>
Malaysia	<ol style="list-style-type: none"> <li>1. The Sedition Act, 1948, amended 2015</li> <li>2. The Security Offences (Special Measures) Act (SOSMA) 2012</li> <li>3. The Prevention of Terrorism Act 2015 (POTA)</li> <li>4. The National Security Council Act, 2016</li> <li>5. The Syariah Criminal Offences Act 1997</li> <li>6. The Peaceful Assembly Act</li> </ol>
Singapore	<ol style="list-style-type: none"> <li>1. The Public Order Act (Additional Temporary Measures) or PO-ATM Act</li> <li>2. The Internal Security Act (ISA) and</li> <li>3. The Criminal Law (Temporary Provisions) Act (CLTPA)</li> <li>4. Undesirable Publications Act 1967, most recently revised in 1998</li> <li>5. The Public Entertainment and Meetings Act (PEMA)</li> </ol>

Vietnam	<ol style="list-style-type: none"> <li>1. Cybersecurity Law (passed into law in June 2018)</li> <li>2. Vietnam Penal Code (enacted in 2018)</li> </ol>
Lao PDR	<ol style="list-style-type: none"> <li>1. The Decree on Information Management on the Internet, 2014 Or Cybercrime Law</li> <li>2. The Decree on Religious Practice 2002</li> <li>3. The Decree on Associations, 2017</li> <li>4. The Decree on International Non-Governmental Organisations, 2010</li> <li>5. The Trade Union Law, 2007</li> </ol>

#### **D. Common Textbook: Arguments used to justify restrictions of CSOs**

There are some common arguments has been using by the government to justify the restriction of CSOs as follow:

- State sovereignty and protection against external interference in domestic affairs requires that a government maintain control over the flow of resources across its territories.
- Protecting the state ideology, values and religion.
- Counterterrorism and anti-money laundering efforts necessitate increased scrutiny over an international money transaction.
- Protecting and preserving national interests, national security, or protecting a nation's moral or religious beliefs.

#### **E. Common Textbook: Undermining the Legitimacy and Efficacy of Civil Society**

The main goal of the attacks on human rights movements and civil society groups in many places is to undermine the legitimacy and the efficacy of human rights actors. There are five common types of measures that are frequently used by the populist regimes: 1) restrictions on foreign funding; 2) smear campaigns; 3) restrictions on fundamental rights that strike at the heart of the work of independent media and NGOs; 4) severe burdens on the operational capabilities of human rights actors and civil society at large; and, 5) cooptation of sections of civil society.<sup>22</sup>

<sup>22</sup> Rodriguez-Garavito, Cesar and Krizna Gomez (2018) Responding to the Populist Challenge: a New Playbook for the Human Rights Field", in Rising to The Populist Challenge: A New Playbook for Human Rights Actors. The Justicia, Colombia.



## IV. SHRINKING CIVIC SPACE IN INDONESIA

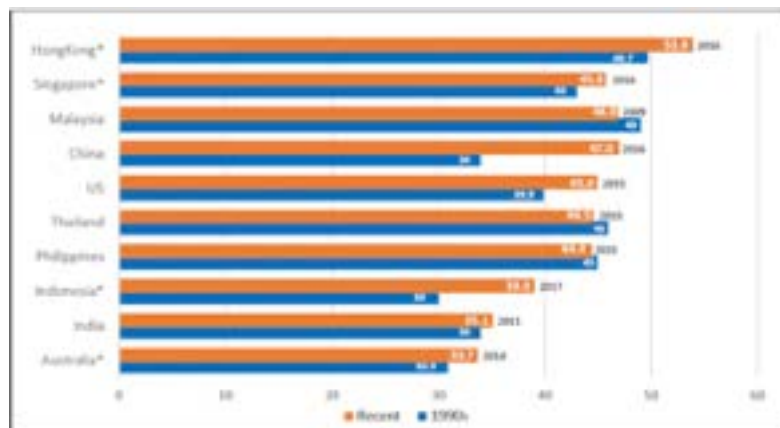
### A. BACKGROUND: Drivers of Shrinking Civic Spaces

The honeymoon of democratic optimism following the election of Joko Widodo (Jokowi) in 2014 is gone too soon in Indonesia. At least since 2017, many assessments of Indonesian democracy show dramatic deterioration.<sup>23</sup> The Economist Intelligence Unit's (2018) Democracy Index concluded a setback of Indonesian democracy, which also in line with a global trend of 'a democratic recession'.<sup>24</sup> Similarly, Freedom House granted Indonesia 'partly free' status in 2017. Therefore, it is difficult to argue that everything is fine with Indonesian democracy.

Many factors contributed to the democratic deterioration status. The Economist point out the rise of "conservative religious ideologies," contributes to the country ranking falls. Meanwhile, Freedom House suggested that Indonesia suffered significant democratic decline due to a systematic corruption, discrimination and persecution to minorities, violence in Papua and the misuse of draconian defamation and blasphemy laws become significant challenges to Indonesian democracy.<sup>25</sup>

### 1. Inequality and Oligarchs

One of the drivers of shrinking civic spaces is the problem of extreme inequality. Indonesia's economic growth spurred rising inequality. Extreme inequality in Indonesia can be found from the ownership of land, natural resources, workers condition and taxation. This is reflected in the country's Gini index.<sup>26</sup> The KPA showed a considerable gap in land ownership in Indonesia that became one of the root causes and structural problem for the massive land conflicts across the country.<sup>27</sup> These extreme figures have significant consequences and lead to the problem of injustice and the decline of democracy. The linkage between extreme inequality and the rising restrictions on civic freedoms is showed by the collusion of wealthy economic elites to protect their interests.



Gini index by country, in the 1990s and recent. Gini index between 40 and 50 indicates high-income inequality, and above 50 corresponds to severe income inequality. Sources: World Bank, CIA, \*Hong Kong (Census & Statistics Department), \*Singapore (Statistics Singapore), \*Indonesia (Statistics Indonesia), \*Australia (OECD Data)

23 Thomas P. Power (2018) Jokowi's authoritarian turn and Indonesia's democratic decline, *Bulletin of Indonesian Economic Studies*, 54:3, 307-338; see also Hadiz, Vedi. R. 2017. "Indonesia's Year of Democratic Setbacks: Towards a New Phase of Deepening Illiberalism?" *Bulletin of Indonesian Economic Studies* 53 (3): 261-278.

24 [https://www.economist.com/media/pdf/DEMOCRACY\\_INDEX\\_2007\\_v3.pdf](https://www.economist.com/media/pdf/DEMOCRACY_INDEX_2007_v3.pdf)

25 <https://freedomhouse.org/report/freedom-world/2017/indonesia>

26 Oxfam and Infid

27 KPA annual report 2017-2018.



The right to peaceful protest and the ability of citizens to challenge the dominant economic narrative and their abusive business is being suppressed almost everywhere since for the oligarchs know that inequality and participatory democracy cannot co-exist for long.<sup>28</sup> The tension between corporations and peoples increased in the past ten years.<sup>29</sup> The oligarchs with their controlled government use of powerful state institutions, especially security forces and law enforcement agencies for the suppression of fundamental freedoms and rights.

## 2. “Democracy Without Rights”: The Rise of Populism in Indonesia

Indonesian populism, according to Hadiz (2017), refers to the rise of Islamic populism and its counterpart a nationalist populism or what he called as “it reactionary hyper-nationalism”.<sup>30</sup> While mainstream researchers observe them in competing for a political race, Hadiz suggested that the real feature is the competition in internal oligarchs.

When he starts to the presidency, no one says Jokowi is a populist leader. Mietzner maybe the exception, by what he said as “a polite populist”.<sup>31</sup> But, once Jokowi in power, he and his administration tend to manipulate the fear and insecurity of the people on drugs, crimes, the survival of the state ideology of Pancasila and the Unitary state of Republic Indonesia. His populist and semi-authoritarian style and policies were even clearer ahead of 2019 presidential election race.<sup>32</sup> Overall, Indonesian Populist leaders are anti-democratic and a severe challenge to the human rights movement.

## 3. Either you with Us or Against Us

Indonesian populism is characterised by also anti-pluralist moral logic of “Us versus Them”.<sup>33</sup> While “Us” refers to the position of the Populists, “Them” are the dissents, no matter they come from oppositions or independent groups, including human rights movements. In the wave of the politic of populism, many Indonesian CSOs forced to clarify their position. Many of them trapped in a tricky situation: either to support the government (popular called as “Cebong” or tadpole ) or to stand in the opposition side (called as “kampret” or bat and also mean as shucks). This situation affected to narrower space to advocacy works because many organisations and individual activists preferred to operate in a smaller alliance.<sup>34</sup>

## 4. Nationalist Populism

For a long time, nationalism enjoys its position in the centre of Indonesian politics. It is not a surprise for the post-colonial state. Today, both Jokowi and Prabowo are an appeal to nationalism.<sup>35</sup> Prabowo’s nationalist message frequently accused Jokowi as too soft to the foreigner, especially in the issues of natural resources ownership, state debt, taxation and the present of Chinese workers. In response to the accusation, Jokowi’s show off and claim his administration success policy to divest extractive companies, like Freeport from FCX and Rio Tinto and Block Rokan oil from Chevron. But still, it does not stop Prabowo’s supporter from accusing Jokowi as “antek asing”, primarily refers to the growing influence of China.<sup>36</sup>

28 <http://www.actionaid.org/2016/01/civil-society-leaders-issue-statement-step-fight-inequality>

29 See KontraS, 4 Years of Jokowi, 2018 ; KPA Annual Report 2017 and 2018; Komnas HAM Annual Report 2017 and 2018

30 Hadiz, Vedi. R. 2017. “Indonesia’s Year of Democratic Setbacks: Towards a New Phase of Deepening Illiberalism?” *Bulletin of Indonesian Economic Studies* 53 (3): 261-278.

31 Mietzner, Marcus, 2014, at <https://www.insideindonesia.org/jokowi-rise-of-a-polite-populist>

32 Thomas P. Power (2018) Jokowi’s authoritarian turn and Indonesia’s democratic decline, *Bulletin of Indonesian Economic Studies*, 54:3, 307-338; in the context of economic policy, see also Kanupriya Kapoor and Gayatri Suroyo at <https://jakartaglobe.id/context/jokowi-turns-populist-policies-ahead-tough-2019-election>

33 Amnesty International. 2018. “Us versus Them: Changing Amnesty to Beat the Demonizers.” January 22, 2018.

34 Interview with WALHI, KPA and KontraS

35 Aspinal, Edward, *The New Nationalism in Indonesia, Asia and The Pacific Policy Studies*, Vol 3 Issues 1, 2015 ; <https://onlinelibrary.wiley.com/doi/full/10.1002/app5.111>

36 See Warburton, eve. *Resource Nationalism in Indonesia: Ownership Structures and Sectoral Variation in Mining and Palm Oil*, Volume 17 Issue 3, *Journal of East Asian Studies*, 2017.

Indonesian narrow nationalism is a driver of shrinking civic space. The linkage of nationalism and its threat to civic freedom can be found in the restrictive policies and abusive practice of the government in responding to the demand for self-determination rights from pro-independence activists in Papua. In the name of national sovereignty and the NKRI, Nationalist-populists do not tolerate the demand from the pro-independent movement on self-determination rights and silence Human Rights CSOs in Papua.

This nationalism rhetoric was also loudly spoken by Jokowi's administration in response to international criticism on the death penalty and palm oil industries.<sup>37</sup>

## 5. Conservative Religious Populism

The rise of Islamist populism in Indonesia refers to the 212 Movement and Islamic hardliner groups possessing more radical ideological orientations. It is not clear when the Islamic populism rises his influence on the stage of Indonesian politic. Many observers acknowledge that they got the momentum in opposition to Basuki Tjahaya Purnama (Ahok) in the Jakarta elections, primarily through the 212 Movement. This movement successfully incorporated many different Islamist groups and in sent Anis Baswedan to beat Ahok in the Jakarta governor race.

## 6. Insecurity

### 1) States narratives on security and counter-terrorism

One of the dominant drivers to the shrinking civic space is insecurity by the rise of extremism and its abusive counter-terrorism measures. Any criticism of the abusive practices of the 88 Detachment Anti-Terror from the CSOs was facing unpopular support from the public. The challenge of civic space in the fights against terrorism became a new concern of the global anti-torture alliance, OMCT.<sup>38</sup>

The rise of extremist groups, militarised responses to the insurgency, conflicts in fragile states, and transnational crime, has led to a dominance of the security agenda in many countries, including Indonesia. Some extremist groups have created shell CSOs to channel funding and governments use this to justify overly burdensome restrictions on all civil society groups. The security agenda's dominance lends support to authoritarian regimes and weak democratic governments seeking to restrict civil society's influence.<sup>39</sup>

### 2) War on drugs and its impacts on fundamental rights

The initial sign of Jokowi's populist's policies that attacks human rights is the reactivation of the death penalty in Indonesia in 2015. After the period of moratorium, Jokowi launched three series of execution.<sup>40</sup> Opposed strongly by human rights activists and international communities, Jokowi's stubbornly denied the pressure as he gained massive popular support for his cruel policy. In the next stages, the enthusiasm for the death penalty was expanded to the justification to extrajudicial killing operations by the Anti-Drug Police Agency (BNN) as he fuelled the war against drugs by saying "if the law allowed it, [I'd tell you to] blast them".<sup>41</sup> In this case, Jokowi's populist copy paste Duterte in the Philippine and smartly exploits public anger and fear on the negative impact of drugs on the young generation.

<sup>37</sup> ibid

<sup>38</sup> <http://www.omct.org/human-rights-defenders/statements/2018/12/d25162/>

<sup>39</sup> <https://oxfamblogs.org/fp2p/5-trends-that-explain-why-civil-society-space-is-under-assault-around-the-world/>

<sup>40</sup> KontraS, 4 Years of Jokowi, 2018

<sup>41</sup> Hidayat, Nurkholis at <http://indonesiaatmelbourne.unimelb.edu.au/what-explains-indonesias-enthusiasm-for-the-death-penalty/>

## B. BARRIERS AND RESTRICTIVES LAWS FOR CIVIC FREEDOMS

### 1. Barriers and Restriction to Freedom of Association

#### 1) Barriers to form

Law No.17 of 2013 on Societal Organisations provides that there are two types of CSOs, namely (1) the ones with a legal entity, which consist of Foundations and Associations; and (2) societal organisations without legal entity status, which include any organisations set up by civil society. The registration status as a Societal Organization is obtained automatically by a Foundation or an Association when the legal entity status is granted by the Ministry of Law and Human Rights, so that they are not required to undertake additional registration at the Ministry of Home Affairs. However, because of the status of Societal Organisations, Foundations and Associations now have an extra layer of operational guidelines and are subject to the close supervision of the Ministry of Home Affairs.

For trade union, there is no complex registration process, as there is only require ten members for the establishment of a new trade union. However, it also potentially used by the company to establish new trade union that controlled by them and operate to weaken the independent one.

#### 2) Barriers to register

Societal Organisations stipulates a category of “societal organisations without legal entity status.” Although this might seem to provide more space for CSOs, this category is intended for the government to be able to control any type of CSO.

Law on Foundations and Staatsblad 1870-64 require registration for foundations and associations to obtain legal entity status. Registration here requires the deed of the establishment to be in the form of a notarial deed and to be registered at the Ministry of Law and Human Rights. If the registration is accepted by the Ministry, the deed of the establishment will be published in the Supplemental to the State Gazette (*Tambahan Berita Negara*).

Any natural person (not including a minor) or a legal entity can found a foundation or association. The Law on Foundations provides that one person or more can found a foundation. There is no specific rule for associations, but Law No. 17 of 2013 regulates the societal organisations (which include associations) must be set up by a minimum of three persons, except for foundations. There are no minimum assets required to found a foundation or an association.

To register a foundation or an association, the notary must submit a request to the Director of General Administration of the Ministry of Law and Human Rights along with two copies of the Deed of Establishment with stamp duty, the foundation’s tax payer’s number (*Nomor Pokok Wajib Pajak* or NPWP) and the foundation’s certificate of domicile.

According to the Law on Foundations, the Ministry must respond within 30 days after the request for registration of a foundation is received. In case confirmation from a relevant ministry/ institution is needed, the Ministry must respond within 14 days after the confirmation is received or 30 days after the request for a confirmation is submitted. The Ministry may deny a registration

request for a foundation in writing on the ground that the application is not according to relevant laws and regulations. An appeal of such denial is not regulated by the Law. By contrast, the registration of associations is not regulated in detail.

In addition to the general procedure above, the Ministry also issued a Minister of Law and Human Rights Regulation No. 5 of 2014 regarding Validation of Foundations to elaborate further the procedures and requirements for securing approvals for names of foundations and their validation by the Minister. According to this regulation, all applications for the establishment of foundations will be processed electronically via the Legal Entities Administration System (*Sistem Administrasi Badan Hukum* or “SABH”) under the Directorate General of Law Administration. This technical regulation, however, is intended for notaries authorised to submit applications for the validation of foundations to the Minister through SABH, and is not applicable when members of the general public wish to establish a foundation.

As for CSOs without legal entity status, Law No. 17 of 2013 stipulates that such CSOs can be established by a minimum of three persons. A Registration Certificate (*Surat Keterangan Terdaftar*) shall be provided by the government. However, there is no explicit provision regarding which authority shall provide the registration certificate because Article 8, regarding the designated registration authority based on the geographical level of organisation, was struck down by the Constitutional Court (Case No. 82/2013, decided in December 2014). The government has not provided a Government Regulation on this matter.

### 3) Barriers to activities

The government does not have the right to interfere with the internal self-governance of a CSO. The Law on Foundations, however, stipulates that the organisational structure of a foundation must consist of three organs: the Governing Board (*Badan Pembina*), Supervisory Board (*Badan Pengawas*), and Executive Board (*Badan Pengurus*). Law No. 17 of 2013 on Societal Organisations does not provide detailed requirements on the organisational structure. It only regulates that the executive of societal organisations shall be selected based on consensus and deliberation and shall consist of a minimum one chairperson, one secretary, and one treasurer. (Article 29). The Law does not provide further on the different levels of an organisation.

The Law on Foundations requires every foundation to publish the abridged version of its annual report on an announcement board in its office. Furthermore, foundations that have received donations from the state, overseas parties, or third parties totalling 500 million Indonesian rupiah (IDR) or more, or that possess assets other than endowed assets of over 20 billion IDR, must be audited by a public accountant and have their annual report summaries published in an Indonesian-language daily newspaper. The Societal Organizations Law requires societal organisations collecting public funds to maintain financial reports according to standards of accountancy and publish them regularly (Article 38). With regard to geographical location to operate, Societal Organizations Law provides that CSOs may have organisational structure abroad and may operate in all parts of Indonesia according to relevant laws and regulations (Articles 26 and 27).

#### 4) Barriers to International Contact

Foreign foundations face a requirement to refrain from activities which “disrupt the stability and the unity“ of Indonesia or “disrupt diplomatic ties.” Excessive bureaucratic controls also require them to have residency and minimum assets for their establishment (USD1 million for a foreign legal entity and USD100.000 for a foreign individual).

#### 5) Barriers to Resources

The Law on Foundations requires foundations that have received donations from the state, overseas parties, or third parties totalling 500 million Indonesian rupiahs (IDR) or more to be audited by a public accountant and to have their annual report summaries published in an Indonesian-language daily newspaper. Foundations are allowed to engage in commercial activities to support the attainment of their objectives by setting up business enterprises and/or participating as shareholders in business enterprises. Associations, on the other hand, are not allowed to do so. If a foundation sets up its enterprise, the activities of the enterprise must relate to the foundation’s statutory purposes. These activities are defined broadly, including the fields of human rights, art, sport, consumer protection, education, environment, health, and the pursuit of knowledge. Shareholding by a foundation is allowed, provided that it does not exceed 25 per cent of the total value of the foundation’s assets. To maintain good corporate governance, no member of the governing, supervisory, or executive board of a foundation can simultaneously serve as a manager, supervisor, member of the Board of Directors, or member of the Board of Commissioners of any commercial enterprise that a foundation establishes or in which it invests.

In October 2011, the House of Representatives passed the zakat (Islamic mandatory alms) management bill into law (*Undang-Undang tentang Pengelolaan Zakat*). According to the new law, individuals are still allowed to establish zakat collection agencies under the supervision of the government-owned National Alms Agency (Baznas), provided that they meet all administrative requirements, including having a recommendation from Baznas and technical ability to run their alms collection and distribution programs. During the House discussion before the bill was passed, several legislators questioned some provisions that provide that alms collection and distribution can only be carried out by a societal organisation with legal entity status. The legislators said that the new law would force community-based alms management groups to stop their alms collection and distribution activities since they have no resources or capacity to establish a societal organisation with legal entity status.

#### 6) Barrier to access to policy dialogue

Since the Government Regulation No. 87/2015 comes into force, the access of labour union in the policy-making process became narrower. The Regulation erodes the role of the labour union in *Dewan Pengupahan* (Minimum Wage Council) to bargain and negotiate fairly in the determination of the amount of annual minimum wage in every region and sector. The critical provision in this regulation is the formulation scheme for deciding minimum salary based on economic inflation and economic growth. This formulation replaced the previous mechanism which uses the survey to every item of decent living components (KHL), which still too basic. As a result, in the last three years or since 2016, the percentage of increase in minimum wage significantly declined from 30% in 2014 to 8,3% in 2018.

Minority groups also have limited access to policy dialogue. Ahmadiyah and Syiah community, for example, they are not involved in every policy which affected directly to themselves. There is no representative of those minority groups in the official forum or event held by the Ministry of Religious Affairs.

### 7) Barrier to political activities

Recently, in response to the growing movement of the right to not to vote or popular called as *Golongan Putih* (Golput), which mostly generated by the critical CSOs activists who upset to the current political situation, Jokowi launched Presidential Instruction No.7/2018 on the National Action Plan on State Defence which include the increase of Golput movement as factual threat to the state defence.<sup>42</sup>

### 8) Barriers to Advocacy

In general, Indonesian law does not hamper the ability of CSOs to criticise the Government or to advocate for politically unpopular causes. However, there is a concern that the 2011 Intelligence Law contains several articles open to multiple interpretations, which CSOs claim to violate and override the Law on Public Freedom of Information of 2008. For example, the Intelligence Law defines “intelligence secrets” as “information that could jeopardise national security,” but provides no further explanation about the definition of “national security.” This is problematic for journalists and CSO activists because the provision could be interpreted in a way which would criminalise the spreading of public interest information. Interestingly, the Constitutional Court, in November 2012, rejected a motion from a coalition of civil society groups to amend the 2011 Intelligence Law, saying that the law neither violated the Constitution nor threatened freedom of expression.

There is generally no limit on the ability of CSOs to engage in political or legislative activities. However, the government can use the penal code against CSOs as well as media outlets that strongly criticise the government.

## 2. Barriers and Restrictions to Freedom Assembly

The Law on Freedom to Express an Opinion in Public, 1998 makes spontaneous assembly illegal, and mandates that the organisers of a public assembly must inform the authorities at least 24 hours in advance and provide a long list of information unless the assembly relates to academic activities on a university campus or religious activities. The authorities can dismiss an assembly on broad grounds. The law also mandates several locations where public assemblies cannot take place, including religious centres, the presidential palace, hospitals, ports, train stations, and Military Installations. Public assemblies may not take place during national holidays. Governor Regulation No. 232/2015 imposes even stricter conditions in Jakarta: stipulating that protests have to be kept at a volume of fewer than 60 decibels and take place only between 6 AM and 6 PM. The strictest enforcement of the laws remains in Papua, however, where in April 2016, an estimated 1,783 persons, including hundreds of HRDs, were arrested for participation in a protest that the Government had not authorised.

42 See <https://setkab.go.id/wp-content/uploads/2018/09/Inpres-Nomor-7-Tahun-2018-3.pdf> ; <https://tirto.id/bagaimana-bisa-mengatasi-golput-dengan-program-bela-negara-dfpV>



Since 2017, the disruption of peaceful demonstration and strike was legitimated by the implementation of Presidential Decree No. 63 of 2004 on National Vital Objects. Using this regulation, the police ban any demonstrations, rallies and strikes in the industrial zone areas.<sup>43</sup> In 2017, the Ministry of Transportation issued circular letters No. 15/2017 to ban demonstrations in the areas of national transportation objects.<sup>44</sup> The police use this to crackdown the union's activism in airport and seaport as often generated by the SP JICT and SBTPI.

Law No. 9 of 1998 on Freedom to Express an Opinion in Public governs various kinds of assemblies, including demonstrations, rallies, public meetings and open forums. The law requires advance notification before the action. According to Law No. 9 of 1998, the organiser of an assembly shall submit information regarding the assembly in writing to the police at least 24 hours before the event, unless the assembly relates to academic activities on campus or religious activities. (Article 10) The advance notification shall contain the following information:

- Purpose of the assembly,
- Venue/location/route,
- Time and duration of the assembly,
- Form of the assembly,
- Name of the person in charge, and
- Name and address of the organisation/group/individuals, any equipment that will be used, and the number of participants. (Article 11)
- The police may dismiss the assembly if they find equipment used in the assembly that is harmful to public safety or if the organiser fails to fulfil the information requirements in Article 10 and 11.

Therefore, the law does not allow spontaneous demonstrations unless it is in the form of an academic forum and held on campus. In addition, regarding time and place of demonstration, article 9 of Law No. 9 of 1998 lists places and times that are not allowed for assemblies, including: the presidential palace, religious places, military installations, hospitals, seaports and airports, train stations, land transport terminals, and vital national objects. Assemblies are not allowed on national holidays.

On October 28, 2015, the Governor of Jakarta issued Gubernatorial Regulation No. 228/2015 on the control of free speech in public spaces. The regulation provides that public protests can only be conducted in three designated areas in Jakarta. All three are located in Central Jakarta and reportedly in venues that are rarely used as protest sites. Public protests also can only take place between 6 a.m. and 6 p.m. and the noise level of the sound system should not exceed 60 decibels. Sixty decibels is about as loud as a conversation in a restaurant. Convoys would also be prohibited in demonstrations. CSOs widely criticised the measure. The Governor subsequently stated that he made a mistake in the regulation, specifically that the regulation should not limit demonstration to only those three locations, and he would revise it.

In mid-November 2015, the Governor issued the more lenient Gubernatorial Regulation No. 232/2015 to replace the previous regulation. While the previous regulation allowed only three locations in Jakarta for demonstrations, the new regulation provides that the three named

<sup>43</sup> <https://nasional.kontan.co.id/news/menhub-terbitkan-se-larangan-demo-di-objek-vital>

<sup>44</sup> <https://nasional.kontan.co.id/news/polri-peringatkan-sp-jict-terkait-demo-di-priok>

locations are provided by the city administration for demonstrations. Protesters can demonstrate in other public spaces, so long as they do not damage public facilities, litter, or violate human rights. Convoys are no longer prohibited during demonstrations. However, the regulation still requires that public protests take place only between 6 a.m. and 6 p.m. and the noise level of the sound system does not exceed 60 decibels.

Also, days before the start of the Peoples' Global Conference (PGC), which is a civil society-led movement that opposes the International Monetary Fund-World Bank (IMF-WB), the Indonesian government ordered a ban on all forms of public assembly and gatherings in Bali. The Bali Intelligence Police, for example, denied a permit to the PGC to assemble, and the administrators of Radio Republik Indonesia Auditorium, which was going to host a PGC event, disallowed the PGC's use of its venue at the last minute, claiming it needed to undergo "urgent renovations." The IMF-WB Annual Meetings in Bali from October 11-14, 2018, were considered to be one of the year's most significant world economic events.

**Responsibilities of Organisers and criminal penalties** --For every 100 participants in a demonstration or rally, organisers must designate at least five persons in charge (Article 12(2)). Law No. 1/PNPS/1965 on The Prevention of Misuse and/or Defamation of Religions, which regulates religious defamation or blasphemy, imposes criminal penalties of up to five years' imprisonment on individuals or groups that "deviate" from the basic teachings of the official religions. This law may be used against organisers and participants of assemblies promoting religious freedom.

Besides, the Indonesian Criminal Code (inherited from the colonial period) contains provisions on criminal defamation and libel (Article 310, Article 311, Article 316, and Article 207), which may be applied to organisers and participants of assemblies. The use of any separatist movement's symbols, such as a flag, is treason according to articles 104-107 of the Criminal Code; these articles have been used against assemblies in Papua against the West Papua Separatist Movement.

**Enforcement** --An assembly involving a separatist movement or land dispute may be subject to harsher regulatory treatment. For example, many protests in Papua (where demonstrators are believed to represent separatist groups) have been broken up with the use of weapons.

### 3. Barriers and Restrictions of Freedom of Expression

#### 1) Internet Freedom; Barrier to access and contents restriction

In 2017, the Indonesian government, through the communication ministry, had blocked 800.000 sites and most of them related to the pornographic and gambling application. In its war on pornography, the ministry also threatened to block Facebook Inc's WhatsApp Messenger, which is widely used in the country, unless obscene Graphics Interchange Format (GIF) images.<sup>45</sup>

However, this massive restriction also affected to the LGBT communities. They have faced a crackdown. The Ministry has its legitimation by Anti-Pornography Law. The Open Observatory of Network Interference (OONI) 2017 report found that numerous other sites that have not a

<sup>45</sup> <https://www.reuters.com/article/us-indonesia-communications/new-indonesia-web-system-blocks-more-than-70000-negative-sites-idUSKCN1G30KA>



relationship with pornography to be blocked as well. For example, the websites that were expressing criticism toward Islam.<sup>46</sup> The reason behind this could be based on the implementation of the Indonesian blasphemy law.

## 2) Barriers to speech

In general, Indonesian law does not hamper the ability of CSOs to criticise the government or to advocate for politically unpopular causes. However, there is a concern that the 2011 Intelligence Law contains several articles open to multiple interpretations, which CSOs claim to violate and override the Law on Public Freedom of Information of 2008. For example, the Intelligence Law defines “intelligence secrets” as “information that could jeopardise national security,” but provides no further explanation about the definition of “national security.” This is problematic for journalists and CSO activists because the provision could be interpreted in a way which would criminalise the spreading of public interest information. Interestingly, the Constitutional Court, in November 2012, rejected a motion from a coalition of civil society groups to amend the 2011 Intelligence Law, saying that the law neither violated the Constitution nor threatened freedom of expression.

There is also a growing concern about the use of Law No.11 of 2008 regarding Electronic Information and Transactions (EIT) as the basis for defamation. The Law actually provides a legal basis for Internet-based commerce in Indonesia and codifies a number of internet-based offences. However, it also contains a provision that criminalises internet-based insults and defamation, with noticeably stronger penalties than those regulated in the Criminal Code. The Law provides a maximum punishment of 6 years of imprisonment and a fine of up to Rp. 1 billion (approximately USD 100,000). Between 2008, when the Law was passed, and October 14, 2014, more than 70 people had been charged under the EIT, with 40 of those cases brought in 2014. Although to date there has not been any case of defamation filed against activists using the EIT, the law is seen generally as a threat to freedom of expression.

On October 2015, the Indonesian Police Chief, Tito Karnavian was launched Circular Letter No.06/X/2015 on Hate Speech. Initially, the letter was formulated to combat the hate speech as Indonesia also bound by several international treaties which seek to criminalise that conduct. However, this Letter has a broader and vague definition of hate speech. It compiles some criminal provisions associated with hate speech, including blasphemy, defamation of state institutions or symbols and even insults and slander. As a result, in practice, the implementation of this letter was extensive and arbitrarily interpreted targeting oppositions, dissents or even for people’s expression that unrelated to political activities. Therefore, The letter is threatening freedom of expression and minorities. In 2017 alone, the police reported that they handled 3.325 cases of what they called as hate speech. The majority of the case is not relevant to the original concept of hate speech as governed in International human rights conventions.

## 4. Tightening monitoring to the National and International Civil Society Organisation

At least since July 2017, Indonesian government is tightening its monitoring to societal organisation operating in Indonesia both national and international. This monitoring is justified

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<sup>46</sup> <https://ooni.torproject.org/post/indonesia-internet-censorship/>

by the introduction of Ministry Home Affair Regulation No. 56 of 2017 on Monitoring of Societal Organisation within the Ministry of Home Affair.<sup>47</sup> This regulation is the operational provision from the higher regulation which are Government Regulation No. 58 of 2016 on the Implementation of Law No. 17 of 2013 on Societal Organisation, and Government Regulation No. 59 of 2016 on Societal Organisation that established by Foreigner.

The most challenges from these regulations are the establishment of the Integrated Team or Tim Terpadu under the coordination of Minister of Home Affair which its member consist several ministries and involving Indonesian Military (TNI), Police (POLRI) and National Intelligence Agency (BIN). The main task and function of this Tim Terpadu is to monitor the societal organisations which are registered and not registered as well. Further, the Team rely on the complaint or report from public about the societal organisation activities. However, there is no adequate mechanism and provision to ensure of to safeguarding them from abusive monitoring activities.

In the practice, this research found that some NGOs and international NGOs and international funding agencies are experiencing to become target supervision of Tim Terpadu works. Some of them received phone call complaining the activity of NGOs and asking detail of projects and programs. Some international funding agencies forced by this Team to present and to agree the provision and conditionalities before operating its projects.

## **C. A CONTEMPORARY CHALLENGES FACING BY INDONESIAN CSO ADVOCATING FOR DEMOCRACY AND HUMAN RIGHTS**

In this chapter, we present the challenges related to changing or shrinking operating space and the implications thereof for CSOs advocating for democracy and human rights. The challenge comes in the form of political narratives, legal reforms, and coercive measures aimed at eroding the legitimacy and efficacy of human rights actors. Global surveys and reports show that the situation facing CSOs regarding democratic and human rights is quite challenging in all ASEAN countries, including in Indonesia. However, the development in recent years has not been equally bad regarding the many dimensions of democracy and human rights.

### **1. Legitimation and Justification of restrictions and limitations of rights**

#### **1) Justification**

There are some common arguments that has been using by the government to justify restrictions of CSOs as follow:

- State sovereignty and protection against external interference in domestic affairs requires that a government maintain control over the flow of resources across its territories.
- Counterterrorism and anti-money laundering efforts necessitate increased scrutiny over an international money transaction.
- To preserve and defend the state ideology of Pancasila
- To protect and defend the Unity in Diversity (Bhineka Tunggal Ika) and the Unitary State of the Republic Indonesia or “NKRI.”

<sup>47</sup> <http://ditjenpp.kemenumham.go.id/arsip/bn/2017/bn1051-2017.pdf>

- To protect the young generation from drugs and other immoral behaviours.
- To combat “latent danger” of socialism and communism.

Accordingly, the Indonesian constitution article 28 J para (2) on limitation of rights often used and interpreted by both government and judiciary, including constitutional court to justify restrictions of fundamental freedoms. Different from the international human rights standards on limitation of rights, article 28 J para (2) added religious norm as one of the reasons to legitimate the limitation of rights.

## 2) Legitimation: a Draconian Laws

“Laws: We know what they are and what they are worth! They are spider webs for the rich and mighty, steel chains for the poor and weak, fishing nets in the hands of the government.”-- Confessions of a Revolutionary, Pierre-Joseph Proudhon

While many laws seek to control all aspects of society, some directly related to the interest of the regime: the criminal laws. In many decades we saw penalisation freedoms and other rightful activities in many ASEAN countries. We called it as draconian laws as its characters that can arbitrarily interpret and easily use to suppress their political opponents.

DRACONIAN LAWS	OPPRESSIVE PROVISIONS	VICTIMS
1. Defamation law: Articles 207 and 310 to 321 of the Indonesian Penal Code;	Articles 310-321 of the Penal Code define defamation very broadly and provide for up to sixteen months of imprisonment. Article 207 outlaws any 'insult' of an authority or public body in Indonesia, and carries a maximum punishment of 18 months imprisonment.	Dissents Oppositions HRDs Journalists
2. Hate Speech law -Articles 27 and 28 of the Law on Information and Electronic Transactions (IET), 2008	Article 27 of the IET threatens web commentators with prison sentences and fines if they distribute electronic information that contains defamatory or threatening content, as well as information that contains violence, threats, incitement, or would result in consumer loss.	Dissents Oppositions HRDs Journalists
3. UU PNPS No. 1/1965 on Blasphemy (Blasphemy law)	The law threatens different believe from the mainstream that recognised by the state. This includes internal religious conscience and practices. The law define defamation of religion very broadly.	Religious minority groups LGBT groups Media workers Dissents
4. Treason or Sedition Law –Criminal Code	Strict sedition laws are consistently used to arrest and prosecute activists advocating for minority rights. Article 106 of the Penal Code states that those attempting to separate part of the State or bring it under foreign domination can face life imprisonment.	Papuan pro-independent Oppositions Dissents
5. The State Intelligence Law, 2011	The law defines a threat to national security as any threat to security, ideology, politics, economics, and culture, including national development. The law provides the Government with broad powers to prosecute whistle-blowers by criminalizing the release of information affecting 'national stability,' vague phrasing left undefined.	Journalists Papuan pro-independent Oppositions Dissent

6. The Law on Freedom to Express an Opinion in Public, 1998	Law makes spontaneous assembly illegal, and mandates that the organisers of a public assembly must inform the authorities at least 24 hours in advance and provide a long list of information unless the assembly relates to academic activities on a university campus or religious activities. The authorities can dismiss an assembly on broad grounds. The law also mandates several locations where public assemblies cannot take place, including religious centres, the presidential palace, hospitals, ports, train stations, and Military installations. Public assemblies may not take place during national holidays. Gubernatorial Regulation No. 232/2015 imposes even stricter conditions in Jakarta: stipulating that protests have to be kept at a volume of less than 60 decibels and take place only between 6 AM and 6 PM.	Unions
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## 2. De-legitimisation of CSOs and Propaganda to ruin CSOs' Credibility

### 1) “Foreign agents” and “state Traitor” Label

When civil society criticises government policy or a private sector driven agenda, they are often labelled ‘anti-development’, ‘anti-national’, ‘politically motivated’ and even ‘against national security’. This rhetoric undermines both the legitimacy of many CSOs and their ability to operate. It further is generally coupled with a series of reforms to restrict civil society space and stifle public debate.<sup>48</sup>

Labelling and stigmatising of CSOs have been using by many ASEAN countries leaders to delegitimise CSOs. Among the common accusation to CSOs is that they are so-called ‘Foreign agents’. It also often associated with the fact that many NGOs received foreign funding. Sometimes the accusation occurred when NGOs advocate some issues that attacking government and corporate interests. For instance, the campaign against Jakarta Legal Aid Institute occurred when the institute launched legal action against privatisation of water supply in Jakarta.<sup>49</sup> Another example is an accusation by authorities and corporation to Greenpeace Indonesia. In 2018, top ministers in Jokowi’s administration openly accused Greenpeace of destroying Indonesian economic, when referred to the organisation’s campaign against deforestation in Indonesia that mainly because of the expansion of palm oil industries.<sup>50</sup> Several years before, in 2010, Greenpeace became a target of attacks for their persistent campaign against the abusive palm oil industry. Since that year, the Indonesian government tighten restriction to international NGOs by forcing them to register as a local entity.

The label of ‘foreign agent’ is powerful because it linked to self-determination, sovereignty, and non-interference principles. According to Jonas Wolff (201\*), the basic rationale of what is called “reputational attacks against civil society actors” involves three steps. First, a given government promotes a specific set of general standards of appropriateness that defines and delimits the range of legitimate CSOs and their activities. Second, individual CSOs are publicly delegitimised, that is, designated as transgressing these limits. Third, in doing so, governments indirectly weaken the CSOs concerned by negatively affecting their reputation with the public.<sup>51</sup>

In the country with a long history of foreign intervention and asymmetric economic independencies, particularly in postcolonial settings, suspicions of and resistance to “Northern” and/ or “Western” interference often constitutes deep-seated public sentiments (Poppe and Wolff 2017, 16).<sup>52</sup> As a result, “pushback measures against Western actors often enjoy significant domestic public support” (Carothers 2016, 370).

48 <https://oxfamblogs.org/fp2p/5-trends-that-explain-why-civil-society-space-is-under-assault-around-the-world/>

49 <https://www.hukumonline.com/berita/baca/lt532001dfa6167/spanduk-menuduh-lbh-jakarta-antek-asing>

50 <https://www.thejakartapost.com/academia/2018/11/27/greenpeace-activists-try-to-sabotage-indonesian-economy.html>

51 [https://www.dejusticia.org/wp-content/uploads/2018/04/Rising-to-the-populist-challenge\\_1.pdf?x54537](https://www.dejusticia.org/wp-content/uploads/2018/04/Rising-to-the-populist-challenge_1.pdf?x54537)

52 For different country case studies, see Brechenmacher (2017) and Wolff and Poppe (2015, 14–29).

Meanwhile, the persistent works of KontraS to fight against impunity and militarism in Indonesia was accused by hardliners within the military and their paramilitary wings as anti-patriotic.<sup>53</sup> For them, human rights activists and organisations always campaigning negative issues on Indonesia and its military institution in international forums.

## 2) Pro-opposition

Another common accusation by governments is that CSOs are lack of independence and in simply misinterpreting for acting on behalf of the political opposition. Since a year before 2019 presidential election, there is almost no room for independence groups. Non-partisan CSOs or activists who frequently acted as a watchdog to criticise government become a target of attack from the supporters and buzzers of the incumbent Jokowi.

Unintentionally, in the hot election environment, human rights violations like forced evictions, disbandment to an organisation, malicious prosecution or popularly called in Indonesia as “kriminalisasi” are among the crosscutting issues which advocated by Human rights NGOs and opposition. As a result, in the misinform public eye, especially government supporters, see that human rights NGOs or activists and the opposition parties are hands in hand attacking Jokowi’s policies. Such accusations may prevent human rights groups and other critical CSOs from gaining legitimacy in the public eye, and therefore from being effective in advocacy.

The oppositions have the same interest to those human rights issues to protect their allies, but it was not genuine and with different motives; attacking the incumbent. While in the opposition, Garindra politicians supported the CSOs against the ITE law, but they used the act when targeting their political opponent.

## 3) Stigmatization and Labelling to Labour Unions: Communist and Provocateur

Progressive trade unions like KASBI, KSN and FPBI, were frequently accused by authorities and elements within the company as communist, troublemakers, provocateur and other negative description like ‘bad for business and investment environment’. Accusation and labelling come from elements within the companies, a local mass organisation funded by the company, and paramilitary groups.

The “communist” label rooted in the long period of suppression to the communist and the left. Under the New Order regime, labour unions were systematically suppressed with no influence in the policy-making processes for economic development. Today, the military supported by Islamic hardliners groups remains to use this stigma to prevent public support to the union activities. In a leaked document of presentation, the Kapolri in public seminar also perceives the labour movement, strike rights as one of the threats to economic development. Previous years ago, a similar briefing within military institutions also described the same perception: that the progressive unions are the threat to the state. Labelling to progressive unions is recognised as part of the union-busting through non-legal strategies. Communist “PKI” labelling is common to attack CSOs activities, progressive and independent labour unions, discussions and other public events on 65 massacres, and leftist movements.<sup>54</sup>

53 Unofficial document: Ancaman Militer dan Non-Militer NKRI see [http://www.academia.edu/17380169/Ancaman\\_Militer\\_Dan\\_Non\\_Militer\\_NKRI](http://www.academia.edu/17380169/Ancaman_Militer_Dan_Non_Militer_NKRI)

54 <http://indonesiaatmelbourne.unimelb.edu.au/democratic-emergency-hard-liners-communism-and-the-attack-on-lbh/>

#### 4) Lack of Integrity and Accountability

Another part of the strategy of labelling CSOs and labour unions claims that they lack accountability and transparency. The accusation is not totally wrong. Only big and established NGOs frequently publish an annual report, including their financial statements. Many NGOs failed to publish it. When the Public Information Disclosure Act introduced in 2009, NGOs, especially human rights NGOs, also become a target of the public to disclose their public information.<sup>55</sup> Although the motivation to demand information about the institution is unclear, it already warned NGOs about the importance of inclusiveness and transparency.

The negative perception of CSOs is also affected by the presence of CSOs that are linked to local governments or ministries. They are usually called “red-license-plate CSOs” as government-owned cars in Indonesia have red license plates. They are allegedly created to facilitate corrupt practices and control over government-funded projects as well as to disseminate an opinion countering CSOs that criticise the government actions or policies.

### 3. Attack, harassment and violence-- Sustained Corruptor’s fightback and attacks on human right defenders

#### 1) Attack on journalists

Indonesia, like other corrupt countries, is not friendly for journalism. Despite freedom of the press is ensured by the constitution and in many regulations, in practice, journalist activities are vulnerable for attack, harassment and violence. According to AJI and Press Legal Aid (LBH Pers), the numbers of human rights violations against journalists have increased in the last one-year; from 47 cases of breaches in 2015, the number went up to 83 in 2016, and 63 in 2017.<sup>56</sup> The violations include physical attacks, a prohibition to access information, terror and intimidation and also extrusion against a journalist. While Indonesia has some regulations in favour of protection of press and journalists, such as article 351 of the Penal Code on serious maltreatment, Law No 39 of 1999 on Human Rights, and Law No 40 of 1999 on Press, these have yet to be effectively applied to ensure the protection of journalists and press.

#### 2) Violence to peasants and land rights activists

The Konsorsium Pembaruan Agraria (KPA) annual report recorded that in 2017, approximately 13 peasants killed, six injured by police shooting, 612 experienced with violence and about 224 people harassed by inhuman, degrading treatments in the agrarian conflict.<sup>57</sup> On September 2018, Indonesian public shocked by the killing of anti-mining villager Salim Kancil in East Java. Kancil, a 52 Years old, was beaten to death by a group of people in Selok Awar-Awar District, Lumajang. Another villager who protests the sand-quarrying operation in of Watu Pecak Beach, Tosan, 51, years old assaulted to the critical condition.

#### 3) Sustained Corruptor’s fightbacks, terrors and Attacks on Anti-corruption activists, KPK Investigators and Commissioners

According to Transparency International Indonesia (TII), attack on anti-corruption activists has been increasing over the last decade.<sup>58</sup> The attacks to the senior investigator of KPK, Novel Baswedan by a chemical fluid is the famous case that until the date of this report is not yet settled.

55 There are some CSOs received a request for public information, including LBH Jakarta, YLBHL, ICW and many more.

56 LBH Pers annual report 2017

57 KPA annual Report 2017

58 <https://www.thejakartapost.com/news/2015/09/28/antimining-activist-beaten-death-east-java.html>

59 Interview with TII



#### 4) Attacks on Religious Minorities

According to KontraS, violations of freedom of religion and belief have always dominated civil and political rights abuse in the country. In the period 2014-2018 alone, there were at least 488 cases of violations against freedom of religion and belief, with the number of victims reaching 896.<sup>60</sup>

#### 5) Attacks on Pro-Independence of Papua

Coercive responses of the Indonesian authorities in Papua to the pro-independence activists are well covered by the latest Amnesty International Indonesia report, published in 2018. The report revealed a massive number of unlawful killings in Papua with most of the case have a link to political activities, and the victims are pro-independence activists or supporters.<sup>61</sup>

#### 6) Attacks on LGBTIQ

Indonesia has seen an increasing number of attacks on LGBT people, and other vulnerable groups have been targeted by vigilantes with intimidation and violence. According to Arus Pelangi, the Indonesian Federation of LGBT groups, attacks on LGBT is increased significantly in the last decades. The groups recorded 142 incidents of banning, raid, and attacks on their activities in the first three months of 2016 alone.<sup>62</sup>

On May 2017, the police raided the gay gathering event in Atlantic Gym & Sauna in Jakarta and arrested 141 gays under Anti-Pornography Law. The raid was gone viral with the spread of photos and videos of individuals in uncovered body condition. The attack to their activity involving police and paramilitary which often came from religious extremist groups.<sup>63</sup>

#### 4. Disbandment of Organisations

On August 2, 2017, the government disbanded the hard-line Muslim group Hizbut Tahrir Indonesia (HTI) for conducting activities that contradict state ideology of Pancasila and the principle of a unitary state of the Republic of Indonesia. The decision was taken following the issuance of regulation in lieu of the Law on Mass Organizations, which has sparked concerns over potential violations of the right to assemble because it grants the government the power to disband mass groups without due process.

#### 5. Raid on events related to Communism and Socialism and the 65 Massacres

The incident of attacks on and disbandment of events associated with Communism and Socialism and the 65 Massacres occur almost every year in cities across the country. On September 16 2017, when police broke up an academic discussion on the 1965-1966 violence at the offices of the Jakarta Legal Aid Foundation (LBH Jakarta) and its national umbrella body, the Indonesian Legal Aid Foundation (YLBHI). Protesters gathered outside, demanding that the event be cancelled. The following day, provoked by the hoax on social media that LBH was holding a congress of the Indonesian Communist Party (PKI), a thousand Islamic hardliners mostly youth attacks on the LBH office, tried to enter the building and forced the LBH lawyers and activists remained trapped inside. A year before, in February 2016, “Belok Kiri Festival” –Turn Left festival also attacked and banned by the police and public order officials.<sup>64</sup>

60 KontraS, 4 years of Jokowi, 2018

61 <https://www.amnesty.org/download/Documents/ASA2181982018ENGLISH.PDF>

62 See <https://nasional.kompas.com/read/2016/08/11/20580231/arus.pelangi.catat.142.serangan.terhadap.lgbt.pada.awal.tahun.ini>

63 Arus Pelangi see at <https://aruspelangi.org/agenda/menimbang-minoritas-yang-jadi-jualan-politik/>

64 <https://www.thejakartapost.com/news/2016/02/29/group-sheds-light-indonesia-s-hidden-history.html>

## 6. Raid on literature related to Communism and Socialism

On December 2018, In Kediri, East Java, TNI troops raid books associated with socialism and communism by accusing it referred to the Indonesian Communist Party “PKI”. Less than a month after, military forces doing the same in Padang, West Sumatera. In the following days, the Attorney General’s Office (AGO) and the Indonesian Military (TNI) are reportedly preparing for a “large scale” raid on books about anything related to socialism or communism or that dig into the contentious history of the 1965 putsch that, according to the official narrative, was orchestrated by the now-defunct Indonesian Communist Party (PKI).<sup>65</sup>

## 7. Attacks on Academic Freedom

Attack on academic activities is another common repression of civic freedom in Indonesia. The Lokataru’s monitoring report in the period of 2018-2019 found at least 57 cases of the violation of academic freedom across Indonesia. 29 cases or almost a half of the cases related to the banning and disruption of academic seminars and public discussions. About 24 cases are intimidation and threat to academia, lecturers, students and organisations. The perpetrators in the attacks on academic freedom come from internal university such as rector and deans, as well as from external like police, paramilitary and hardliner societal organisations.<sup>66</sup> Some universities are also introducing policies to justify the restriction of even in campus area that attacking or criticising the government.

## 8. Disruption to Peaceful Demonstrations and Assembly

In 2018, for the first time since starting in 2007 in Jakarta, the weekly “Kamisan” (Thursdays) protest was disrupted in Malang and Surabaya. The Kamisan was initiated in January 2007 by families of victims of human rights violations and facilitated by KontraS. Recently, supported by other human rights organisations like LBH and Amnesty International Indonesia, the movement spread out to other cities and carry on various human rights violation cases, including Papuan issues. This aggressive development was responded by the coercive measure of local security agencies and often with the involvement of paramilitary. They accused the movement of being a supporter of Papuan independence and PKI sympathisers.<sup>67</sup>

## 9. Strategic Lawsuit Against Public Participation (SLAPP)

The use of laws both civil and criminal or commonly called as SLAPP is common to silence and suppress critics, dissents, resistances and oppositions. The SLAPP was used by not only government officials but also by non-state actors –mostly companies. However, SLAPP is possible in a situation where legal and law enforcement institutions are highly politicised. Even though the phenomenon of the politicisation of law enforcement agencies is not new, under Jokowi, it more open and systematic. In the lead-up to the 2019 election, the victims are not only activists but also the politicians who stand in the opposition side. Jokowi’s regime through its attorney general and police - also use the corruption charges to some regional government leaders unless they stand with the incumbent.<sup>68</sup>

65 <https://www.thejakartapost.com/news/2019/01/25/ago-plans-massive-raid-left-wing-literature.html>

66 Lokataru Foundation monitoring 2018

67 <https://regional.kompas.com/read/2018/09/27/19153081/aksi-kamisan-di-kota-malang-dibubarkan-kelompok-massa>

68 Thomas P. Power (2018) Jokowi’s authoritarian turn and Indonesia’s democratic decline, *Bulletin of Indonesian Economic Studies*, 54:3, 307-338



## 1) Malicious Prosecution and the Excessive Use of the Draconian Criminal Defamation Laws, Treason, and Anti-Terrorism Laws

### a. Targeting Oppositions

Initial repressions of the Jokowi's regime can be traced to 2016. In that year, shortly after the 212 rallies, some figures which are accused behind the movement declared as a suspect and some arrested on treason charges under article 107 Indonesian Penal Code. They are including Rachmawati Soekarnoputri, Maj. Gen. (retirement) Kivlan Zein, Gen. Brig (ret) Adityawarman, Ratna Sarumpaet, Firza Husain, Eko, Alvin Indra. Meanwhile Rizal Kobar, Jamran and Sri Bintang Pamungkas charged by article 28 para 2 ITE Law. The prosecution was continued and targeted to the head of FPI, Rizieq Shihab on ITE charges following the revelation of his private massaging in social media.<sup>69</sup>

In the eve of 2019 elections, criminal prosecution to the oppositions was significantly increased. Rocky Gerung charged by article 156 (a) Criminal Code--a draconian blasphemy law, following his controversial speak at a popular talk show program in national television. Ahmad Dhani charged by the similar laws when he insulted Multipurpose Ansor Front (Banser)-- the quasi-militia affiliated with Nahdlatul Ulama (NU) in Surabaya. He even convicted and imprisoned for the violation of ITE Laws for his offensive online commentary to the controversial of Ahok Blasphemy case.<sup>70</sup> In response, the oppositions are also used a similar tactic. They reported some figures of Jokowi's supporter to the police using the same laws.<sup>71</sup>

### b. Targeting Human Rights Lawyers

In August 2016, Haris Azhar, an HRD and coordinator of Forum-Asia member KontraS, had a defamation complaint filed against him by the National Anti-Narcotics Agency (BNN), the TNI and the National Police under Article 27 of ITE Law. Following public pressure, the National Police put its investigation of Haris Azhar on hold, but the charges remain as of November 2016. In August 2015, HRD I Wayan 'Gendo' Suardana was the object of a criminal defamation charge filed under Article 28 of the Law by mass organisation Prospera over Gendo's tweet featuring play on words of the organisation's name.<sup>72</sup>

### c. Targeting Anti-Corruption Activists

In 2015, following the decision of the Indonesian Anti-Corruption Commission (ACC) to charge Gen. Budi Gunawan - the single candidate of the chief of Indonesian Police chosen by President Jokowi -as suspect of corruption, two commissioners of the ACC, Bambang Widjojanto and Abraham Samad were arrested by the Police. The public criticism to the police following their arrest was responded by the police with another crackdown and series of malicious prosecutions to other ACC Commissioners—Adnan Pandu Praja and Johan Budi, Head of Judicial Commission-Suparman Marzuki, Head of PPATK –Yunus Husain and many anti-corruption figures like Feri Amsari, Charles Simabura, Erwin Natosmal, Taufiqurrahman Sauri, including former deputy minister of law and human rights -Danny Indrayana.<sup>73</sup> Most of them were charged under the IET Law, as well as Article 310 and 311 of the Penal Code.

69 <https://jakartaglobe.id/context/police-continue-probe-pornography-case-involving-fpi-leader-rizieq>

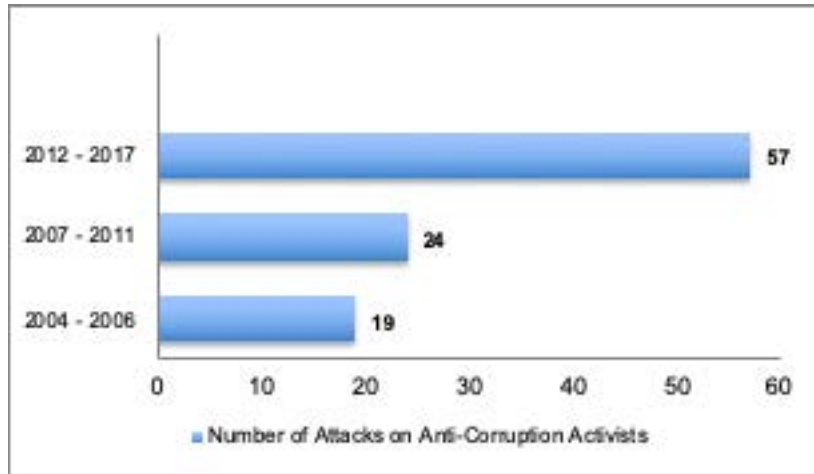
70 <https://www.thejakartapost.com/news/2019/02/06/ahmad-dhani-to-face-another-hate-speech-trial-for-calling-political-rivals-idiots.html>

71 <https://www.thejakartapost.com/news/2018/06/09/grace-natalie-reports-internet-users-for-libel-against-her-and-ahok.html>

72 KontraS Report 2018

73 TII Report (unpublished 2018)

Transparency International Indonesia research on malicious prosecutions to Anti-Graft activists found that the number of attack and terror to whistleblowers and anti-corruption activists has significantly increased in the period 2012 to 2017. In that period, TII recorded 57 incidents of attacks on whistleblowers and anti-corruption activists.<sup>74</sup>



#### d. Targeting Peasants, Environmental and Land Rights Activists

The Konsorsium Pembaruan Agraria (KPA) annual report 2017 recorded about 369 people --peasants and land rights activists, faced criminal charges and detained across Indonesia. Authorities commonly use article 55 Law No. 39/2014 on Plantation, article 12 and 82 para 1, article 17, article 92 Law on (P3H), and article 160,170, 187 and 406 Penal Code to prosecute peasants and indigenous peoples.<sup>75</sup>

In 2018, criminal prosecution to peasants was significantly increased to 940 victims or almost three times more cases in the previous year. Among the most controversial cases is Budi Pego. The resistance of local peasants to the operation of Tumpang Pitu mining led to the arrest and prosecution of the leader of the resistance movement, Heri Budiawan aka Budi Pego. He is accused of bringing communist flag during the rally and then he was charged for treasons or sedition provision, under article 107 (a) Penal Code. He found guilty with four years imprisonment. In another conflict spot, Sawin and Sukma, both are peasant who organises and generate resistance against PLTU in Mekarsari village, arrested and prosecuted by article 24 and 26 Law No. 24/2009 on National Flag, Language and Symbol for his unintended mistake to raise a national flag during the rally.<sup>76</sup>

Criminal prosecution to the protest and resistance of environmental activists also increased in the last four years. Among the cases is the fisherman of Pari Island versus PT. Bumi Pari Asri, the fishermen, protest to coal tankers in Northern Kalimantan, Bangka Island Fisherman versus PT. Mikgro Metal Utama, Peasants versus Steam Fired Power Plant (PLTU) Indramayu 2 and many more.<sup>77</sup>

<sup>74</sup> TII Report (unpublished 2018)

<sup>75</sup> KPA Annual Report 2017, "Reforma Agraria Di Bawah Bayang-Bayang Investasi",

<sup>76</sup> KPA Annual Report 2017

<sup>77</sup> Walhi -see <https://walhi.or.id/kriminalisasi-pejuang-lingkungan-hidup-terus-berlanjut-di-rezim-nawa-cita/>

### e. Targeting Journalist

On September 2017, Journalist and Videomaker Dandhy Dwi Laksono was charged by criminal defamation laws, article 27 para (3) in conjunction with article 45 (3) ITE Law. He was reported to the police by Repdem volunteer (affiliated to PDIP) after compared former President Megawati Soekarnoputeri with Myanmar's President Aung San Suu Kyi for their incapability to handle the issue of Papua and Rohingya.<sup>78</sup> The report, however, was stopped without a formal decision. On October 2018, Abdul Manan, chair of AJI and one of the founders of Indonesialeaks, an investigative platform that developed by numbers of media and CSOs was also reported to the police by the same defamation laws following their brave report –“the Redbook Scandal” that revealed the allegation of corruption of Indonesian Police Chief Tito Karnavian.<sup>79</sup> Til the date of this report, there is no clear information about whether the police continue to prosecute them.

### f. Targeting Labour Unionists

On October 2015, 23 labour unionists arrested when they organised a rally against Government Regulation No.78/2015 on Remuneration. They arrested including one student and two LBH Jakarta lawyers, Tigor Hutapea and Obed. All of them charged by article 216 and 218 Penal Code governing the crime of the disobedience to authority order. However, in 2017, they found not guilty in the trial at the Jakarta District Court.

In 2017, LBH Jakarta assisted the other three cases of malicious prosecution against unionists. The first case is the prosecution to the leader and Secretary General of SBTPI (Serikat buruh Sektor Transportasi, Pergudangan dan Pelabuhan) by criminal defamation law, article 310 para 1 and 311 para 1 Criminal Code. The case was fabricated following their involvement in the negotiation of their member dispute with the company, PT. Daya Mitra Serasi. In the same year, leader and secretary general of SP. Bank Danamon is also prosecuted by the police for defamation charges for the violation of article 310, 311 Penal Code and article 27 para 3 ITE Law. The third case is the prosecution to the leader of SP Lion Air by also the same defamation provisions in the Penal Code. The trial of 23 labour unionists together with the three cases as above, could be considered as the most significant malicious prosecution to labour activists since the Reformasi period. LBH Jakarta titled 2017 as the year of the Fading of Reformasi Spirit (Redupnya Api Reformasi).<sup>80</sup>

Meanwhile, in Papua, the strong union at PT. Freeport Indonesia crushed and hijacked by management after Sudiro -the leader of PUK SPKEP SPSI detained by fraud charges for his and all committee members refused to pay a contribution to the Branch Office of SPSI which at that time controlled by management who close to the company. Bribery and corruption allegation surrounding the case is reported by Sudiro's lawyer to the Anti-graft Commission and Judicial Commission. Since that time, the Union was divided, and internal conflict remained in the trial.<sup>81</sup>

### g. Targeting Papuan Pro-Independence activists

Papuan pro-Independent activists, especially the KNPB members, are the subjects of criminal prosecution. Arbitrary arrest and detention, torture and killing are the methods to silence suppress their movement. In 2016 alone, about 1783 members of KNPB and Papuan human rights defenders (HRDs) arrested mostly during the national rally in commemoration of the

78 Interview with WatchDoc

79 <https://en.tempo.co/read/922579/police-to-investigate-indonesialeaks-lbh-finds-it-regrettable>

80 LBH Jakarta Annual Report 2017 “Redupnya Api Reformasi”, 2017

81 Interview with PUK SPKEP SPSI PT. Freeport Indonesia

82 ‘Urgent Appeal - Unlawful Mass Arrests of at least 1,783 West Papuans in April and May 2016’, Human

independence of Papua in every first December. The latest report of Amnesty International Indonesia in 2018 revealed 100 cases of extrajudicial killing in Papua that related to political aspiration. Among the victims are the KNPB activists.<sup>83</sup>

## 2) Civil Lawsuit

Many environmental activists being a target of SLAPP suit.

- Nur Alam v. Basuki Wasis – On April 2017, suspended Southeast Sulawesi governor Nur Alam filed a civil lawsuit against Basuki Wasis, an environmental destruction expert from Bogor Agricultural University (IPB) who acted as an expert witness for KPK’ Prosecutor. Alam accused Wasis of committing a tort and wrongful conduct for Wasis’s study in the calculation of the potential environmental losses in Nur’s graft case, which amounted to Rp 2.7 trillion (US\$196 million). His case raised concern from KPK and environmental activists about the risk of SLAPP in the fight against corruption.<sup>84</sup> After a massive campaign and extensive coverage media, the panel of judges of Cibinong District Court, a place where the lawsuit was filled, dismissed Nur Alam petition.<sup>85</sup>

Wasis case remained us to the case of PT. Newmont Minahasa Raya v. Dr. Rignolda Djameluddin in 2006. At that time Rignolda also faced a lawsuit for his study on environmental condition in Buyat bay which affected and poisoned by the US gold company. Wasis is lucky enough after gained widespread support. In many places, communities struggle hardly against company lawsuits.

- Kementrian Pertanian v. Yeka Hendra – In 2018, Ministry of Agriculture filed a civil defamation lawsuit against Yeka Hendra Fatika, chairperson of Pusat Kajian Pertanian Pangan dan Advokasi (PATAKA). The Ministry claimed that Yeka was committed wrongful acts for his activity to organise online petition questioning the Ministry’s data of padi productions. On January 2019, however, the plaintiff recalled its lawsuit without reason. Although the trial was recalled, PATAKA and its lawyers condemned the Ministry of Agriculture for their attempt to suppress dissent and critics.

Labour unions are also a subject of SLAPP target. In the last three years, companies have been using civil lawsuit against labour unions. KASBI –a progressive labour confederation, probably the most experienced labour union to confront this attack as described below:

- PT. Dream Sentosa Indonesia v. Dayat and Hermansyah (KASBI Karawang) – in 2016, PT. Dream Sentosa Indonesia –based in Kawarang- sued two Dayat and Hermansyah-both is activists of KASBI Karawang for their involvement in the advocacy of a massive number of lay off of the 4000 workers of the company. However, at the Karawang Court, They were survived after the dismissal of the lawsuit due to a mistake of judicial competency.<sup>86</sup>

- PT. Metro Tara v. S SEBUMI-KASBI – in 2018, the company based in Bandung filled a civil suit against its 54 workers who are affiliated to the Federation of SEBUMI-KASBI. If the labours lose at the court, they have to pay 13,7 billion rupiahs for the compensation.<sup>87</sup> Until the date of this report, the case is still on going in the court.

83 Amnesty International Indonesia, 2018.

84 <https://www.thejakartapost.com/news/2018/04/17/suit-against-witness-raises-concerns.html>

85 <https://www.thejakartapost.com/news/2018/12/13/court-rules-in-favor-of-environmental-scientist-in-buton-mining-case.html>

86 Interview with KASBI; <https://www.bantuanhukum.or.id/web/eksepsi-diterima-pn-karawang-tolak-gugatan-pt-dream-sentosa-indonesia/>

87 Interview with KASBI; <https://www.solidaritas.net/dituduh-mogok-kerja-tidak-sah-buruh-digugat-rp1379-miliar/>

## 10. Surveillance and Interference with Privacy

Indonesia has seen both high-level surveillance scandals and widespread reports of surveillance against activists, journalists and other public citizens. The country's scorecard for Internet freedom is one of the worst in Southeast Asia. Indonesia (47) is only better than Kamboja (52), Myanmar (63), Thailand (67), and Vietnam (76).<sup>88</sup> In 2011, Human Rights Watch revealed systematic surveillance of activists and journalists in West Papua, a highly militarised region of the country that has witnessed significant separatist activities. According to leaked documents, Indonesia's Special Forces unit 'Kopassus' had been illegally surveilling "a broad swathe of Papuan political, traditional, and religious leaders, and civil society groups." Kopassus has also been accused of torture and other grave crimes.<sup>89</sup> According to a report from Global Information Society Watch 2014, Pro-independence of Papua activists said they feared being "physically harmed by security forces" if they posted controversial content on social media and were mostly resorting to self-censorship.

Indonesian activists are aware of the practice of surveillance by authorities to their critical activities. Not only by the CSOs, but Illegal wiretapping by authorities also is criticised by the opposition party and even former president Yudhoyono raised his concern about it.<sup>90</sup> However, the police denied that the institution had wiretapped Yudhoyono's phone.

Interference to privacy not only conducted by authorities, but also by civil and hereby vigilante groups. In line with the rising Islamic hardliners, attack by Islamic vigilante groups through social media was significantly increased. In 2017, Koalisi Anti-Persekusi (Anti-Persecution Coalition) recorded the massive number of persecution to an ordinary citizen who criticises Front Islamic Defender (FPI) leaders publicly through the social media platform. In that year, the coalition recorded 87 cases of persecution and mostly continued with physical attacks.<sup>91</sup>

## 11. Shrinking International funding opportunities: New Conditionalities

Many international donors have to adapt to the current Indonesian government regulation on mass-organisation. They are no longer free to fund their local CSOs partner as before. For local NGOs, they need government approval to receive international funding. In addition, the scope of activities is also restricted. Some international donors and its local partners are forced by the Indonesian government to sign Memorandum of Agreement (MoU). There are some requirements within the MoU to cooperate and engage with government institutions, local governments, and private sectors.<sup>92</sup> Many NGOs have to deliver a presentation about their project and program before the National Intelligence Agency (BIN) and Ministry of Law, Justice and Human Rights. The material of the presentation contains the theme, kind of activities, geographical areas, and including their partners in the project.<sup>93</sup>

88 <http://id.safenetvoice.org/2017/11/lima-tahun-terakhir-kebebasan-internet-indonesia-memburuk/>

89 Privacy International

90 <https://www.thejakartapost.com/news/2017/02/08/sby-dissapointed-over-unresponsiveness-to-his-wiretapping-complaint.html>

91 <https://aji.or.id/read/press-release/736/resolusi-aji-ruang-kebebasan-berekspresi-kian-menyempit.html>

92 Interview with KPA and Tifa Foundation

93 Interview with KPA and Tifa Foundation

## 12. Government captured independent and critical CSOs and Labour Unions

### 1) Moderating independent and progressive labour unions

Since the Reformasi, there are some improvements concerning labours, especially the freer for the formation of the union. The relaxation of laws on the establishment of unions was given in 1998 when President Habibie ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise with a 'Presidential Decree' (Law No. 83/1998). In the next development, the reform expanded with the enactment of the package of three new labour laws: the Manpower Law No. 13/2003, the Trade Union Law No. 21/2000, and the Industrial Relations Dispute Settlement Law No. 2/2004. However, for many labour activists, at the same time, these laws have another hidden agenda: to moderate the unions. According to Tjandra, instead of strengthening labour unions, the more relaxed rules to form union resulted in union movement fragmentation. Furthermore, some provisions were incorporated to labour laws and provide a legitimation for a more flexible labour market and some procedural restriction for union activity including for organising the strike.<sup>94</sup>

As Gramsci noted, the ruling class needs to be more than a hammer to smash the oppressed. He wrote that for most of the time the ruling class rules "by a combination of force and consent which balance each other, so that force does not overwhelm consent, but rather appears to be backed by the consent of the majority..."<sup>95</sup> Indonesian ruling class also take the same tactic. While sometimes they maintain coercive measures, they also use more systematic oppression by the laws. For instance, some provisions in the Industrial Relations Dispute Settlement Law (No. 2/2004, promulgated on 14 January 2004) tend to reduce the need for trade union representation.<sup>96</sup> In addition, under this law, the dispute settlement process is entirely subject to the procedures of the civil court. The most critical issues within that law are the provision related to the areas of dispute, which include the dispute of normative labour rights. Previously, the violation of labour rights –called normative or prescriptive rights, is solely a domain of labour inspection. At the moment, based on that provision, the breach of normative rights becomes the issue of civil dispute. Consequently, labour inspector becomes dysfunction. As a result, workers who violated their normative rights should follow all stages in the process of industrial relations dispute settlement, including the tripartite compulsory mediation and arbitration mechanism, to redress their grievances.

This report found that the many progressive unions facing another form of moderations, for instance, the formation of "controlled" unions by the company to weakening the stronger and the independent one. Other examples, the operation of the company by triggering internal conflict within the union, mostly by bribing some leaders of the union by promising or giving promotions or other gifts.<sup>97</sup>

### 2) Institutionalisation of the Human Rights Movement

There is a paradox in the era of Jokowi. While many civil society figures were accommodated in the presidential palace, especially the Presidential Staff (KSP), the situation of human rights was deteriorated with the increase of human rights violations in many almost all sector. The frustration of the victim groups to this situation reflected in the direct offence and protest to

94 Tjandra, S. (2002) „Labour Law, the State and Economic Development in Indonesia, unpublished Master Thesis, Coventry: School of Law, the University of Warwick, UK.

95 Gramsci, A. (1971) Selection from the Prison Notebook by Antonio Gramsci (London: Lawrence & Wishart).

96 Tjandra, S. (2002) „Labour Law, the State and Economic Development in Indonesia, unpublished Master Thesis, Coventry: School of Law, the University of Warwick, UK.

97 Interview with KSN and SPKEP SPSI PT. Freeport Indonesia



questioning their role and position. Some of them are already losing their trust, while some others were hard to understand difficulties to bargain inside the power.

However, this phenomenon was predicted a long time before. In his deep reflection to the politic of the human rights movement in Indonesia, Robertus Robet, 2008, suggested that Indonesian *Reformasi* resulted in two situations: a normative consensus and institutionalisation. Both are the starting point or the beginning of the moderation process to weakening radical political demands and people's resistance.<sup>98</sup> Institutionalisation, according to him, refers to the localisation of human rights activists in the structure of and by the state. In this process, the CSOs and human rights agents took over the agenda of political reforms, including by moderating and arranging its direction. As a consequence, many of them "trapped" in the tricky game: while they forced by their constituencies to maintains their critical, in the same time, they have to play in the same form, same language and consensus with the state. Robert reflection is important, especially after the recommendation of Demos in early 2004 for CSOs activists to join the political parties.<sup>99</sup> It is important not because the Demos's proposal was wrong, but it challenges civil society movements to redefine and reformulation their strategies in the most contextual challenges.

### 3) NGOs Award

For the first time, since 2016, Ministry of Interiors give awards to CSOs from all different backgrounds. Human rights NGOs has a critic and suspicion to this initiative as part of the regime strategy to silent NGOs, and to consolidate their power.<sup>100</sup> There is no clear indicator to grant the awards. A long-standing critical human rights organisations like YLBHI and KontraS was excluded even from the list of the candidacy of NGOs which descent to be awarded. As discussed in the previous section, giving the award to NGOs which 'friendly' to the government could be seen as a part of the logic strategy of "Us versus Them".

## D. CSO'S RESPONSES AND STRATEGIES TO PROTECT CIVIC SPACE

This chapter summarises and discusses findings on how different CSOs respond to the challenges related to democracy, human rights and their own operational space. While some CSOs have had to close down, most CSOs continue their work by adapting to new realities or resisting governments' attempts to restrict their operations. We can distinguish between reactive strategies of dealing with the immediate challenges, adapting to restricted operational space and human rights abuses, and pro-active strategies aimed at expanding or reclaiming CSOs' operational space. Another key dimension concerns if the CSOs work individually or in coordination with other actors.

### 1. Civil Society Responses to the Shrinking Civic Space

#### 2) Law Reforms and Strategic Litigations

Indonesian NGOs was divided in response to the Perpu Ormas –Mass organisation law. While many human rights NGOs like KontraS and YLBHI opposed the law. Still, some of NGOs, like Setara Institute was approved this law in what they argued as still under the corridor of the

98 Robet, Robertus, (2008), Politik Hak Asasi Manusia dan Transisi di Indonesia, Sebuah Tinjauan Kritis, Elsam.

99 Demos (2007) Survey Nasional Masalah Pilihan Demokrasi. Demos

100 Interview with KontraS

margin of appreciation. However, Setara also warned the risk of law to be misused for other malicious purposes. The opposition and critic to the Perpu Ormas also came from media as clearly stated in the Jakarta Post's editorial.

On 2017, HTI, as the direct victim of the implementation of Perpu Ormas, filed a petition or judicial review to the Supreme Court. But the Court rejected their petition and upholds the government decision to disband of the organisation for being contradicted with state ideology Pancasila.

### 3) Mitigation and Building Security System

A respond of CSOs and unions to the attack is different depend on the level of risks. For more serious threat, terror and violence, Labour Unions and human rights defenders prefer to fill a report to the police. However, they take it rarely as a deep distrust to the police performance. In fact, as happened in the case of Novel, many terror and harassment cases that reported to the police was stopped with uncertainty.

Awareness to build and strengthen protection procedures has increased among the NGOs. LBH Jakarta and YLBHI, after the incidents of the attack, took several measures to build an adequate protection system.<sup>101</sup> They are no longer underestimate the threat, especially after frequently being a target of attacks by security forces and Islamic hardliner groups. The TII also starts to develop protection mechanisms and pushing state institution like the Witness and Victim Protection Agency (LPSK) and the ACC to establish an adequate system to protect whistleblowers and anti-corruption activists. Other organisation mandated to protect human rights defenders like Protection International has conducted series of capacity building programs for many human rights organisations.

### 4) Countering Narrative

In the context of labelling and stigmatization,

- o Building integrity and Countering propaganda through transparency, inclusiveness, and robust internal governance. Do not give room for attack and searching your weaknesses
- o Fact-based counter narratives \_many NGOs present strong counterarguments to the stigma and disinformation. In respond to the allegations and misleading information, Greenpeace Indonesia tried to give the information based on the facts and their factual activities.
- o Organizing religious events: the KSN has its strategy to response the labelling attack. For instance, in Bandung, they organised a religious event in their base and invited religious leaders and local communities around their home base. According to them, this strategy is effective to counter negative issues and the trust and confident of the union member and people.
- o Accepted language: many NGOs and donor agencies also have to deal with the stigmatization of LGBT. Instead of using LGBT term, they used "gender diversity" term to avoid restriction and banning from authorities.
- o Non-partisan Front building --There is an urgency to rebuild CSOs coalition which able to build a strict demarcation line and to remain independence in the situation where many NGOs and individuals unable to keep their independency. There is also urgency to expand

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101 Interview with LBH Jakarta



this front to academia, journalists and other intellectuals who can enrich the ideas and alternative of actions.

### 5) Alternative Fundraising System

Building more sustainable fundraising system is crucial in the time where many restrictions to international funding. Some NGOs underlined the need for CSOs to start to decrease their dependency to International donors. Finding other alternatives for sources and begin to develop a fundraising system. In a situation where access to global resources is diminishing, either due to legal restrictions or shifting donor priorities, some CSOs build sources of income of their own or mobilise resources domestically (WDF 2017).

## E. RECOMMENDATIONS

### 1. RECOMMENDATIONS FOR THE PROTECTION OF CIVIC FREEDOMS

- Monitoring -- We highlighted the importance of monitoring and documenting the implementation of laws on expression, assembly and association to ensure that the people's rights are respected.
- Strategic Litigation --in some instances, courts have proven to be an effective forum to challenge restrictive laws as we found in the Constitutional Court's decision on the book banning laws. However, the rejection of petition to review the mass organisation law and other draconian laws in the Constitutional Courts may give an alarm about the effectiveness of this approach.
- Research --more comprehensive study, research and public education is critical to building a more democratic culture. Governments and even members of the public tend to be wary of dangers associated with protests, but CSOs noted that civil society activities promote peace and security by providing peaceful means for people to express themselves.
- Coalition building --Advocacy in favour of civic space is most successful when it has a broad base of support, representing a diversity of civil society organizations (CSOs) and perspectives. National, regional, and sub-regional groupings have been formed across Southeast Asia to reinforce civil society advocacy efforts.
- Proactive advocacy --Much of civil society's advocacy is in reaction to government activities such as introducing new laws or policies. This is appropriate since a primary function of civil society is to hold government accountable. However, some NGOs underlined the need for civil society to also be proactive in its advocacy. By focusing on regulatory issues before they become crises, civil society can take the initiative in advocating for a more enabling framework. One example of this balance comes from the initiative of TII to reform the whistleblower protection, the coalition of Freedom of Association with their agenda to the revision of mass-organisation law and regulations.

### 2. CALL FOR LAW REFORMS

- Defamation should not be a criminal offence, and therefore Articles 207 and 310-321 of the Penal Code must be repealed in their entirety. Article 27 and 28 of the Law on Information

and Electronic Transactions must also be scrapped. The Chief of Police Circular Letter No.06/X/2015 on Hate Speech must be amended to be more in line with International human rights standards on the criminalisation of hate speech.

- The Penal Code Articles 156 and 156(a) on blasphemy, Article 106 on sedition, and Articles 160 and 161 on incitement should be repealed.
- The Law on Mass Organizations and the Law on Foundations must be amended to remove registration costs, any restrictions on activities or access to funding (for both foreign and local CSOs), and any requirement to undergo overly burdensome requirements such as annual Government auditing.
- The Ministry of Home Affairs Decree No. 56/2017 on the monitoring of Societal Organisation should be repealed.
- The Law on Freedom to Express an Opinion in Public must be amended to legalize spontaneous assembly, remove any approval requirement for organized assemblies, and add clauses laying out penalties for the interference with people's right to assemble freely. Gubernatorial Regulation No. 232/2015 must be scrapped. The unreasonably low limits on volume and the illegitimate restriction on times at which protests can be held are particularly egregious. The Government must carry out reform of both its policies on Papua and on the security forces' practices there. Members of the security forces arbitrarily arresting or detaining Papuans exercising their right to assemble freely or using excessive force against protestors must be disciplined and brought to justice.
- Restrictions on the ability of to cover any issues in the manner of their choosing must be lifted. The Broadcast Act must be amended to ensure that restriction on media workers' and publishers' and limitations on foreign media are lifted. Furthermore, the film censorship board must be abolished. The censorship, both legal and extra-legal, of content dealing with Marxism, Socialism, the 1965-66 massacre and self-determination must also be halted. Controls on both foreign and local journalists in Papua must be lifted in their entirety.
- Government Regulation No. 78 of 2015 on Remuneration (minimum wage) must be repealed to give a genuine role of unions in the deliberation and decision making process of the increase of minimum wage.
- Presidential Decree No. 63 of 2004 on National Vital Objects and other related regulations like Ministry of Transportation Circular Letters No. 15/2017 must be repealed to give free space for the right to strike and freedom of peaceful demonstration and assembly.

## V. CLOSING CIVIC SPACE IN THAILAND

### A. Background: Drivers of closing civic spaces

The extended episode of political instability and democratic struggle remains the landscape of Thailand. Since the 1932 Siamese revolution, this constitutional monarchy country experienced with dozens of military coups d'état. Struggling with democracy, still, the country was one of the best growing economies in the region. The evolution of the political crisis in Thailand leads human rights violations, restriction to right and freedom and resulted in a condition of closing civic space. Today, in the context of preparations for the 2019 elections, the NCPO repealed some laws and relaxing restrictions, especially to political activities. However, at the same time, in other areas the NCPO tighten its repression to civic rights.

### 3. Military regime

Since the 2014 coup, National Council for Peace and Order (NCPO) maintains repressive measures to civil liberties. The military junta failed to respect human rights and to restore democracy. NCPO passed many laws and orders to restrict fundamental freedoms and to suppress activists, political dissents and oppositions. The junta announced the national human rights agenda in November 2017 but did not end repression of civil liberties, imprisonment of dissidents, and impunity for human rights violations.

### 4. Inequality and oligarchs

A key driver of closing civic space is political capture, whereby military junta rig the rule of the game in their favour. However, as suggested by Phongpaichit and Baker (2018), the repeated political crisis and the coup's de etat in Thailand are rooted in inequality. Economic inequality underpins inequality in power, social position and access to resources.<sup>102</sup> The concentration of wealth at the few elites Thailand opens up opportunities to buy political influence with the aim to defence and generate further wealth for themselves.

Thailand has always been referred to one of the unequal countries in the world, along with Russian and India. The latest annual Global Wealth Databook by Credit Suisse (CS) placed Thailand as the world's worst for wealth inequality.<sup>103</sup> There is no significant improvement to reduce inequality in Thailand. Even under Thaksin (2001-2006), his pro-poor populism inequality remains high. The reason is that Thaksin was not solely worked to lift the poor out of poverty and to reduce inequality. Instead, as an oligarch, he has other motives: to win the vote and to defence its wealth.<sup>104</sup>

102 Phongpaichit, P., & Baker, C. (2015). Unequal Thailand: Aspects of Income, Wealth and Power. University of Hawaii Press; see also Phongpaichit, P. (2016). Inequality, Wealth and Thailand's Politics. *Journal of Contemporary Asia*, 46(3), 405-424. Retrieved from <https://doi.org/10.1080/00472336.2016.1153701> doi: 10.1080/00472336.2016.1153701

103 See <https://www.bangkokpost.com/business/news/1588786/report-thailand-most-unequal-country-in-2018>

104 Tangpianpant. Patana Ginger,(2010). Thaksin Populism and Beyond: A Study of Thaksin's Pro-Poor Populist Policies in Thailand A thesis submitted to the faculty of Wesleyan University [https://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1527&context=etd\\_hon\\_theses](https://wescholar.wesleyan.edu/cgi/viewcontent.cgi?article=1527&context=etd_hon_theses)

## 5. Insecurity: Nationalism (National interests, national security) and Royalism, and Buddhism (protecting a nation's moral or religious beliefs)

Thai military junta centred on the dual ideological basis: nationalism and royalism. Initially, nationalist-royalist alliance grew up in the early 1970's to confront the growing influence of communist movement and the 1973 mass demonstration. Afterwards, this country entered a long period of military dictatorship and authoritarianism. Observers suggest that this conservative ideology drives the application of draconian lese *majeste* laws to suppress political dissents and activists.<sup>105</sup>

## B. ENABLERS, BARRIERS AND RESTRICTIVE LAWS FOR CIVIC FREEDOMS

### 1. Enablers

#### 1) Constitution

The 2007 Constitution ensures series of rights of the Thai people, with corresponding duties on the government. The Constitution sets a high official standard of consultation with local populations for government projects. Chapter 3 of the Constitution is entitled, 'Rights and Liberties of the Thai People' and Part 10 establishes a class of information and complaint rights against government. In effect, this mandates thorough public consultation at the highest level, going so far as, where a project is 'likely to have impacts on essential interests of the public, the State shall cause to be held comprehensive public hearings before that'. (Section 57) Part 11 of the same chapter is concerned with the rights of association and assembly. Part 12 establishes wide-ranging community rights.

#### 2) National laws and regulations affecting CSOs per sector

There are some laws enabling people's right to participate in politic and government. Among important legislation to protect civic freedom is the 2011 amendment to the Organic Act on Counter Corruption (OACC), 2009. This law introduced provisions that established protective measures for whistleblowers and their close family members, including access to safe houses, police escorts, allowance, and assistance altering one's name and identification cards.<sup>106</sup>

Also, Thailand has a Witness Protection Act (enacted in 2003) and maintains a witness protection office under the jurisdiction of the Ministry of Justice. Furthermore, the Official Information Act, 1997425, allows citizens to demand official and public information from a State agency. However, the law does not give specific guidance on the mechanism and necessary steps taken by the requesters to demand access to information. Therefore, in practice, the application of this law remains ineffective.

105 Sambotpoosiri, Janjira (2017) The 2014 Military Coup in Thailand: Implication for Political Conflict and Resolution. Asian Journal of Peacebuilding Vol. 5 No. 1 (2017): 131-154; see also Sambotpoosiri, Janjira (2018) Conservative Civil Society in Thailand, in Youngs Richards, et. all.(2018) the Mobilization of Conservative Civil Society. Carnegie Europe.

106 ADB, Civil Society Briefs Thailand. see <https://www.adb.org/sites/default/files/publication/29149/csb-tha.pdf>  
Interview with CrCF

## 2. Barriers and Restrictive laws to Freedom of Association

### 1) Barriers to form and register

Regarding a form of CSOs, international and Thai CSOs – in Thai language Prachasangkhom or Sangkhompracha --must register as companies, associations, and foundations, the latter being the most favourable for tax purposes. In 2000 there are 17,000 NGOs, which are registered as foundations and associations in Thailand. Many of these may not be active at all with just 140 actives. Most of the foundations do some charity works.<sup>107</sup>

Thailand's laws severely restrict freedom of association. Under the constitution, registration for CSOs is not compulsory. However, there is no specific law governing CSOs registration in Thailand. According to the Civil and Commercial Code in Thailand, all associations must be registered<sup>108</sup> - although this is not strictly enforced, as unregistered groups exist in Thailand.

However, the process of registration is a long and can take up to 6 months to complete, and complicated process subject to arbitrary denial. It contrasts to the fast process of registration of a business entity that often takes in days.<sup>109</sup> Foundations are required to serve the public's interest, a criterion that is left undefined and therefore subject to manipulation by Government to hinder the work of critical voices. Adding to this subjectivity is the lack of clarity in the required documentation to establish a CSO, which, even for a non-critical organisation, can drag the registration process out for well over a year.<sup>110</sup>

Registration is also highly interfering: the three board members required by law must provide financial details, identification, and police clearance. Foreigners are technically permitted to serve on a board, but they are subject to intense scrutiny, which can further encumber the registration process. The law also requires there to be at least ten members, whose personal information must be provided, which excludes small organisations from legal status.<sup>111</sup>

Establishing Foundation in Thailand is high cost and its significant barrier for small CSOs. For foundation registration, there is the requirement that THB200.000 (US\$5.500) -and in some cases, up to THB500.000 (US\$14.000)- be deposited in a bank account. This money must remain in the account at all times, meaning that all costs are over and above this sum, and if the organisation is dissolved, the money may not be claimed. The foundation must also show proof of a lease to register. The name of the organisation must be in Thai, and may not be transliterated, even in part. In Thailand, the Registrar has the power to order the name of an association struck off the registrar if: (1) it appears that the object of the association is contrary to the law or public moral or is likely to endanger the public peace or national security and an order for alteration of such object has been given by the Registrar, but the association fails to comply therewith within period of time fixed by the Registrar; or (2) it appears that any activity conducted by the association is contrary to the law or public morality or is likely to endanger the public peace or national security. Finally, excessive paperwork with district and provincial, and national-level offices, as well as the requirement that associations and foundations file annual reports, including income and expenses auditing certified by an accountant add to the burdens placed on NGOs.

107 Interview with CrCF

108 Thailand, Civil and Commercial Code, Section 78, available at: <http://library.siam-legal.com/thai-law/civil-andcommercial-code-jurist-persons-sections-78-109/>

109 Interview with CrCF

110 Interview with CrCF

111 Thailand, Civil and Commercial Code, Section 81

Under Thailand's Civil and Commercial Code, registration may be denied because "the object of the association is contrary to the law or good morals or likely to endanger public order or national security..." Less common are procedural safeguards involving the right to appeal to an administrative agency or a court. Indeed, we see more examples of recourse to an administrative agency than a potential remedy to the judicial branch. Many countries (for example, China, Vietnam, Cambodia, Thailand, Laos, and others) continue to provide no judicial recourse for a negative registration decision.

### **Trade unions**

Thailand has not ratified ILO Convention No.87 and No. 98 that fundamental to protect freedom of association and the right of union for collective bargaining. In 2015, ILO estimated that about 2% of the country workforce is organized into trade unions.<sup>112</sup> The Government's data shows that less than half per cent of private enterprises in Thailand had unions.<sup>113</sup> This low trade union density is a result of a combination of factors such as restrictive laws, resistance from employers and lack of enforcement of workers' rights that in the end also weakens trade unions capacities to represent workers effectively. Unions exist in about 34 provinces out of a total of 76. Unions across Thailand have been urging the government to ratify International Labour Organization (ILO) Convention 87 and Convention 98 covering the freedom of association and the right to form a union and bargain collectively. Ratification would provide worker rights' advocates with a strong basis for challenging employer efforts to break unions by firing workers.

### **2) Barriers to international NGOs**

The Rule of the Ministry of Labour on the Entry of Foreign Private Organisations to Operate in Thailand of 1998 restricts the activities of foreign NGOs and also the ability of domestic NGOs to access foreign funding. Under Article 9 of the regulations, Government approval is necessary for a local NGO to receive foreign funding. International NGOs also need permission to organise or fund seminars, or to establish an office in Thailand. According to the regulations, work related to politics is forbidden, and the objectives and operation plan of an organisation must be 'in conformity with the development policy and security of Thailand,' as well as 'not contrary to the policy of the Thai Government.' These regulations explicitly allow Governments to limit work that might be critical of it or its policies and mirrors similar provisions in China, Laos, Bangladesh, India and Cambodia. The application process is lengthy, cumbersome and difficult, requiring the submission of, among other things, the organisation's objectives, politics, work plan, financial sources and budget.

Under Thai regulations, foreign organizations wishing to operate in Thailand—even only to hold a meeting or seminar—must seek permission from a committee established under the Ministry of Labour, which includes national security and intelligence representatives, among others. The committee has wide latitude in deciding to grant permission to operate, needing only to "take into account the policy of economic and social development, national security, the good relationship between Thailand and other countries, the objectives and operation plan of such foreign private organization, as well as opinions and recommendations of the government agencies concerned."<sup>114</sup> Foreign organizations must have objectives that are "in conformity

<sup>112</sup> [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_205099.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_205099.pdf)

<sup>113</sup> *ibid*

<sup>114</sup> Thailand, Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate In Thailand, B.E.2541 (1998), Clauses 7, 9, 10, available at: [http://wp.doe.go.th/ngo/documents/rule\\_2541\\_eng.pdf](http://wp.doe.go.th/ngo/documents/rule_2541_eng.pdf).



with the development policy and security of Thailand...”<sup>115</sup> and “activities shall not be contrary to morals, Thai custom and culture...” Permission to operate is given for one year for the first applications, with extensions of two years each time.<sup>116</sup>

### 3) Barriers to activities

#### a. Union activities

There are several challenges facing workers and unions in the exercise of the rights to organize and collective bargaining. Tension and conflict on industrial relations remain high because of a lack of respect for workers’ rights and weaknesses in the disputes resolution mechanism. It also adversely affects migrant workers who often suffer from serious labour rights abuses. Violation of Freedom of association rights is also reflected in the cases filed with ILO’s Committee on Freedom of Association (CFA). Meanwhile, the government’s Working Committee to Amend Labour laws has never severe to make a reform and follow up ILO recommendations. Without any legal protection to freedom of association, still, Thailand’s labour unions have been growing. In 2015, with the support of international unions, including the Solidarity Center, worker activists had formed some 1,000 factory-level unions representing more than 100,000 workers in Thailand’s industrialized Eastern provinces.<sup>118</sup>

### 4) Barriers to resources and International Donor

Under Thai regulations, where a foreign private organization seeks not to operate in Thailand but to provide financial or other assistance, the donor organization and the recipient must together apply for approval to the government, specifying the objectives and activities of the donor organization and the details of the project it wishes to support.<sup>119</sup> As middle-income countries, few international donors are available for local CSOs. Many CSOs in Thailand are reliant on volunteers for their day-to-day operations, and non-grant sources of funding from within the country for project funding.<sup>120</sup>

### 5) Barriers and Restrictive laws to Freedom of Expression

Freedom of expression is limited by the Head of the National Council for Peace and Order (NCPO) Order 3/2015, Article 116 of the Criminal Code on sedition, the Computer Crime Act and the lèse- majesté provision (Article 112) in the Criminal Code, and most recently by Cybersecurity Act; all of which have been repeatedly used to target activists, HRDs and other independent voices.

#### a. Cybersecurity Act

Recently, on February 2019, Thailand’ legislature has passed a cybersecurity bill that would allow authorities access to people’s personal information without a court order. This law could enable government surveillance and interference to privacy. The lawmaker claimed that the law intended to protect against cyber risks, but activists have a reason to fear as the bill has vague words, unclear scope, and defined broadly national security.<sup>121</sup>

115 d. at Clause 12, 14(2).

116 Thailand, Rule of Committee on Consideration of the Entry of Foreign Private Organization (2000), Clause 7, available at: [http://wp.doe.go.th/ngo/documents/rule\\_2543\\_eng.pdf](http://wp.doe.go.th/ngo/documents/rule_2543_eng.pdf).

117 ILO (2017 [https://www.ilo.org/asia/countries/thailand/WCMS\\_546209/lang--en/index.htm](https://www.ilo.org/asia/countries/thailand/WCMS_546209/lang--en/index.htm); see also ILO (2013) Thailand; A labour market profile at [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_205099.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_205099.pdf)

118 *ibid*

119 Rule of the Ministry of Labour and Social Welfare on the Entry of Foreign Private Organizations to Operate in Thailand, B.E.2541 (1998), Clause 13(2), available at: [http://wp.doe.go.th/ngo/documents/rule\\_2541\\_eng.pdf](http://wp.doe.go.th/ngo/documents/rule_2541_eng.pdf).

120 *ibid*

121 <https://asia.nikkei.com/Politics/Turbulent-Thailand/Thai-cybersecurity-bill-to-give-junta-license-to-snoop>



**b. Computer Crime Act, NCPO Chief Orders No.97/2014, Order No. 103/2014 and Order No. 18/2014**

Restrictions on freedom of expression extend to cybercommunications. Thailand's Computer Crime Act criminalises a wide variety of broad acts associated with online content. Criminal defamation laws are also extremely frequently used to target Government critics in Thailand. Under Article 326 of Thailand's Criminal Code, an individual can be imprisoned for up to one year if he or she makes a statement that impairs the reputation of another person. Under Article 328, those who commit defamation through a published document or recording can be imprisoned for up to two years. Article 133 punishes insults against foreign heads of state with up to seven years imprisonment, and Article 136 allows up to one-year imprisonment for anyone who insults a public official. Under Article 287, anyone who makes publishes, or distributes obscene content can be imprisoned for up to three years. NCPO Chief Orders No.97/2014, No. 103/2014 and Order 18/2014 add to this by further criminalizing media or online content containing false or defamatory statements about the monarchy.

These laws have frequently been heavily abused to target political opposition groups, journalists and activists since the 2014 coup; to make matters worse, under NCPO announcements No. 37/2014, No. 38/2014, and No. 50/2014, any offence related to an extremely broad conception of national security, *lèse-majesté*, or a violation of NCPO orders committed before September 2016 was tried in a Military court.

A prominent labour rights defender was sentenced to 10 years of imprisonment in early 2013 for printing two articles in his capacity as editor of a magazine, allegedly criticising the royal family. There has been a staggering increase in the number of cases investigated since the NCPO, the junta, took power.

On 24 June 2015, 14 student activists from the New Democracy Movement took part in a peaceful rally in Bangkok calling for an end to military rule under the NCPO. Two days after the rally, they were arrested for violation of the Head of the NCPO Order 3/2015 and sedition under article 116 coupled with Article 83 of the Criminal Code.

**6) Barriers and Restrictive laws to Freedom of Assembly**

Previously, Thailand used to be the most restrictive for public assembly in the region. Military and police used HNCPO Order No. 3/2558 to cancel and crack down any political events, seminars, and academic panels on political and human rights issues on the grounds that the events threatened the stability and national security. But, recently, ahead of elections, there is a bit relaxation to political activities, especially to freedom of assembly.<sup>122</sup> The NCPO lifted Article 12 of HNCPO Order No. 3/2558, which prohibited the gathering of five or more persons for a "political purpose" and which had carried a six months imprisonment punishment. However, cases -criminalising persons exercising their rights to free expression, assembly and association--brought before 11 December 2018 under HNCPO Order No. 3/2558 can legally continue to be prosecuted in courts.<sup>123</sup>

<sup>122</sup> Thailand-ICCPR-Submission-ICJ-TLHR-Advocacy-Non-legal-submissions-2017-ENG.pdf

<sup>123</sup> *ibid*

Other existing restriction to freedom of assembly is Article 116 of the Criminal Code- which has carried a seven years imprisonment punishment, which has also been interpreted to apply to public assembly and heavily used to crack down on protests critical of Government. According to a leading Thai NGO, the Internet Law Reform Dialogue (‘iLaw’), at least 62 people have been accused of and or prosecuted for violations of Article 116 since the coup.

## C. A CONTEMPORARY CHALLENGES FACING BY THAILAND CSO ADVOCATING FOR DEMOCRACY AND HUMAN RIGHTS

### 1. Legitimation and Justification of restrictions and limitations of rights

#### 1) Justification

The limitation of rights in Thailand is justified in the name of Royalism. To protect the monarchy, Lèse-majesté prosecutions and convictions have skyrocketed under NCPO rule. The total number of civilians tried by Military courts in the first two years of NCPO rule was 1,811. In the first year of NCPO rule, at least 47 people were detained under Article 112, and eighteen people were sentenced to jail terms. By May 2017, the number of people charged under the law had reached 105, of which 27 were in the October and November 2016 crackdown following the death of King Bhumibol.

#### 2) Legitimation: A Draconian Laws

There are legal restrictions on the rights to freedom of expression, and freedom of association and peaceful assembly. Numerous restrictions currently exist, including in the NCPO Orders, the Martial Law, the Emergency Decree, the Computer Crimes Act, the Internal Security Act, the Public Assembly Act and the lèse majesté provision of the Criminal Code.

DRACONIAN LAWSO	PPRESSIVE PROVISIONS	VICTIMS
6. Article 116 of the Criminal Code on sedition	article criminalises “actions that aim to change the government, create unrest amongst people or cause people to transgress the law”. This sedition-like offence carries a maximum penalty of seven years’ imprisonment.	Political opponents Activists, HRDs Dissents Students
7. Defamation laws -Article 14 The Computer Crime Act B.E.2550 (2007)	It criminalizes a number of acts, including the vaguely worded “Dishonestly or deceitfully input into a computer system of fake or distorted computer data, either in whole or in part, or false computer data, in a manner that is likely to cause public damage in which not the defamation offence under Criminal Code.  The law criminalizes “input into a computer system false computer data in a manner that is likely to harm the maintenance of national security, public safety, national economic security, public infrastructure serving the public interest, or cause panic among the public,  It carries a maximum sentence of five years’ imprisonment	Political opponents Activists, HRDs Dissents Students
8. The Cybersecurity Act 2019	The law allows the National Cybersecurity Committee (NCSC) to summon individuals for questioning and enter private property without court orders in case of actual or anticipated “serious cyber threats.”	Political opponents Activists, HRDs Dissents
9. The Lèse- majesté provision (Article 112) in the Criminal Code	The offense is codified in Article 112 of the Criminal Code, which states that anyone who defames, threatens, or insults the king or the royal family can be punished with imprisonment of up to fifteen years. These terms are left undefined, meaning that the law may be very broadly interpreted, which it has been by the heavily politicised judiciary. Under NCPO announcements No. 37/2014, No. 38/2014, and No. 50/2014, lèse-majesté suspects were tried by Military courts until September 2016.	Political opponents Activists, HRDs Dissents

10. Martial Law Act B.E. 2457 (1914), Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005), and the Internal Security Act B.E.2551 (2008)

Law and Emergency Decree come into force in three Southern border Provinces (Patani, Yala and Narathiwat). The ISA come into force in 4 districts of Jana, Thepha, Sabayoi and Nathavee in Songkhla Province. The emergency decree introduced in 2005 allows for persons to be held for 30 days without charge. On 31 March 2015, the Thai Military Government announced that the nationwide enforcement of the Martial Law Act was replaced with Article 44 of the Interim Constitution. Article 44 empowers the NCPO leader to act arbitrarily and grants Military personnel sweeping law enforcement powers over the people. It allows the Military to secretly detain people without charge or trial and interrogate them without access to lawyers or safeguards against mistreatment. Articles 47 and 48 provide immunity for Military actions.

Activists,  
HRDs Dissents  
Students  
Pro-insurgent  
groups

## 2. De-legitimization of CSOs and Propaganda to ruin CSOs credibility

### 1) Foreign agents and/ or puppets

Labelling, stigmatization, smear campaign to human rights activists and CSOs in Thailand is massive and systematically well organised. The authorities responded to the persistent works of CrCF, THRL, and Amnesty International Thailand in revealing and advocating human rights violations with those forms of oppression.

The backlash against CSOs, including hatred and insult commentary, bullying on the social media platform, especially the Facebook page, which is commonly used in Thailand. The attackers accused them of receiving foreign funding and living with a luxurious lifestyle. According to Thailand activists, the attacks were organised systematically as part of the “information operations”.

### 2) Yellow Shirts versus Red Shirts

The situation “Us versus Them” is also relevant in Thailand context. In the political turbulent since Taksin step down, civil society is divided into the Red Shirts (pro-Taksin populist) and the Yellow (Nationalist-Royalist). During a nationwide campaign against Taksin, the People’s Democratic Reform Committee (PDRC) received support from various civil society groups, including student groups, academia, unions, certain NGOs, individual monks, entertainment industries, and religious organizations.<sup>125</sup>

### 3) Pro-Insurgency

In Southern Border Provinces, some human rights NGOs and other charity organisations are often labelled “anti-government” and pro or sympathiser of the Insurgent groups. NCPO through the Southern Border Province Administration Center (SBPAC) offers a massive number of funding opportunity for moderating CSOs in Patani. However, the majority of critical human rights CSOs refused to access and receive that money. Local authorities respond to their refusal with some intimidations.<sup>126</sup>

## 3. Attack, harassment and violence-- Sustained attacks on human right defenders

### 1) Attack on HRDs

Attacks on HRDs remain high in Thailand and unresolved. In the period of 2003 until 2012, the National Human Rights Commission of Thailand documented 35 cases of extrajudicial

<sup>125</sup> Bencharat Sae Chua, “Revisiting ‘People’s Politics,’” Cultural Anthropology, September 23, 2014, <https://culanth.org/fieldsights/576-revisiting-people-s-politics>.

<sup>126</sup> Interview with Patani CSOs Activists

killings of HRDs. Approximately 30 of those killed were HRDs working on economic, social, and cultural rights. Until to date, those cases remained unresolved. The deteriorated situation happened in southern provinces of Thailand, where widespread impunity for the perpetrators -who are often Government or Military officials.<sup>127</sup>

## 2) Violence to land rights activists

In April 2016, land rights activist Den Khamlee was reportedly abducted and became a victim of forced disappearances.<sup>128</sup> He reportedly went missing near his home in Chaiyaphum province.

## 3) Attack to Patani activists

HRDs in the South, particularly those working with the victims of the conflict, who are for the most part Muslim, report regular abuse of the law and emergency decree and widespread abuse of power by authorities. HRDs have had their offices raided and been smeared in the media and online.<sup>129</sup>

## 4) Strategic Lawsuit Against Public Participation (SLAPP)

Harassment by specious legal actions through SLAPP lawsuits has brought by government and corporation. The Thai Military and private companies have used defamation lawsuits to silence HRDs and to make it more difficult for victims to voice their complaints. Like in Indonesia, the criminal laws in Thailand may be misused to charge individual for insulting authorities, leaders, or heads of states.

### a. SLAPP suits brought by authorities

#### • Targeting HRDs

- In July 2016, three prominent activists --Somchai Homlaor, a lawyer and long-time advisor to the Cross-Cultural Foundation (CrCF), Pornpen Khongkachonkiet, director and chair of the CrCF, and Anchana Heemmina, the director of Duay Jai Group--were charged with criminal defamation as well as offences under the Computer Crimes Act for releasing a report documenting torture and ill-treatment in the four Southern Border Provinces: Patani, Yala and Narathiwat and some part of Songkhla. As the case was committed before September 2016, they were to be tried in a Military court. In the next development, facing international criticism, in March 2017, the Thai Military's Internal Security Operations Command finally announced that the criminal defamation and Computer Crimes Act charges against the three were being dropped. In November 2017, the Pattani Provincial Prosecutor announced that the criminal defamation charges against the three were being withdrawn.
- On August 2014, the army's 41st Task Force in Yala filed defamation suits against Pornpen Khongkachonkiet for allegedly damaging the reputation of the military by publishing an open letter in May 2014 exposing torture of Muslim Patani by a Paramilitary force.<sup>130</sup>
- In 2017, the junta charged Sirikan Charoensiri of the Thai Lawyers for Human Rights (TLHR) with sedition for her works in advocating 14 student activists arrested in June 2015.<sup>131</sup>
- In deep south-southern border provinces, Muslim Attorney Center recorded numbers of arbitrary of arrest to their paralegals --the Southern Paralegal Action Networks.<sup>132</sup>

127 HRW 2018

128 HRW 2018

129 Interview with MAC and CrCF

130 <https://www.hrw.org/news/2014/10/21/thailand-human-rights-watch-letter-un-human-rights-council-candidacy>

131 [https://www.fortifyrights.org/downloads/Thailand\\_Joint\\_Presser\\_Sirikan\\_Charoensiri.pdf](https://www.fortifyrights.org/downloads/Thailand_Joint_Presser_Sirikan_Charoensiri.pdf)

132 Interview with MAC

- The junta continued to use sedition (article 116 of the criminal code) and the Computer-Related Crime Act (CCA) to criminalize criticism and peaceful opposition to military rule. Since the 2014 coup, at least 66 people have been charged with sedition. In August, authorities charged veteran journalist Pravit Rojanaphruk and two prominent politicians—Pichai Nariphaphan and Watana Muangsook—with sedition and violating the CCA for their Facebook commentaries about Thailand’s political and economic problems.<sup>133</sup>

#### •Targeting Journalist –

- In December 2013, Chutima Sidasathian and Alan Morison, journalists from the online newspaper Phuketwan, were accused of defamation and breach of the Computer Crime Act by the Royal Thai Navy for publishing a paragraph from a Reuters’ special report on the Rohingya. The court later acquitted the journalists on both offences on 1 September 2015.<sup>134</sup>
- In September 2016, labour activist Andy Hall was convicted of criminal defamation with a suspended prison sentence under charges filed by Natural Fruit Co. Ltd., one of Thailand’s biggest pineapple processors, regarding a report he co-wrote alleging severe labour rights abuses at one of its factories, and he still faces two civil defamation suits. Later on 31 May 2018, the Court of Appeals dismissed the case on the ground that such an interview should be made public.
- Charnvit Kasetsiri, the former rector of Thammasat University, is accused of violating the Computer Crimes Act for allegedly sharing on Facebook a widely circulated news report about Naraporn, the wife of junta leader and Prime Minister Prayut Chan-o-cha, carrying “a Bt2-million Hermes handbag”.<sup>135</sup>

### b. SLAPP suits brought by Company

#### • Targeting Labour Activists-

- Thammakaset Company Limited v. Nan Win and Sutharee Wannasiri 2018 In October 2018, Thammakaset filed criminal and civil defamation complaints against Nan Win, one of the migrant workers featured in the film, and Sutharee Wannasiri, a woman human rights defender and a former Human Rights Specialist with Fortify Rights.<sup>136</sup> If convicted of the criminal defamation charges filed in the case, Nan Win faces up to four years in prison and up to 400,000 Thai Baht (US\$12,100) in fines and Sutharee Wannasiri faces up to six years in jail and up to 600,000 Thai Baht (US\$18,150) in fines. Thammakaset also brought civil defamation complaints against Sutharee Wannasiri, seeking five million Thai Baht (US\$151,400) in compensation for alleged damage to the company’s reputation. Thammakaset—a Thai-owned poultry company in Lopburi Province—also brought criminal defamation complaints against 14 migrant workers and former employees in October 2016,
- Other recorded cases including the prosecution to Andy Hall and Migrant workers. On November 2016, criminal defamation –Article 116 Criminal Code --lawsuit against Andy Hall, a defender of labour rights.<sup>137</sup> On August 2017, a fabricated theft charges was launched against two migrant workers for removing timesheets from company grounds, and the same alleged theft charges against the coordinator of the Migrant Worker Rights Network (MWRN) Suthasinee Kaewleklai.<sup>138</sup>

133 <https://freedom.ilaw.or.th/en/blog/section-116-when-%E2%80%98sedition%E2%80%99-used-obstruction-freedom-expression>

134 <https://www.theguardian.com/world/2015/sep/01/australian-and-thai-journalists-found-not-guilty-of-defaming-thai-navy>

135 <http://www.nationmultimedia.com/detail/opinion/30337470>

136 <https://www.hrw.org/news/2018/12/03/joint-statement-strategic-litigation-against-public-participation-slapp>

137 *ibid*

138 *ibid*

### 5) Arbitrary arrest and detention under NCPO's Rule

The total number of civilians tried by Military courts in the first two years of NCPO rule was 1,811. Lèse-majesté prosecutions and convictions have skyrocketed under NCPO rule. In the first year of NCPO rule, at least 47 people were detained under Article 112, and eighteen people were sentenced to jail terms. By May 2017, the number of people charged under the law had reached 105, of which 27 were in the October and November 2016 crackdown following the death of King Bhumibol.<sup>139</sup>

### 6) Protest Disruption

At least since the coup, protest disruption became a common method to silence the dissent. As mentioned earlier, the NCPO 3/2558 and 12/2559 effectively used for this purpose. However, there are some events that were poorly crushed by the authority. For instance, on 22 May 2015, in the commemoration of the military coup, about 38 students were arrested for their peaceful demonstration in front of the Bangkok Art and Culture Center. In the same time, in Khon Kaen Province, another seven students were arrested and charged with violating HNCPO Order No. 3/2558.<sup>140</sup> Another protest disruption was on 26 June 2015, in Bangkok, when the police and military officers arrested and detained 14 students who had been protesting the 22 May 2015 arrests. They were charged with sedition and violation of HNCPO Order No. 3/2558 and released on July 2015. In Songkla province, at least 16 protesters were arrested for piling a petition to General Prayuth against the construction of a coal-fired power plant.<sup>141</sup>

### 7) Censorship

The military junta continued to censor public discussions related to human rights, democracy, the monarchy, and the NCPO's performance. On September 28, 2016, Thailand Chapter of Amnesty International cancelled its Bangkok press conference to launch a report on torture in Thailand after authorities threatened to arrest senior Amnesty International staff for working illegally as foreigners in the country.<sup>142</sup>

### 8) Information Operations: Social Media Monitoring, Surveillances and interference with privacy

Thailand CSOs has a significant concern over the practices of internet surveillance by Thai authorities. National legislation governing surveillance is inadequate, unclear as to the powers, scope and capacity of state surveillance activities and thus it falls short of the required human rights standards to safeguard individuals from unlawful interference to the right to privacy. According to Privacy International, there is increasing monitoring of social media and other internet-based communications services to identify and to criminalize political dissent, often in pursuant of prosecutions under the overbroad crime of *lèse majesté* and related crimes.<sup>143</sup> This intrusion into people's privacy is clearly unlawful.

139 [https://www.fidh.org/IMG/pdf/le\\_se-majeste\\_prosecutions\\_under\\_king\\_rama\\_x-2.pdf](https://www.fidh.org/IMG/pdf/le_se-majeste_prosecutions_under_king_rama_x-2.pdf)

140 Thailand-ICCPR-Submission-ICJ-TLHR-Advocacy-Non-legal-submissions-2017-ENG.pdf;

141 <https://www.reuters.com/article/us-thailand-coal/thai-police-arrest-16-protesting-against-coal-fired-power-plant-idUSKBN1DS0QE>

142 <https://www.reuters.com/article/us-thailand-coal/thai-police-arrest-16-protesting-against-coal-fired-power-plant-idUSKBN1DS0QE>

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Internet is new area for the introduction of another form of oppression. Thailand activists name this as “information operations” by online spinning, throttling, doxxing and cyber bullying to expose, attack and punish anyone who criticizes military junta and the royal family. This operation was allegedly conducted by all security agencies and relied on the support from some conservative civic groups like Social Sanction (SS), Rubbish Collection Organization (RCO), and The Cyber Scouts.<sup>144</sup>

#### **D. RECOMMENDATION**

There are enormous demands from civil society and pro democracy activists for law reform in Thailand to more respect human rights. One of the top priority reform is the need to repeal all draconian laws including Article 116, Articles 112 and 326 to 328 of the Criminal Code, The Computer Crime Act, NCPO Orders No.97/2014, 103/2014, and 14/2557, Martial Law, ISA and the Emergency Decree.

There is also need to reform laws on freedom of association which may ensure a simple, short, non-mandatory registration process for domestic and international CSOs. It also should be handled by an independent, apolitical agency. Additional requirements to away and refrain from political activity, or to work aligns with the Government must be repealed. Furthermore, conditions and any interference to the independency of CSOs by regulating the structure, leadership and funding of organisations must be removed.



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