

*Editorial*

## Navigating Human Rights in Indonesia and Beyond

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### I. OVERVIEW

In Indonesia, promoting human rights is a long battle run. Human rights were just formally recognised when Suharto's authoritarian regime ended in 1998, but these rights have experienced a rise and fall throughout the *Reformasi*. Indonesia successfully amended the 1945 Constitution by incorporating more human rights provisions and enacted Human Rights Law 39/1999. However, this country still faces the challenges of ensuring that human rights are promoted with the state's obligation to respect, protect and fulfil amidst the debates on institutional reforms, universalism and relativism,<sup>1</sup> as well as the limited powers of the national human rights institution.<sup>2</sup> Along with efforts to ensure that democracy and human rights can coexist, democratisation in Indonesia is also inextricably linked to advancing human rights. After two decades of Indonesia's reform, human rights and democracy have become vital cornerstones, but they have experienced serious challenges in their promotion.

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<sup>1</sup> Heru Susetyo, "Human Rights Regime between Universality and Cultural Relativism: The Asian and Indonesian Experience Culture & International Law II" (2018) 16:2 *Indonesian J Int'l L* 191–209 at 195.

<sup>2</sup> Melissa Crouch, "Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia" (2013) 5:2 *Hague Journal on the Rule of Law* 146–177 at 165.

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## II. INDONESIA'S CONTRIBUTION TO THE GLOBAL SOUTH SCHOLARSHIP

From the Indonesian context, these discourses can relate to those in other Global South countries, like India, that this edition will elaborate on due to their relatively similar and unique pathways with arduous tasks in managing domestic affairs. Indonesia can represent critical, which is more likely underrepresented discourses with robust arguments on various social, economic, political and cultural situations in the Southern Hemisphere, from which these debates endure and are usually more centred on the West and, to some extent, the Global North. These discourses from the Global South countries can provide a frequently unheard perspective to current discussions on human rights.<sup>3</sup> These discourses highlight how the new justification of human rights can contribute to emancipatory initiatives.

The discourses on human rights in Indonesia are controversial. Constitutional and legal instruments guarantee human rights, but criticism has come from society and academics.<sup>4</sup> These responses indicate the concerns about authoritarianism in the past with the limited legal protection and the absence of sufficient human rights instruments that may resurface. In fact, despite the *Kamisan* activism, Indonesia's longest-running human rights protest that has endured,<sup>5</sup> almost a decade ago scholars in Indonesian studies warned about the decline of Indonesia's democracy, which shifted into a so-called "illiberal turn"<sup>6</sup> and democratic regression.<sup>7</sup> Further, political

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<sup>3</sup> Gavin W Anderson, "Human Rights and the Global South" in Tom Campbell, KD Ewing & Adam Tomkins, eds, *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 0 at 349.

<sup>4</sup> Maksimus Regus, "Centering Acculturation as an Approach to Challenging the Fragility of Human Rights in Indonesia" (2022) 6:2 *Journal of Southeast Asian Human Rights* 299–322 at 299.

<sup>5</sup> Ken M P Setiawan, "Struggling for justice in post-authoritarian states: human rights protest in Indonesia" (2022) 26:3 *The International Journal of Human Rights* 541–565 at 549.

<sup>6</sup> Rachael Diprose, Dave McRae & Vedi R Hadiz, "Two Decades of Reformasi in Indonesia: Its Illiberal Turn" (2019) 49:5 *Journal of Contemporary Asia* 691–712 at 692.

<sup>7</sup> Eve Warburton & Edward Aspinall, "Explaining Indonesia's Democratic Regression: Structure, Agency and Popular Opinion" (2018) 41:2 *Contemporary Southeast Asia* 255–285 at 256.

succession could take human rights as a serious threat, as indicated by the political initiative to reinstate the original version of the 1945 Constitution,<sup>8</sup> which the original constitution that was applied in the authoritarian regimes of Sukarno and Suharto had a lack of human rights provisions. Though considered not comprehensive, the current constitutional provisions on human rights in Indonesia underpin the recognition of basic human rights, particularly they become the important guidelines in policymaking and decision-making amidst the long and hard struggle to realise a more democratic nation.

This issue brings together scholars with some articles dealing with the efforts to navigate human rights in Indonesia and beyond. It is a general consensus that human rights are essential, and various efforts to achieve them are the concerns. While human rights are regarded as prominent and recognised in constitutional and legal provisions, the trend and development follow. In practice, legal instruments often encounter challenges to promoting human rights that encourage legal interpretations or text amendments. This issue features human rights articles dealing with the right to a fair trial in sentencing terrorism, child's opinion in courts as part of children's rights, children's right to political participation, the constitutional dispute over electoral results that impacted political rights, as well as the right of asylum seekers and refugees.

The first article in this issue, by **Milda Istiqomah and Armin Alimardani**, analyses the application of the right to a fair trial in sentencing terrorism offences in Indonesia through the interpretive lens of Southern criminology. This article considers a multi-dimensional approach of historical, legal, and empirical analyses to provide an in-depth understanding of factors that affect sentencing decisions in terrorism cases. A Southern criminology approach helps explain terrorism sentencing in the broader historical, legal, and socio-political contexts. The way laws are written and how judges determine the sentences of terrorism offences result from the persistent impact of colonialism, authoritarianism, and the 'war on terror' discourse. The case

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<sup>8</sup> Muhammad Bahrul Ulum & Nilna Aliyan Hamida, "Revisiting Liberal Democracy and Asian Values in Contemporary Indonesia" (2018) 4:1 Constitutional Review 111–130 at 124.

study reveals violations of international human rights rules and standards. Terrorism sentencing practices also exemplify a troubling trend where national security trumps the fundamental procedural rights of terrorist offenders.

The accommodation of a child's opinion in courts as integral to children's rights is vividly discussed by **Y.A. Triana Ohoiwutun, Evoryo Carel Prabhata, and Pyali Chatterjee** in their article. The authors examine the framework of protecting children in Indonesia to comply with children's right to an opinion and demonstrate the significant role of forensic science in complementing legal inquiry to consider a child's opinion in court. In this article, they outline that Indonesia's legal and regulatory framework of children protection had not specified to elucidate children's right to an opinion, particularly in the Child Protection Law, the primary legal basis for children protection. They emphasise that Indonesia is yet to have a robust and consistent practice of human rights-based instruments considered in the court, indicated by a lack of comprehensive understanding in law enforcement to implement this right. Given that children are more complex compared to adults, particularly in a case of a child victim of rape-related pregnancy, they suggest the forensic approach as an alternative that involves forensic experts in courts to consider a child's psychology and physical condition.

**Rongeeet Poddar** considers the participation of children in a political demonstration. The author argues that children are merely viewed as apprentice citizens who cannot exercise rational choice. It negates children's autonomy and reduces them to disenfranchised spectators in an adult-centric social fabric. The protectionist approach enables the state to evade its obligation of preserving democratic spaces wherein minors can protest safely and make their voices heard. State functionaries and judicial authorities in India have also been complicit in adopting an infantilising stance. In this article, the author makes a case for recognising the agency of children such that they can exercise their 'autonomy' right to political participation. This article incorporates diverse perspectives in existing child rights literature, including those from the Global South, to argue in favour of an epistemic reorientation in child rights law discourse. Moreover, the author relies upon

key interpretations of UNCRC provisions made by the Committee on the Rights of the Child and argues for facilitating a participative environment where children can exercise their civil and political rights. The ‘best interests’ test should not be wielded as a sword from an adult standpoint to curtail children’s rights in the political domain.

The examination of the Indonesian Constitutional Court’s power to decide the dispute over the result of the regional head election is presented by **Mexasai Indra, Geofani Milthree Saragih, and Tito Handoko**. In this article, they analyse the rationale of the Constitutional Court to implement a pseudo-judicial review over the regional head election result, given the judicial activism that also is limited to checks and balances. Throughout the analysis, this article also links the theoretical basis for rule-breaking and judicial activism by the Constitutional Court, the transition of the Constitutional Court’s power in deciding regional election disputes from temporary to permanent, as well as further analysis of why the Constitutional Court needs to file a lawsuit for review. In this article, pseudo-judicial review affirms the legal breakthrough beyond ordinary decisions as this was made on the ground of the public interest. While the Constitutional Court is essential in maintaining and overseeing democracy in Indonesia, the rationale of the Constitutional Court under the public interest is justified as it is constitutionally correct that has led to judicial activism.

Turning to the last article by **Dodik Setiawan Nur Heriyanto, Sefriani, and Fezer Tamas** discusses the non-refoulement principle as a customary international law in Indonesia. This article argues that as a geographically strategic country, Indonesia has been a significant crossroad for international refugees, and asylum seekers often consider Indonesia their temporary destination. Further, the complex situation of international refugees has encouraged to reinterpret of the principle of non-refoulement into various national measures and domestic policies, given that Indonesia is deemed a transit country for refugees and has not ratified the 1951 Convention on the Status of Refugees. In this article, the authors analyse the concept of refugee protection under international law, particularly the non-refoulement principle and investigate the application of the non-refoulement principle in Indonesia. This article confirms that the non-refoulement principle is part

of jus cogens norms in international law but does not fit in its application. Indonesia has inconsistency in upholding the non-refoulement principle into the binding normative rules. Refugees have received far less attention from the Indonesian government due to insufficient infrastructure and financial allocation. The existing executive regulations do not provide effective enforcement since these regulations have a lower position in the hierarchy and cannot have deterrent sanctions. Hence, ratification of the 1951 Convention is urgently needed by Indonesia to guarantee the protection of refugees within its jurisdiction. At the regional scope, Indonesia can encourage ASEAN countries to adopt good practices in the European Union to set sharing quotas to ensure that not most refugees escape to Indonesia.

Last but not least, we want to mention some key points that emerge from the articles in this issue. Overall, each article offers a rich and detailed analysis of human rights and, to some extent democracy, in Indonesia and beyond. Individually and collectively, these papers inspire us and give valuable perspectives among legal scholars in Indonesian studies and the Global South at large. We thank the editorial board members, assistant editors, and anonymous peer reviewers for their invaluable teamwork in facilitating the review process and publication. Also, we would like to thank the contributors for their analysis and cooperation with the review process.

## REFERENCES

- Anderson, Gavin W, “Human Rights and the Global South” in Tom Campbell, KD Ewing & Adam Tomkins, eds, *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 0.
- Crouch, Melissa, “Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia” (2013) 5:2 *Hague Journal on the Rule of Law* 146–177.
- Diprose, Rachael, Dave McRae & Vedi R Hadiz, “Two Decades of Reformasi in Indonesia: Its Illiberal Turn” (2019) 49:5 *Journal of Contemporary Asia* 691–712.
- Regus, Maksimus, “Centering Acculturation as an Approach to Challenging the Fragility of Human Rights in Indonesia” (2022) 6:2 *Journal of Southeast Asian Human Rights* 299–322.

- Setiawan, Ken M P, “Struggling for justice in post-authoritarian states: human rights protest in Indonesia” (2022) 26:3 *The International Journal of Human Rights* 541–565.
- Susetyo, Heru, “Human Rights Regime between Universality and Cultural Relativism: The Asian and Indonesian Experience *Culture & International Law II*” (2018) 16:2 *Indonesian J Int’l L* 191–209.
- Ulum, Muhammad Bahrul & Nilna Aliyan Hamida, “Revisiting Liberal Democracy and Asian Values in Contemporary Indonesia” (2018) 4:1 *Constitutional Review* 111–130.
- Warburton, Eve & Edward Aspinall, “Explaining Indonesia’s Democratic Regression: Structure, Agency and Popular Opinion” (2018) 41:2 *Contemporary Southeast Asia* 255–285.

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