CRIMINAL LAWYERS' ASSOCIATION
OF THE NORTHERN TERRITORY

CONFERENCE : JULY 1993

INDONESIAN CRIMINAL PROCEDURE

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Indonesian criminal procedure is governed by a 1981 code known by its acronym as the "KUHAP"[1].This replaced the Dutch colonial code of 1848 known as the "HIR".[2] Those who are generally aware of criticisms of Indonesian human rights may be surprised to know that the KUHAP establishes a number of fundamental rights for criminal defendants. These include a presumption of innocence[3], a right to legal assistance[4], a right to be free of duress during interrogation and trial[5] and a right to compensation for illegal arrest, detention and/or seizure of property[6]. Why, then,has Indonesian criminal procedure been criticised by organisations such as Asia Watch and the International Commission of Jurists?[7]

The answer lies in the practice of Indonesian criminal justice and,in particular,the interaction between:

(a) formal deficiencies in the KUHAP including the absence of sanction for its violation;

(b) social factors such as the relatively small numbers of trained lawyers, the judiciary's indentification with the state, and the paucity of institutional opposition to executive power; and

(c) the exclusion of the KUHAP's provisions in respect of offences arising under "special laws" such as the Anti-Subversion law.

This paper will examine these issues in some detail. Firstly, however, it is necessary to comment upon the cultural and political background to the KUHAP.

Why does the KUHAP offers new procedural rights to criminal defendants? After all, not only has Indonesian culture traditionally placed more emphasis on community needs than individual rights, the New Order government of President Soeharto has clearly been more concerned with the development of Indonesia than the protection of individuals against the state. The answer

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1 Kitab Undang-Undang Hukum Acara Pidana.

2 Herziene Indonesish Reglement.

3 Art. 66.

4 Arts. 54, 60.

5 Arts. 52, 153.

6 Arts. 81, 82.

7 e.g. Indonesia and the Rule of Law, International Commission of Jurists, 1991; Human Rights in Indonesia and East Timor Asia Watch 1989.

may be found in the introductory Elucidation to the KUHAP itself.

It states in part that:

> "The 1945 Constitution clearly explains that the Indonesian state is based on law (law-abiding state), not on mere power (power state).
> This means that the Republic of Indonesia is a law-abiding state which...upholds basic human rights and guarantees equal status in law and administration for all its citizens ...
> It is clear that a deep sensing, observance and implementation of basic human rights ... is a must for every citizen, every state administrator, every state institution ... and should also be manifested in and by the presence of this code of criminal procedure."[8]

This notion of a "law-abiding state" - which founds the KUHAP's recognition of basic human rights - bears close resemblance to the Western concept of the "rule of law". Supporters of a law-abiding state in Indonesia openly acknowledge this occidental derivation. The question is : how has this foreign ideology come to be so influential in modern Indonesia?

The "rule of law" movement in Indonesia is commonly seen as having its genesis in the backlash against President Sukarno's period of "Guided Democracy" (1958 to 1965). The years of Guided Democracy were characterised by Sukarno's disregard for the Indonesian Constitution. Notorious examples include:

(a) Sukarno's appointment in 1963 as President for life which contravened the Constitution's requirement that the President be elected every five years by the People's Consultative Assembly,and

(b) The 1964 Basic Law on the Judiciary which empowered the President to interfere directly in judicial proceedings. This was inconsistent with the Elucidation to the Constitution which affirmed the independence of the judiciary.

In these circumstances, the notion of a "law-abiding state" took on potent political significance.Groups excluded from power under Sukarno such as the incipient middle-classes, non-Javanese Indonesians,the legal profession and academics began to take part in an uncharacteristically vocal debate on the need for adherence to the rule of law. The accession to power of President Soeharto harnessed these forces, firstly, for their popularity amongst an elite influenced by Western legal concepts, and, secondly, because they represented a powerful symbolic distinction between the new regime and the old. The KUHAP's reference to a state based on law and not mere power is therefore a shorthand reference to the public ideological difference between President Soeharto and President Sukarno.

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[8] Indonesia 1985 : An Official Handbook (which contains an official translation of the KUHAP and its Elucidation)

President Soeharto's government has continued to be characterised by its public commitment to a rule of law ideology. Fruits of that ideology include not only the KUHAP but the 1970 Basic Law of the Judiciary of 1970 which affirmed the independence of the judiciary[9]. Nevertheless, it has become apparent over the years that the Soeharto government's commitment to the rule of law has always been subject to its drive to consolidate and develop independent Indonesia. There are many instances of the government's lack of political commitment to individual rights notwithstanding its ideological commitment to the rule of law. Particular examples for present purposes include the widespread use of special criminal laws such as the Anti-subversion Law, and campaigns such as the extra-judicial killing of large numbers of alleged criminals in Jakarta not long after the KUHAP was passed.[10] The government's actions should be, of course, understood in the context of the numerous religious, racial and regional[11] threats to national unity in Indonesia. Nevertheless, one result of its overriding commitment to national unity and stability has been a reluctance by the courts to enforce the provisions of the KUHAP against either the instruments or the interests of the state.

In addition to the government's apparent lack of political commitment to the KUHAP, enforcement of its provisions has also suffered because the concept of individual rights lacks a cultural focus in Indonesia. Whilst it is undoubtedly true that Indonesian culture has a fundamental belief in fairness and equity, it is nevertheless more concerned with equitable relationships within a community than the equitable treatment of particular individuals. The well-known Indonesian lawyer Djojodigoeno has stated that:

> "... individualistic and liberalistic views do not live in the minds of Indonesians. We are socio - and traditio - bound people ... and an individualistic state of mind will arouse opposition, disapproval and condemnation."[12]

Or as another well-known commentator on Indonesian law has said:

> "What tends to be emphasized is not the application of given rules, but the elimination of a conflict which may

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9 This law also established a number of rights that were subsequently expanded upon by the KUHAP, namely a presumption of innocence (Art. 8), a right to compensation for illegal detention (Art. 9), a right to be tried in person in open court (Arts. 16, 17), and a right to legal aid (Art. 36).

10 Indonesia's Legal Aid Institute (LBH) estimated that there were more than 4,000 joint military/police death squad murders of suspected criminals in 1983 alone.

11 For instance, there have been six regional rebellions since Independence.

12 Adat Law, Djojodigoeno (1952).

cause social tension or disruption. Those who talk about rules as if they were absolute are likely to be considered obstructors, stubborn trouble-makes, antisocial fools, or worse."[13]

It is suggested that this cultural lack of emphasis on individual rights still exists in modern Indonesia. A powerful example lies in the approval of the aforementioned campaign of extra-judicial killings by 65% of respondents to an opinion poll conducted by Tempo Magazine.[14]

This paper argues that the fact that the rights contained in the KUHAP are not based on fundamental cultural and political priorities but on a foreign ideology imported in reaction to political events has had a critical effect on the operation of the KUHAP. In other words the "rule of law" movement may have successfully incorporated fundamental individual rights into the KUHAP, but it has lacked the political strength to overcome cultural and governmental obstacles in the way of ensuring that the reality of those rights conform to their theory. Whilst these cultural and governmental obstacles are so embedded in Indonesian society that they are unlikely to change in the near future, it is suggested that social change, including the rise of a middle-class and the growth of institutional restraints on executive power, may in the long term ensure that the spirit of the KUHAP is evident in its practice. In this regard the long-term role of organisations such as the Northern Territory Criminal Lawyers' Association can be a constructive one.

I turn to consider the KUHAP in detail.

1. Investigations

The KUHAP gives police exclusive powers of investigation and interrogation. The former powers of prosecutors to undertake investigations themselves is abolished: they are simply limited to prosecution itself (Art. 137) and the implementation of court decisions (Art. 270).

The police must have a reasonable presumption that a criminal act has been committed before they can begin an investigation (Art. 102 (1), 106). Judicial review of this requirement is available, however there is no other sanction for its violation.[15]

2. Arrests

Unless the offender is caught in the act, a warrant is required in order to make an arrest (Art. 18). Warrants

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13 Judicial Institutions, Lev. (1972)

14 Cited in Making it in Jakarta - The Independent Monthly, February 1992.

15 See Indonesia and the Rule of Law, International Commission of Jurists at p. 180 (1991).

must identify the suspect, give reasons for his arrest, briefly outline the nature of the case against him, and state the place of interrogation (Art. 7). A copy of the warrant must be delivered to the suspect's family (Art. 18). For those crimes which are roughly equivalent to indictable offences in the Australian legal system, an arrest requires a strong presumption of a criminal act and sufficient initial proof (Arts. 17, 19(2)). Less serious crimes simply require a failure on two consecutive occasions to comply with a summons (Art. 7). A suspect must be released one day after arrest unless pre-trial detention has been ordered.[16] There is a right of compensation for unlawful arrest (Arts. 81, 82), however there is no doctrine to the effect that an unlawful arrest may "taint" subsequent proceedings.

3. Detention

Pre-trial detention is limited to offences carrying a sentence of greater than five years imprisonment as well as a number of other crimes specifically enumerated in the KUHAP (Art. 21(4)). In all other cases the suspect must be released within one day of arrest with or without bail or personal guarantees.

Depending on the stage of the investigation or proceedings, the police, prosecutors and judges all have the power to order pre-trial detention. In every case, however, a detention order identifying the suspect, outlining the reasons for the detention, briefly explaining the nature of the suspected criminal act, and stating the place of detention must be presented to the suspect and a copy give to his or her family (Arts. 21(2) and (3)). The ground on which detention may be ordered is a strong suspicion from the basis of sufficient evidence that the suspect will disappear, damage or destroy evidence, and/or repeat the criminal act (Art. 21(1)). A detention order may be suspended or withdrawn by either police, prosecutors or a judge with or without bail or personal guarantees (Art. 31).

There are two formal deficiencies in the pre-trial detention provisions. The first is that detention may be ordered by the police themselves, and may, therefore, be an instrument by which a suspect may be pressured into making admissions. This is compounded by the second deficiency which is that the KUHAP does not contain a requirement that a detainee be brought promptly before a court. Indeed, a suspect may be detained for up to 80 days before the police or prosecution are obliged to bring him or her before a judge. The police may detain a person on their own authority for 20 days. This period is extendable for a further 40 days by a prosecutor. The prosecutor may

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[16] See the Elucidation to the KUHAP referred to in footnote 8 above. See also Subekti, Criminal Procedure (1983).

himself order a further detention period of 20 days and the detainee will only be brought before a court upon an application for an extension of this 20 day period. The court itself may order a further detention period for 30 days (Arts. 24 - 28). In this way a suspect may be detained for up to 80 days without any judicial involvement and may be detained for up to 110 days with judicial consent. This is an improvement on the old Dutch colonial code which allowed for indefinite detentions on 30 day renewable periods. Nevertheless, the police's ability to detain suspects for long periods of time on their own, or the prosecution's, authority does create conditions in which duress may flourish.

Detentions may be of three kinds: house, city and gaol. The latter is subtracted in full from the term of any sentence, house detentions are subtracted at the rate of one third of the entire period of detention and city detentions are subtracted at the rate of one fifth (Art. 22(4)).

4. Pre-Trial Procedure

An important reform achieved by the KUHAP is the establishment of a pre-trial procedure to determine whether the arrest and/or detention of a suspect is lawful. A request for a pre-trial hearing may be made by the suspect, his family or counsel (Art. 79). If the arrest or detention is determined to be unlawful by a judge then the detainee is to be released immediately and is entitled to compensation (Arts. 81, 82). The KUHAP does not provide any criteria by which the amount of any such compensation may be established, however an implementing regulation states that the amount of compensation may range from 5,000.00Rps to 3,000,000.00Rps (approximately A$3.20 to A$2,000).

It appears that judges in "ordinary" criminal cases (ie. non-political) have already used the pre-trial procedure to invalidate arrests or detentions on the grounds of non-compliance with the KUHAP[17]. In this regard, there is some cause for optimism that the pre-trial procedure may enable the judiciary to restrain apparently widespread police and prosecution abuse of arrest and detention powers. Nevertheless, a significant formal deficiency is that only the legal validity of the detention - and not its necessity - may be challenged in the court (Arts. 77, 124). In other words, a court may examine whether the requirement of a written order has been satisfied or that a copy has been given to the family, but not if there was in fact a reasonable belief that the offender may abscond or repeat his act.

There are also two substantial practical obstacles in the way of the effective operation of the pre-trial procedure.

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[17] Above, n. 15, p.180.

Firstly, there is simply not enough lawyers, particularly in rural areas, to allow legal assistance to most suspects prior to the trial itself. The result is that many suspects are unaware of, or unable to utilise, the pre-trial procedure. The catch 22 is that challenges to the validity of arrests or detentions are limited to the pre-trial hearing; they may not be made at the time of trial. Secondly, there is a perception that, whilst the Indonesian Government has formally affirmed the independence of the judiciary[18], the operation of that independence in practice has been undermined by cultural and administrative factors.

These include the fact that there is neither an historical tradition of judicial independence in Indonesia, nor a cultural tradition of institutional restraint on state power. What restraints there are stem from religious or mystical notions of duty and obligation. One result is that Indonesian judges see themselves as part of the apparatus of the state. Indeed, a 1986 law expressly categorises judges as public servant.[19] Whilst, somewhat perversely, this has made their dismissal more difficult than it would otherwise have been, judges are nevertheless subject to more subtle administrative influences. All courts save for the Supreme Court are under the direct administrative control of the Ministry of Justice which determines postings, transfers and promotions of individual judges. There is apparently a fear of postings to undesirable locations. Finally, Chairmen of the District Courts, where first instance trials are held, are required to hold regular meetings with the local Army commander and Chief of Police[20]. This is a formal link which is compounded by the fact that most judges are retired military officers.

5. Interrogation

As previously stated, a suspect must be interrogated within one day of arrest. He has the right to be informed of what is presumed against him at the beginning of an interrogation (Art. 51). Statements of suspects and witnesses must be recorded in their own words (Art. 117(2)) and signed by them, and the police, after their contents have been approved. A refusal to sign must be recorded in the police report along with the reasons for such refusal (Art. 118). There appears to be an express right to silence during interrogation as Art. 66 states that a suspect shall not be burdened with a duty to answer questions. Most importantly, a suspect must be in a condition to speak freely without pressure being brought to bear on him in any way. (Art. 52).

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18 The Basic Law of the Judiciary 1970.

19 Above, n. 15, p. 193.

20 Ibid.

These are comprehensive safeguards. Nevertheless, they are not only undermined by the lack of penalty for their violation, but more importantly by the fact that judges have no discretion to exclude illegally obtained evidence[21]. Individual judges may, of course, give little weight to admissions obtained by duress, but one consequence of the lack of judicial independence discussed above is that this is rarely done. The general reluctance of judges to investigate claims of ill-treatment is compounded by the fact that, under the Civil Law procedure inherited by Indonesia, it is the judge who asks questions and calls witnesses. He or she not only has the discretion not to ask questions suggested by defence counsel, but may also refuse to call witnesses requested by the defence. It has been suggested that these discretionary powers have been the subject of abuse in 'political' trials.[22]

6. Search and Seizure

A search of a home requires a warrant from the Chairman of the local District Court (Art. 33(1)). Where the householder consents to the search, two witnesses must be present. If the householder objects, or is not there, the village head or community chief must also attend (Arts. 33(3) and (4)). A report on the search must be prepared within two days by the police and signed by them, the witnesses, the householder and, if applicable, the village or community chief. If the householder refuses to sign the report, the reason for refusal must be recorded in the report itself. These provisions do not apply where the police have to act immediately and cannot possibly obtain a warrant first (Art. 33(2), 34(1), 35).

In addition, the chief police investigator is authorised to make a body search at the time of arrest or when the suspect has been brought to him by an assistant after the arrest. Police other than the chief investigator may only search a suspect's clothes and/or the goods he is carrying with him at the time of arrest.

Seizure of property also requires a warrant of the Chairman of the local District Court. However, in an urgent situation the police may seize the goods in question and report afterwards to the Chairman of the District Court for approval (Art. 22(2)). There are similar requirements for the presence of witnesses, the village or community chief and the preparation of a report in respect of seizure of goods as for house searches.

All the KUHAP's provisions on search and seizure lack penalties for their violation.

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21 Ibid at p. 171.

22 Ibid, p. 186, See also Human Rights in Indonesia and East Timor: Asia Watch 1989 at p. 148.

7. Legal Assistance

The KUHAP improves significantly on the old code in that it establishes a right to legal assistance from the beginning of the police investigation itself and not simply at the time of trial. It also does not limit the right to legal assistance to offences carrying the death penalty - as was the case under the HIR. Nevertheless, the right does remain quite restricted in so far as it only applies to crimes carrying sentences of five years imprisonment or more. The right to legal assistance includes the right to counsel of one's own choosing.

Counsel has a right of access to his client at all stages of the investigation (Arts. 69 and 70). This expressly includes the right to be present at, and listen to, interrogations (Art. 115(1)). Clearly enough, the presence of counsel during interrogation serves to prevent the possibility of unfair interrogating techniques. Nevertheless, the extension of the right to legal assistance to include investigations has not been as effective as one might think. In practice, detainees often do not receive legal assistance because they are unaware of that right and there is no obligation on the part of police to inform them that it exists. Furthermore, particularly in rural areas, there is often no lawyer available. Finally, there is a monetary disincentive for lawyers to represent poorer clients. if they are lawyers assigned to clients who cannot afford assistance the amount payable by the state in respect of trial, appeal and cassation procedures is limited by a 1980 regulation to a maximum of 100,000.00Rps (approximately A$75.00). In practice, legal aid lawyers say they often receive less.

The right to legal assistance has also been weakened by Ministerial regulations. For example the KUHAP allows counsel the right under 1983 Ministry of Justice regulation pursuant to the KUHAP to communicate with his client "at every moment". But this means "at every moment during office hours". The result is said to be that many interrogations are conducted at night.

Finally, it is important to note that the phrase "legal assistance" is not limited to qualified lawyers. "Pokrol Bambu" or "bush lawyers" are often assigned to represent criminal suspects or defendants. The use of pokrol bambu in Indonesia has a long tradition, and some of Indonesia's better known criminal lawyers are from their ranks. Indeed, as there were only 3,500 qualified practising lawyers in Indonesia in 1988, the right to legal assistance is only made meaningful by the use of pokrol bambu.

8. Client/Counsel Confidentiality

The KUHAP impliedly recognises the confidentiality of client/counsel communication. However, it establishes a number of significant exceptions to that confidentiality. These include:

* Art. 70 which allows for communication to be monitored if counsel fails to heed police warnings about abuse of his rights to speak to his client. Repeated abuse of this right may in fact lead to the banning of counsel.

* Art. 71(2) which states that the police can listen to the discussion between counsel and client where the charges include crimes against the security of the state.

* Art. 62 which states that written communications between counsel and client may be censored or examined where there is sufficient reason to presume that the correspondence is being abused.

9. The Preparation of the Defence

The KUHAP gives a defendant the right to be clearly informed in a language he understands of what has been presumed against him (Art. 51). The accused also has the right to receive a copy of the indictment which must identify the accused, give an accurate and complete account of the charge and when and where the offence is said to have been committed (Art. 143). An indictment which does not fulfil these requirements is invalid (Art. 143(3)).

In addition, the accused has a right to receive a copy of the report of the preliminary examination by police (Art. 72). Prior to the trial the accused should receive the whole of the prosecution's file (Art. 236(3)). Interestingly, this would appear to include matters that in the Australian legal system would be covered by legal professional privilege. At the end of the trial the accused has the right to receive the whole of the prosecutioner's dossier on the case including the verdict (Art. 236(4)). The verdict should identify the accused and the offence, summarise the facts and evidence, state the relevant law and refer to the presence or otherwise of constituent elements of the offence. Save for the right to receive a copy of the indictment, there is no sanction for the violation of these rights to be informed.

10. The Trial

Indonesian trials follow the civil law procedure inherited from the Dutch. At the beginning of the trial, the accused is identified, the prosecution reads out the charges and the presiding judge gives an explanation of them to the accused (Arts. 155, 221). Both the accused and the prosecution have a right to call witnesses, but this is subject to judicial discretion. Similarly, the prosecution and the accused may ask questions of witnesses through the court but the court has a discretion to refuse to ask them. As stated previously, it appears that these discretionary

powers have been the subject of abuse in 'political trials[23]. Finally, the court is required to be convinced on the basis of two pieces of admissible evidence that the accused committed the crime in question (Art. 183).[24]

The KUHAP establishes a number of important procedural safeguards for the conduct of Indonesian trials. These include a presumption of innocence (Art. 66), a right to be present in person at the trial, and a right to be tried without undue delay (Art. 50). Charges are to be based on specific legal provisions (Art. 1). There is also a requirement that criminal laws are to have no retrospective operation (Art. 2).

The greatest failing of the KUHAP in respect of the conduct of trials is the absence of an express right to remain silent. Art. 66 does state that an accused shall not be burdened with the duty of giving evidence, but that simply means that it is for the prosecution to prove its case[25] Art. 175 states that if a defendant refuses to answer a question, the Chairman of the Court must advise him to answer it (Art. 175). Any continuing refusal to answer questions will be treated either as an aggravating circumstance in the penalty or as pointing by implication to the guilt of the accused[26].

This absence of a right to silence has had a particularly unfortunate result in the practice of "splitting" trials. Because there is no obligation in Indonesian law to prosecute matters involving more than one offender in the one trial, a practice has arisen whereby defendants in one case are summoned as witnesses in a related case and compelled to give evidence which is subsequently then used against them in their own trial. The problem is compounded by the further practice of refusing to allow the defence to have access to the evidence given in the related trial. It appears that 'splitting' trials is more likely to occur in 'political cases.[27]

11. Indonesia's Special Criminal Laws

Finally, the procedural safeguards contained in the KUHAP have been undermined to a significant extent by special criminal laws which provide exceptions to those safeguards. These include the Anti-Subversion Law, Anti-Corruption Law, the Narcotics Law and the Economic Crimes Law. The most

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[23] Ibid.

widely used is the Anti-Subversion Law and this paper will look only at that.

The Anti-Subversion Law was promulgated as a Presidential Decree in 1963 and became a statute in 1969. The scope of its application is potentially very broad. It defines "subversion" to include "any action" that could "distort, undermine or deviate from the ideology of Pancasila ... or otherwise destroy or undermine the power of the state or the authority of the lawful government", or that could "arouse feelings of hostility ... or anxiety among the population ...". The "Pancasila" is Indonesia's official state ideology. It has five very broad elements:

1) Belief in one God;
2) A just and civilised humanitarianism;
3) A united Indonesia;
4) Democracy guided by wisdom through consultation and representation;
5) Social justice for all Indonesian people.

Actions that distort, undermine or deviate from any one of these elements is subversion as defined and is punishable by death. This extraordinary theoretical breadth of application is reflected to some extent at least in practice: the Justice Minister in July 1988 estimated that the number of convictions under the Anti-Subversion Law (i.e. excluding those detained without trial) "probably reaches the thousands"[28].

The Anti-Subversion Law contains a number of exceptions to the KUHAP's procedural rights. The most important is the right it gives to prosecutors to detain suspects on their own authority for renewable periods of one year. The KUHAP's pre-trial procedure to determine the lawfulness of an arrest or detention and consequent compensation does not apply and a suspect may therefore be detained indefinitely without the involvement of a court. Furthermore, periods of pre-trial detention under the Anti-Subversion Law are not deducted from the final sentence.

Even where the procedural rights established by the KUHAP do apply, they are often ignored in practice. There is such a widespread fear of "Laksusda", the military body charged with investigation of subversive activity, that the courts are very reluctant to make rulings against them. In fact, on occasions the courts have cited the Laksusda operating "Instructions", which grant very broad arrest and detention powers, to excuse illegal actions[29]by Laksusda personnel. This judicial reluctance to make rulings against Laksusda is reflected in the fact that only one subversion

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[24] A classic civil law formulation.

conviction has ever been overturned on appeal[30]. Asia Watch and the International Commission of Jurists have catalogued a number of examples of non-compliance with the KUHAP including the refusal of the right to counsel of one's own choosing and the refusal to call witnesses on behalf of the defence[31].

CONCLUDING REMARKS

A proper understanding of Indonesian criminal procedure requires an awareness of conflicting forces in Indonesian society. There is, on the one hand, a "rule of law" movement which retains a certain ideological influence over a government committed to distancing itself from the excesses of Sukarno's Guided Democracy. This movement is weakened to some extent in that rule of law notions, in particular the concept of individual rights, lack a traditional, cultural foundation in Indonesia. However, its remaining strength may be seen in the fact that it is credited with overcoming bureaucratic opposition to the KUHAP's most important reforms, namely the formal limits on arrests and detention, the pre-trial procedure, the right to compensation and the right to legal assistance. On the other hand, there is a government so intent on the consolidation and development of Indonesia that it is deeply suspicious of institutional restraints on its power, and entirely unwilling to allow individual rights to hinder its efforts to combat perceived threats to national unity. In these circumstances it is clear that in the short-term the theory and practice of Indonesian criminal procedure is likely to remain divergent. However, in the long term, it is suggested that the combination of a rapidly increasing middle-class, a legal elite influenced by western concepts, and a government more secure in its own power may allow the spirit of the KUHAP to become more evident in its operation.

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[25] Above, n.15 at p. 187.

[26] Above, n. 15, p.188.

[27] See Human Rights in Indonesia and East Timor, at p. 150, Asia Watch 1989.

[28] Ibid, footnote .... p. 138.

[29] Ibid, footnote ... at p. 137.

[30] See Human Rights in Indonesia and East Timor, Asia Watch, 1989.