

Proposed Indonesian criminal code enshrines Suharto-era repression

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A draft for a new Indonesian criminal code (KUHP) is currently on the desk of President Susilo Bambang Yudhoyono. Purported to be an update of existing legislation, the new bill revives or reasserts many of the anti-democratic measures that prevailed under the Suharto military-backed dictatorship.

The new code must be endorsed by the parliament before becoming law. However, the fact that the new draft is even being considered in its present form is an indication of the authoritarian direction that Indonesia is taking under Yudhoyono.

Article 209 entrenches one of the main anti-democratic measures of the Suharto era. It provides for 10 years imprisonment for any person who “spreads or promotes” through the media the principles of communism or Marxism-Leninism with the intention of challenging the state ideology of Pancasila.

Pancasila is an eclectic amalgam of nationalist nostrums elaborated under the country’s first president Sukarno to defend capitalist rule and at the same time undermine the mass support enjoyed by the Stalinist Indonesian Communist Party (PKI). The legislation outlawing “communism” was introduced in the aftermath of Suharto’s US-backed 1965 coup, during which hundreds of thousands of PKI members and supporters were murdered or imprisoned.

Article 209 echoes a stipulation in the electoral laws under which last year’s parliamentary and presidential elections were held. No party could stand candidates whom the Electoral Commission (KPU) judged to be advocating a socialist platform. The KPU also used other restrictions to bar dozens of parties that sought to participate in the elections.

Article 209 is one of a series of articles aimed at criminalising criticism of leading politicians and the government. Articles 262, 263 and 264 reassert existing

laws that mandate five years jail for insulting the president or vice president. Articles 284 and 285 stipulate three years jail for insulting the government.

The *Australian Financial Review* reported on May 18 on the case of student leader Monang Johannes Tambunan, who has been jailed for six months for insulting Yudhoyono during a demonstration in Jakarta in January. Tambunan’s case is one of 11 such prosecutions in the past two years and the fourth under Yudhoyono.

The draft criminal code also incorporates the anti-terrorist measures that were implemented by Yudhoyono’s predecessor, Megawati Sukarnoputri, following the terrorist attack on the Bali resort in October 2002. Pushed through under pressure from the US and Australian governments, these provisions re-introduced Suharto police-state style laws. The security forces were given widened powers of detention and interrogation, including the right to detain individuals without charge for up to six months. The death penalty was introduced for a number of offences.

The code includes “morality” articles, which reflect the reactionary influence of right-wing Islamic parties that form part of the coalition supporting Yudhoyono’s administration. Kissing in public can result in 10 years jail, while article 486 makes living together outside of matrimony a criminal act punishable by two years jail and a 30 million rupiah fine (\$US3,175).

According to the Indonesian Press Council and journalists’ associations, the 727-article code will end the limited press freedom that emerged after the fall of Suharto’s regime in May 1998.

Article 308 imposes fines of 30 million rupiah and one year’s jail for anyone found to have disseminated incomplete or exaggerated news that could lead to “social disorder”. The Additional Crimes Section

stipulates that “a convicted felon may have their right to continue working in a specific profession revoked, including the profession of journalism”.

The Ministry of Justice and Human Rights, which authored the proposed criminal code, has refused to debate the draft with any media representatives.

In all, 49 of the KUHP articles have the effect of restricting press freedom, compared with 32 in the previous code. Many of the articles are deliberately vague and therefore give the Indonesian judiciary, which is highly susceptible to political pressure, wide powers of interpretation.

Press Council deputy chairman R.H. Siregar told the *Jakarta Post*: “Article 209 doesn’t elaborate what it means to spread or promote (communism or Marxism-Leninism), and can easily be interpreted in various ways. Whether a news story is exaggerated or incomplete is a journalistic matter, and the draft crosses its domain. Besides, one can actually arrange fake ‘social disorder’”.

The “fake disorder” to which Siregar refers is the practice of Suharto’s ruling party Golkar of using provocateurs to create disturbances that then became the pretext for action against political opponents or journalists.

The Press Council pointed out that the new KUHP undermines the 1999 Press Law, which gave the civil courts jurisdiction over allegations of libel or defamation. The law was promoted as a major democratic concession as it ostensibly freed journalists from the threat of imprisonment. The ability of the state to prosecute libel and defamation in the criminal courts was retained, however, and is increasingly being used under Yudhoyono.

In September, Bambang Harymurti, the editor of the magazine *Tempo*, was sentenced by a criminal court to one year’s jail for allegedly defaming the politically-connected tycoon Tomy Winata. The state prosecutors filed criminal charges despite the fact an appeals court had overturned an earlier civil ruling favouring Winata.

This month, two senior staff of the Sumatran *Koridor* newspaper, Darwin Ruslinur and Budiono Syahputra, were sentenced to nine months jail for authoring an allegedly defamatory article about a Golkar official, Alzier Dianis.

The proposed KUHP is another indication that the limited democratic concessions made following the

1998 fall of Suharto are being stripped away.

Commenting from his jail cell, student leader Tumbunan told the *Australian Financial Review*: “When Suharto was ousted I felt at the time there would be big changes. But the changes did not occur, and in many cases there has been a step back. Education remains expensive, health care remains expensive and there is no improvement in the workers’ welfare. Democracy is only enjoyed by certain groups.”



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