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## INDONESIA'S 1999 POLITICAL LAWS: THE RIGHT OF ASSOCIATION IN ACEH AND PAPUA

Amber Dufseth<sup>†</sup>

*Abstract:* Post-Suharto Indonesia has taken steps to liberalize and codify the right of political association through a package of political laws passed by the House of Representatives (*Dewan Perwakilan Rakyat* or "DPR") in 1999. International pressure and Indonesian mass demonstrations calling for political reform provided the impetus for the passage of the laws. Since this legal reform, the number of registered political parties in Indonesia has jumped from three to over one hundred. Moreover, the laws provided a legal framework for the 1999 general elections, which were widely recognized as free and fair. The initiatives, however, have had limited effect in the outlying provinces of Aceh and Papua, where political dissent and armed pro-independence movements are often violently subdued by the government.

This Comment argues that the political laws' failure to protect the right of association can be explained by a number of constraints. The speedy passage of the political laws was driven by pressure from the International Monetary Fund and other loan institutions. Furthermore, the Indonesian elite who drafted the laws worked to limit political participation in order to protect their own interests. The political laws promote elite interests by requiring that parties who participate in general elections adhere to the principles of *Pancasila* democracy; in accordance with *Pancasila*, political parties must be national in scope and must not endanger national unity. These requirements act as barriers to the political aspirations of Acehnese and Papuans, who typically have strong provincial, but not national, support and often advocate for provincial independence. Despite the constraints in the existing laws, recent draft amendments to the political laws do not appear to expand the right of association. This Comment suggests several amendments to the political laws that might be made to better codify a full right of association in Indonesia.

In the meantime, the Acehnese and Papuans' exclusion from the scope of the political laws is enforced by the Indonesian military, which plays an active role in suppressing Acehnese and Papuan dissent from central government policy. Ultimately, the political laws fail to provide measures for the legitimization of separatists' grievances in the political sphere, even if they are brought in a peaceful manner. Thus, the political laws seem to promise nothing more than an uneasy stalemate, institutionalizing an on-going cycle of state-sponsored violence.

### I. INTRODUCTION

Indonesia's 1999 political laws represent a significant departure from the authoritarian policies of the New Order.<sup>1</sup> During President Suharto's<sup>2</sup>

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<sup>1</sup> President Suharto ruled over Indonesia during the New Order regime, which lasted from 1966 to 1998. David Bouchier, *Habibie's Interregnum: Reformasi, Elections, Regionalism and the Struggle for Power*, in *INDONESIA IN TRANSITION: SOCIAL ASPECTS OF REFORMASI AND CRISIS* 15, 15-38 (Chris Manning & Peter van Diermen eds., Inst. of Southeast Asian Stud., Indonesia Assessment Series, 2000).

regime, political leaders disappeared or were imprisoned, tortured, or executed; peaceful political dissent was violently crushed; and the rule of law remained subordinate to an all-powerful executive branch.<sup>3</sup> As one scholar comments, the New Order government's description of itself as democratic "amounted to an Orwellian deception . . . . In fact the regime was a complex hierarchy of authoritarian institutions designed to curtail political participation and enable Suharto and the military to control society."<sup>4</sup> In May 1998, after a severe economic downturn<sup>5</sup> and mass student-led demonstrations,<sup>6</sup> President Suharto resigned and was replaced by President B.J. Habibie. In the spirit of democratic reawakening, student activists and scholars called for *reformasi total* ("total reform") and *negara hukum* ("the rule of law").<sup>7</sup>

On January 28, 1999, the DPR endorsed four political laws: a law on the general elections, a law on political parties, a law on the composition of Indonesia's representative bodies, and a law concerning civil servants' membership in political parties.<sup>8</sup> Part II of this Comment provides a brief description of the 1999 political laws. Part III discusses the impact of the 1999 political reform on Indonesia's political party system and the right of association both at the center and on the periphery. This Comment argues that the political laws do not offer a fully developed right of political association, especially in areas where there is armed resistance to the central government. Today, conflict rages in the outlying provinces of Aceh and Papua, where both armed separatists and peaceful pro-independence groups are violently suppressed by the Indonesian military (*Tentara Nasional Indonesia* or "TNI"). The political laws fail to accommodate the political

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<sup>2</sup> This Comment uses the spelling of Indonesian names according to modern Indonesian standard orthography determined by the Indonesian Ministry of Education; thus, it uses the spelling 'Suharto' rather than 'Soeharto,' except where the names are quoted from other materials. See INDONESIA: LAW AND SOCIETY xiv (Timothy C. Lindsey ed., 1999).

<sup>3</sup> For a description of Indonesia's New Order executive hegemony, see Timothy C. Lindsey, *Paradigms, Paradoxes and Possibilities: Towards Understandings of Indonesia's Legal System*, in ASIAN LAWS THROUGH AUSTRALIAN EYES 90, 97-98 (Veronica Taylor ed., 1997).

<sup>4</sup> R. William Liddle, *Regime: The New Order*, in INDONESIA BEYOND SUHARTO: POLITY, ECONOMY, SOCIETY AND TRANSITION 39, 40 (Donald K. Emmerson ed., 1999).

<sup>5</sup> ANGEL RABASA & PETER CHALK, INDONESIA'S TRANSFORMATION AND THE STABILITY OF SOUTH EAST ASIA 15-16 (2001); see generally Michel Camdessus, Managing Director of the Int'l Monetary Fund, *The Asian Crisis and the Int'l Response*, Address at the Inst. of Advanced Bus. Stud. (IESE) of the U. of Navarra, Barcelona, Spain (Nov. 28, 1997), Int'l Monetary Fund, <http://www.imf.org/external/np/speeches/1997/mds9717.htm>.

<sup>6</sup> See DAVE MCRAE, THE 1998 INDONESIAN STUDENT MOVEMENT (Centre of Southeast Asian Stud., Monash Asia Inst., Working Paper No. 110, 2001).

<sup>7</sup> See generally KEES VAN DIJK, A COUNTRY IN DESPAIR: INDONESIA BETWEEN 1997 AND 2000 161-184 (2001) (see Chapter VII: Mounting Tension, for a description of mass demonstrations).

<sup>8</sup> *Id.* at 317.

aspirations of parties advocating for independence, even when they do so peacefully.

Part IV explores how shortcomings in the legislative process and involvement of Indonesia's elite in drafting laws have placed significant restraints on political reform. Part V explores where Indonesia's existing laws fail to codify a full right of association and suggests amendments. Finally, Part VI discusses the consequence of these shortcomings in political reform—the institutionalization of a cycle of state-sponsored violence in Aceh and Papua.

## II. A NEW RIGHT OF POLITICAL ASSOCIATION?

The right of political association was first established by Indonesia's 1945 Constitution, Article 28, which guarantees that "[f]reedom of association and assembly, of verbal and written expression and the like, shall be prescribed by law."<sup>9</sup> The Elucidation of the Constitution, an accompanying document that elaborates the purpose of the Constitution, explains that "[t]hese articles referred to here . . . contain the desire of the Indonesian people to build a state with a democratic character which seeks to put into practice social justice and the principle of humanity."<sup>10</sup> Despite the 1945 Constitution's facially democratic leanings, Indonesia's leaders have consistently used it as a tool of repression.<sup>11</sup> The ambiguous language of the 1945 Constitution places a burden on the DPR to pass laws that codify the right of association. Prior to 1999, the political laws in existence severely restricted political freedoms.<sup>12</sup>

As one of his first acts of office, President Habibie announced his intention to draft new laws implementing the right to political association described by Article 28, thus replacing the New Order-era political laws.<sup>13</sup> The resulting four laws are commonly referred to as the 1999 Political Laws.

Law 2/1999 Concerning Political Parties significantly opened Indonesia's political playing field. In New Order Indonesia, only three parties could legally exist—the United Development Party ("PPP"), the

<sup>9</sup> INDON. CONST. (1945) art. 28, translated in MASS MEDIA LAWS AND REGULATIONS IN INDONESIA 183, 189 (Abdul Razak ed. & trans., 2000), available at <http://inic.utexas.edu/asnic/countries/indonesia/ConstIndonesia.html>.

<sup>10</sup> ELUCIDATION OF INDONESIA'S 1945 STATE CONSTITUTION art. 28, art. 29, cl. 1, art. 34, translated in MASS MEDIA LAWS AND REGULATIONS IN INDONESIA 191, 198-99 (Abdul Razak ed. & trans., 2000).

<sup>11</sup> See Marcus Mietzner, *Abdurrahman's Indonesia: Political Conflict and Institutional Crisis*, in INDONESIA TODAY: CHALLENGES OF HISTORY 29 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> See *Habibie Outlines Reform Program*, JAKARTA POST, May 26, 1998, LEXIS; see also GEOFF SIMONS, INDONESIA: THE LONG OPPRESSION 217 (2000).

Functional Group Party (“*Golkar*”),<sup>14</sup> and the Indonesian Democratic Party (“PDI”).<sup>15</sup> The new political party law allows groups of fifty or more Indonesian citizens to form a political party to educate citizens, influence policy, and participate in general elections.<sup>16</sup> While every political party must comply with the “five principles” of *Pancasila* democracy,<sup>17</sup> *Pancasila* need not be the sole ideological basis of the parties.<sup>18</sup> Parties may advocate any platform that does not contradict these principles.<sup>19</sup> Importantly, political parties must not, in the government’s view, “endanger national unity.”<sup>20</sup> For the first time in over thirty years, Indonesians have been able to form parties organized based on a religious or ethnic affiliation, although parties must open membership to all Indonesian citizens.<sup>21</sup> Parties with communist affiliations remain banned.<sup>22</sup> Parties that do not comply with the requirements of the political laws may be “dissolved” by the government.<sup>23</sup>

Law 3/1999 Concerning General Elections was passed in anticipation of Indonesia’s first free and fair elections in over forty years.<sup>24</sup> During the

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<sup>14</sup> *Golkar* was referred to as a “functional group” during the New Order and was not officially declared a political party until after the end of the New Order. VAN DIJK, *supra* note 7, at 536.

<sup>15</sup> This three party structure was established by Law 3/1975, which was replaced by Law 2/1999. See Spencer Zifcak, ‘*But a Shadow of Justice’ Political Trials in Indonesia*, in INDONESIA: LAW AND SOCIETY, *supra* note 2, at 357 (discussing application of political laws in the New Order era).

<sup>16</sup> Law Concerning Political Parties No. 2 art. 2, § 1 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>17</sup> *Id.* art. 2, § 2 (a)-(b). The Law Concerning Political Parties requires parties to “[i]nclude *Pancasila* as basis and ideology of the Unitary State of the Republic of the State of the Republic of Indonesia in the Party Statutes.” *Id.* The five principles are listed in the preamble to 1945 Constitution of the Republic of Indonesia, as follows:

1. Belief in the One Supreme God;
2. Just and Civilized Humanity;
3. Unity of Indonesia;
4. ‘Deliberative’ Democracy; and
5. Social Justice.

INTERNATIONAL COMMISSION OF JURISTS, INDONESIA AND THE RULE OF LAW 36 (1987). For a discussion of the overriding importance of the precepts of *Pancasila* in Indonesian society, see E. DARMAPUTERA, PANCASILA AND THE SEARCH FOR IDENTITY AND MODERNITY IN INDONESIAN SOCIETY: A CULTURAL AND ETHICAL ANALYSIS (1988).

<sup>18</sup> In contrast, the political laws passed in 1985 and repealed by the laws of 1999 required that “political parties and social organizations had to declare that the *Pancasila* was their *asas tunggal*, their sole base[.]” VAN DIJK, *supra* note 7, at 31.

<sup>19</sup> Law Concerning Political Parties No. 2, art. 5, § 1 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>20</sup> *Id.* art. 3.

<sup>21</sup> *Id.* art. 3, art. 2, § 2 (c).

<sup>22</sup> *Id.* art. 16, § (a). President Suharto gained power in 1966 following a brutal massacre of hundreds of thousands of members of the Indonesian Communist Party (PKI) and their suspected associates. Geonawan Mohamad, *Remembering the Left*, *supra* note 11, at 126. The Law Concerning Political Parties’ aversion to communism is nothing new: the Suharto regime “created a fear of anything ‘leftist’ and threatened anyone fostering opinions tainted with Marxism.” *Id.*

<sup>23</sup> Law Concerning Political Parties No. 2, art. 17, § 2 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>24</sup> The last Indonesian elections recognized by the international community as free and fair were held in 1955. INTERNATIONAL COMMISSION OF JURISTS, *supra* note 17, at 45.

New Order, only three political parties<sup>25</sup> were able to compete in general elections and *Golkar*, President Suharto's Functional Group, inevitably won.<sup>26</sup> Thus, elections prior to 1999 were "not intended to establish a democratic government, but rather only to legitimize the existing power system."<sup>27</sup> In contrast, the General Elections law sought to enable Indonesians a true choice in government by ensuring a "democratic, transparent, fair and just general election by direct, general and secret voting."<sup>28</sup>

The General Elections law establishes electoral districts, defines the number of seats in the DPR and the Regional House of Representatives ("DPRD"), and provides a general framework for party campaigning, administering, and supervising general elections.<sup>29</sup> Additionally, the law designates who has the right to vote and establishes qualifications for political parties that wish to participate in general elections and candidates who wish to compete in them.<sup>30</sup> Parties are required to have offices in more than one-half of Indonesia's fourteen provinces in order to compete in general elections.<sup>31</sup> In addition, they must have headquarters in more than one-half of the number of districts/regencies in those provinces.<sup>32</sup> The law requires that parties win at least 2% of the number of DPR seats or 3% of the number of the seats in the DPRD, to be eligible to participate in the next General Election.<sup>33</sup> Pursuant to the General Elections law, forty-eight parties registered and competed in the June 7, 1999 general elections; twenty-one of the contesting parties won seats in the DPR;<sup>34</sup> and six of these parties were able to win at least 2% of the seats in the DPR or 3% of the seats in the DPRD and thus qualify to compete in the next general elections.<sup>35</sup>

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<sup>25</sup> Law on Political Parties and the Functional Group No.3 (1975) (Indon.), amended by Transitional Law Concerning Political Parties and Functional Groups No. 3 (1985) (Indon.).

<sup>26</sup> REFORM IN INDONESIA: VISION AND ACHIEVEMENTS OF PRESIDENT B.J. HABIBIE: VOLUME 1 ECONOMIC & POLITICAL REFORMS 94 (Ahmad Watik Pratiknya eds. et al., 1999).

<sup>27</sup> *Id.*

<sup>28</sup> Law Concerning General Elections No. 3, preamble (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>29</sup> *Id.* ch. II (Electoral District and Number of Seats), ch. III (Implementation and Organization), ch. VI (Supervision and Control of General Elections), ch. IX (Election Campaigns), and ch. X (Voting and Counting Votes).

<sup>30</sup> *Id.* ch. V (The Right to Vote), ch. VI (Registration of Voters), ch. VII (Requirements of Participation in General Elections), and ch. VIII (The Right To Be Elected and Candidacy).

<sup>31</sup> *Id.* ch. VII, art. 39, § 1 (b) (Requirements of Participation in General Elections).

<sup>32</sup> *Id.* ch. VII, art. 39, § 1 (c).

<sup>33</sup> *Id.* ch. VII, art. 39, § 3.

<sup>34</sup> Greg Fealy, *Parties and Parliament: Serving Whose Interests?*, in INDONESIA TODAY: CHALLENGES OF HISTORY, *supra* note 11, at 100.

<sup>35</sup> Law Concerning General Elections No. 3, art. 39, § 3 (Rep. of Indon., Dept. of Info., trans., 1999); see also Mietzner, *supra* note 11, at 39.

Law 4/1999 Concerning the Composition of the MPR, DPR and DPRD was passed to reform the composition and structure of the People's Consultative Assembly ("MPR"), the House of Representatives ("DPR"), and the Regional House of Representatives ("DPRD").<sup>36</sup> The law reduces the representation of Indonesia's military<sup>37</sup> from a quota of seventy-five seats in the DPR and MPR<sup>38</sup> to only thirty-eight seats.<sup>39</sup> Drafters hoped that this reduction in military representation would reduce the political influence of the military, and degrade its *dwi fungsi*, or dual social and security function.<sup>40</sup>

Finally, Law 5/1999 Concerning Civil Servant Membership in Political Parties prohibits civil servants from becoming members of political parties without taking paid leave from their jobs.<sup>41</sup> The law allows civil servants to vote in elections.<sup>42</sup> This law was passed in an attempt to extricate political parties from Indonesia's government bureaucracy, and thus sever the tight grasp of *Golkar*, the leading party of the New Order, on government institutions.<sup>43</sup> During the New Order, civil servants were required by the Indonesia Civil Servants Corps to support *Golkar*, and the party received significant monetary contributions from the Corps.<sup>44</sup> The law specifies that "Civil Servants must adopt a [politically] neutral attitude and refrain from using state facilities for a certain group"<sup>45</sup> and must "not

<sup>36</sup> Law Concerning The Composition and Status of the People's Consultative Assembly (MPR), The House of Representatives (DPR), and The Regional House of Representatives (DPRD) No. 4 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>37</sup> *Id.* art. 11, § 3 (b). During the New Order era, Indonesia's security forces, including both military and police forces, were called the Armed Forces of the Republic of Indonesia (*Angkatan Bersenjata Republik Indonesia* or "ABRI"). Atmadji Sumarkidjo, *The Rise and Fall of the Generals: The Indonesian Military at a Crossroads*, in *INDONESIA TODAY: CHALLENGES OF HISTORY*, *supra* note 11, at 143. In September 1999, while Indonesia's military was undergoing internal restructuring, including the separation of the police force, its name was changed from ABRI to TNI. *Id.*

<sup>38</sup> Arief Budiman, *The 1998 Crisis: Change and Continuity in Indonesia*, in *REFORMASI: CRISIS AND CHANGE IN INDONESIA* 41, 52 (Arief Budiman eds. et al., 1999). Prior to 1997 the military's representation in the MPR was 150 seats. *Id.*

<sup>39</sup> Bouchier, *supra* note 1, at 18.

<sup>40</sup> Peter Holland, *Regional Government and Central Authority*, in *INDONESIA: LAW & SOCIETY*, *supra* note 2, at 212.

<sup>41</sup> Law Concerning Civil Servant Membership in Political Parties No. 5, art. 5 (Rep. of Indon., Dept. of Info., trans., 1999) ("Civil Servants who have become a member and/or board member of a political party must abide with the stipulation mentioned in this Government Regulation."). Article 8, section 1 stipulates that Civil Servants who are party members "shall be dismissed from their state function and shall be given interim compensation money[.]" *Id.* art. 8, § 1.

<sup>42</sup> *Id.* art. 5.

<sup>43</sup> This attempt to remove bias and corruption from government institutions is often referred to as the attempt to free Indonesia from "KKN"—collusion, corruption and nepotism. VAN DIJK, *supra* note 7, at 114.

<sup>44</sup> *REFORM IN INDONESIA*, *supra* note 26, at 114.

<sup>45</sup> Law Concerning Civil Servant Membership in Political Parties No. 5, art. 3 (Rep. of Indon., Dept. of Info., trans., 1999).

discriminate."<sup>46</sup> The passage of the law was hotly contested by *Golkar* in the DPR, but passed after intense negotiations.<sup>47</sup>

### III. THE IMPACT OF THE 1999 POLITICAL REFORMS

The passage of Law 2/1999 Concerning Political Parties, Law 3/1999 Concerning General Elections, Law 4/1999 Concerning the Composition of the MPR, DPR and DPRD, and Law 5/1999 Concerning Political Party Membership of Civil Servants created an impressive laundry list of legislation aimed at institutionalizing political openness and the right of association. However, today, the Indonesian political system remains in crisis. Awash in law, Indonesia remains short on reform. As a *Jakarta Post* editorial describes,

With all these new legal instruments instituted as part of the national reforms—both [Wahid] and Megawati were elected [President] on reformist platforms—you would have thought Indonesia would be well on its way to becoming a civil, peaceful and prosperous nation. Wrong. Indonesia in 2001 is as messy, if not even messier, than it has ever been in the last three years, in spite of, or some would say because of, these measures in the legal sector.<sup>48</sup>

As the editorial reflects, the DPR has crafted piles of legislation. Law alone, however, has been unable to solve the inherent tensions between Indonesia's central government and peripheral provinces. Since the passage of the political laws, the number of registered political parties has jumped from three to over one hundred, and the country held its first general elections, which were widely recognized in the international community as free and fair.<sup>49</sup> Yet, the political laws are imperfect and do not offer a fully developed right of political association for provincial activists who advocate for independence. The political parties that were most adept at forming

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<sup>46</sup> *Id.* art. 4.

<sup>47</sup> *Deal Struck on Civil Servants*, *JAKARTA POST*, Jan. 27, 1999, LEXIS; *Golkar's Acquiescence*, *JAKARTA POST*, Jan. 25, 1999, LEXIS.

<sup>48</sup> *Reform Starts with the Men Behind the Law*, *JAKARTA POST*, Dec. 31, 2001, LEXIS.

<sup>49</sup> MUHAMMAD A.S. HIKAM, PROBLEMS OF POLITICAL TRANSITION IN POST NEW ORDER INDONESIA 3 (Willem van der Geest & Paul Lim eds., Eur. Inst. for Asian Stud., Briefing Paper No. 99/01, 1999); see generally UNITED NATIONS DEVELOPMENT PROGRAMME, TRANSITION TO DEMOCRACY: REPORT ON THE UNDP TECHNICAL ASSISTANCE PROGRAMME FOR THE 1999 INDONESIAN GENERAL ELECTIONS (Merril Stevensen & Anne-Birgitte Albrechtsen eds., 1999).



under Law 2/1999, registering for elections under Law 3/1999, and mobilizing voters in the 1999 elections—*Golkar*, the PDI (Indonesian Democratic Party), and the PKB (National Awakening Party)<sup>50</sup>—had a strong base at the center of Indonesia, not at the periphery.<sup>51</sup> While close to Jakarta, several political demonstrations have been held in relative peace. In Aceh and Papua the government has routinely employed military force to suppress both peaceful political demonstrations and armed separatism.<sup>52</sup>

#### A. *Aceh's Islamic Separatist Movement*

The province of Aceh lies on the northern tip of the island of Sumatra in Indonesia, over one thousand miles northwest of the Indonesian capitol of Jakarta. In 1959, Suharto's regime granted Aceh a special region status that gave the Acehnese autonomy over religion, local Islamic law, and custom.<sup>53</sup> However, in 1969, the regime effectively ended the era of special region status,<sup>54</sup> bringing the *ulamas* (Islamic religious leaders) and the All-Aceh Ulama Association ("PUSA") under the control of the state; thus, the *ulamas* were deprived of their traditional roles as Aceh's political and religious leaders.<sup>55</sup> Acehnese saw Jakarta's centralized rule as corrupt, neglectful, and un-Islamic.<sup>56</sup>

*Gerakan Aceh Merdeka* ("GAM" or "Free Aceh"), a group of hard-line separatists, was formed in 1976 with the goal of creating an independent Islamic state, partly in response to the state's repressive action.<sup>57</sup> GAM has harnessed an "underlying sense of dissatisfaction," and used it to "justify a

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<sup>50</sup> Jared Levinson, *Indonesia's Odyssey: A Nation's Long, Perilous Journey to the Rule of Law and Democracy*, 18 ARIZ. J. INT'L & COMP. L. 103, 107-08 (2001).

<sup>51</sup> RABASA & CHALK, *supra* note 5, at 10-11.

<sup>52</sup> See, e.g., *From Chaos to Despair: After a Week of Drama that Left the President Increasingly Isolated, Indonesia Faces the Prospect of Violence in the Streets, Political Paralysis and Economic Ruin*, FAR E. ECON. REV., Feb. 15, 2001, 2001 WL-FEER 6645704 (noting "demonstrations [calling for the removal of President Wahid] so far have been orderly and peaceful, certainly different from the 1998 upheaval that removed Suharto"); *Protests At Wahid Palace In Indonesia; Fincl Mkts Plunge*, DOW JONES INT'L NEWS, Mar. 12, 2001, WESTLAW; but see, e.g., *Indonesian Police Fire Teargas at Student Protest Near Suharto Home*, AGENCE FRANCE-PRESSE, May 25, 2000, 2000 WL 2801074. Participants in several demonstrations were killed or injured by security forces seeking to disperse pro-independence crowds or suppress separatists in both Aceh and Papua. See UNITED STATES DEPT. OF STATE, INDONESIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2000 § 2(b) (2002), U.S. Dept. of State, <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/index.cfm?docid=707>.

<sup>53</sup> MIEKE KOOISTRA, INDONESIA: REGIONAL CONFLICTS AND STATE TERROR 15 (Minority Rights Group Int'l 2001).

<sup>54</sup> The special region status was not officially terminated until 1989. See generally RABASA & CHALK, *supra* note 5.

<sup>55</sup> KOOISTRA, *supra* note 53, at 15.

<sup>56</sup> RABASA & CHALK, *supra* note 5, at 27-28.

<sup>57</sup> *Id.* at 29.

general call to arms.”<sup>58</sup> After an escalation in violence, Aceh was designated an Operational Military Zone (*Dareah Operasi Milite* or “DOM”) in 1990 by Suharto; the designation gave the military a virtual free hand to crush GAM rebels by whatever means necessary.<sup>59</sup> Within the first two years of the Operational Military Zone’s existence, approximately 2000 unarmed civilians were killed by the military.<sup>60</sup> The government’s approach stymied immediate separatist activity but, over time, fueled growing radicalization and anger.<sup>61</sup>

By the late 1990s, a civil society-based movement began to advocate for provincial independence.<sup>62</sup> In February 1999, after President Habibie announced his intention to allow a referendum in East Timor on independence, the student-led Information Center for a Referendum on Aceh (“SIRA”) formed and argued that the central government should hold a provincial referendum on independence to resolve the Aceh conflict.<sup>63</sup> Throughout 1999, the nascent pro-independence political movement was fueled by a frustrated, highly mobilized population and quickly gathered steam.<sup>64</sup> On November 8, 1999, after Wahid came into office, an independence rally in Aceh’s provincial capital of Banda drew a crowd of up to one million people—the largest single public demonstration of separatist sentiment in Indonesian history.<sup>65</sup> The rally was largely peaceful despite the fact that participants demanded a referendum on independence.<sup>66</sup>

On December 4, 1999, Acehese celebrated a self-proclaimed “Independence Day” both in the urban centers and countryside without interference.<sup>67</sup> One Indonesian scholar referred to the rallies as “velvet protests,” drawing parallels to Czechoslovakia’s bloodless Velvet Revolution.<sup>68</sup> While the SIRA-led protests were generally peaceful, this analogy is imperfect from a broader perspective—GAM’s independence

<sup>58</sup> *Id.* at 27-29.

<sup>59</sup> HUMAN RIGHTS WATCH, VOL. 13, NO. 4(C), THE WAR IN ACEH 8 (2001) [hereinafter WAR IN ACEH]. The DOM was created in response to GAM’s escalation of violence in 1989-90. KOOISTRA, *supra* note 53, at 16; and RABASA & CHALK, *supra* note 5, at 30.

<sup>60</sup> KOOISTRA, *supra* note 53, at 16. The DOM was lifted in August 1998. ANTHONY L. SMITH, INDONESIA: ONE STATE, MANY STATES, CHAOTIC STATES? 16 (ISEAS Working Papers, Int’l Pol. and Security Issues No. 1, 2001).

<sup>61</sup> RABASA & CHALK, *supra* note 5, at 33.

<sup>62</sup> *Id.*

<sup>63</sup> WAR IN ACEH, *supra* note 59, at 9.

<sup>64</sup> *Id.*

<sup>65</sup> RABASA & CHALK, *supra* note 5, at 35.

<sup>66</sup> Aboeprijadi Santoso, Violence in the Age of *Reformasi*—An Introduction, Address at the Univ. of Wash. in Seattle, Wash. (Apr. 12, 2002) (tape and transcript on file with author).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

efforts often have been exceedingly bloody. Wahid initially attempted to pacify the Acehnese, who demanded redress for gross human rights violations committed by the military, through presidential decree No. 88/1999, which established an Independent Commission to Investigate Violence in Aceh.<sup>69</sup> Despite Wahid's tolerance of the rallies and the creation of the commission, violent clashes between pro-independence GAM and military forces soon resumed.<sup>70</sup>

A year later, in November 2000, Indonesian security forces violently suppressed a mass rally organized by the SIRA in Banda.<sup>71</sup> The military blocked Acehnese from reaching the 2000 Banda rally by shooting at sea and land transport, arresting and beating members of the organizing committee and raiding offices of NGOs before the rally.<sup>72</sup> The organizational leader of the rally was arrested and charged with "spreading hatred" against the government under Article 154 of the Indonesian Criminal Code.<sup>73</sup>

On May 15, 2000, President Wahid and GAM signed a temporary three-month cease-fire, the Joint Agreement on Humanitarian Pause.<sup>74</sup> As part of the negotiations, Jakarta withdrew combat elements of the TNI and turned over internal security functions in the province to the police, with the military providing backup as necessary.<sup>75</sup> While the peace talks were a landmark, they were quickly overtaken by renewed fighting.<sup>76</sup> On April 1, 2001, President Wahid issued Presidential Instruction (Inpres) No. 4, which declared that the GAM negotiations were ineffective, and set up a cabinet to restructure the security apparatus in Aceh.<sup>77</sup> The restructured troops embarked on "a systematic effort to target suspected GAM strongholds and headquarters, with many claims by local organizations of civilians killed in the process."<sup>78</sup> In June 2001, the Indonesian government proposed a regional autonomy package that would allow Aceh to retain 70% of provincial revenues and institute elements of Islamic law starting January 1,

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<sup>69</sup> KOOISTRA, *supra* note 53, at 17.

<sup>70</sup> During 2000, several prominent Aceh human rights defenders and Acehnese activists disappeared and were later found tortured and killed or not found at all. WAR IN ACEH, *supra* note 59, at 17.

<sup>71</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2002: INDONESIA, <http://www.hrw.org/wr2k2/asia7.html> [hereinafter WORLD REPORT 2002].

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> WAR IN ACEH, *supra* note 59.

<sup>75</sup> *Id.*

<sup>76</sup> Santoso, *supra* note 66.

<sup>77</sup> WAR IN ACEH, *supra* note 59, at 11.

<sup>78</sup> *Id.*

2002.<sup>79</sup> This special autonomy law did little to quell unrest within the province and fighting continued. In July 2001, after President Megawati took office, six GAM emissaries to the dialogue process were arrested and jailed by police, in clear violation of the negotiation protocol.<sup>80</sup> With this kidnapping, the Indonesian government demonstrated its unwillingness to engage in peaceful dialogue with those it sees as a threat to national unity. One scholar comments that the lack of “negotiations in good faith on the part of the Indonesian government” is a major obstacle to establishing a meaningful dialogue with pro-independence activists.<sup>81</sup>

President Megawati, like her predecessors, has a strong interest in ensuring the unity of Indonesia.<sup>82</sup> In part, the central government is concerned that once periphery secedes, the center may crumble.<sup>83</sup> Moreover, the government wants to maintain some control over Aceh’s rich natural resources—Aceh produces over 30% of Indonesia’s gas exports.<sup>84</sup> The organized, relatively well-equipped,<sup>85</sup> foreign-funded<sup>86</sup> GAM forces present a clear threat to these goals.

In the process of neutralizing the threat of GAM, however, the executive has often conflated GAM with other peaceful civil society-based movements such as SIRA. As one NGO comments, while in Aceh “disaffection with the central government” showed itself both in the form of “a strong civil society-based movement for a referendum on Aceh’s political status and in an armed rebel group[,] . . . Indonesian security forces made little distinction between the two.”<sup>87</sup> The Indonesian government has failed to grasp that GAM and SIRA have different political goals and employ vastly different means to achieve them; ultimately, SIRA’s “commitment to peaceful means for achieving its political ends . . . remains at odds with GAM’s commitment to armed struggle.”<sup>88</sup> By responding to peaceful

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<sup>79</sup> Roberto Belloni, *Aceh Self-Determination Conflict Profile*, FOREIGN POLICY IN FOCUS, [http://www.selfdetermine.org/conflicts/aceh\\_body.html](http://www.selfdetermine.org/conflicts/aceh_body.html) (last visited Mar. 7, 2002).

<sup>80</sup> *Id.*; see also WORLD REPORT 2002, *supra* note 71.

<sup>81</sup> E-mail from Gary F. Bell, Associate Professor, Faculty of Law, Nat’l Univ. of Sing., to author (Mar. 8, 2002) (on file with author).

<sup>82</sup> *Megawati Says Indonesia Faces Break-Up*, INDON. OBSERVER ON THE WEB, Mar. 4, 2002, [http://www.indonesian-observer.com/include/isi\\_all.php?ID=318](http://www.indonesian-observer.com/include/isi_all.php?ID=318).

<sup>83</sup> Interview with Professor Veronica Taylor, Director of Asian Law Center, Univ. of Wash. Sch. of Law in Seattle, Wash. (May 1, 2002) (notes on file with author).

<sup>84</sup> SMITH, *supra* note 60, at 15.

<sup>85</sup> WAR IN ACEH, *supra* note 59, at 5. (GAM is “an increasingly well-organized and motivated force of perhaps 10,000 regulars, less than 2,000 of whom may be armed.”)

<sup>86</sup> RABASA & CHALK, *supra* note 5, at 32.

<sup>87</sup> HUMAN RIGHTS WATCH: WORLD REPORT 2001: INDONESIA, <http://www.hrw.org/wr2k1/asia/indonesia.html> [hereinafter WORLD REPORT 2001].

<sup>88</sup> WAR IN ACEH, *supra* note 59, at 19.

political association such as the December 1999 and November 2000 rallies with military force, the government has essentially undermined the political laws and converted them into the vehicles of state-sponsored violence.

### B. *Papuan (Irian Jayan) Flag Raisings*

Papua, a province “roughly the size of France, has a population under two million in a country of over two hundred million, and its capital, Jayapura, is some 3500 kilometers (2100 miles) from the Indonesian capital [of] Jakarta.”<sup>89</sup> Papua<sup>90</sup> was transferred to Indonesia by the United Nations in 1963 with the proviso that an “Act of Free Choice” be held in 1968 to determine whether the inhabitants desired to be a part of Indonesia.<sup>91</sup> To fulfill this requirement, the Indonesian government hand-selected 1022 tribal leaders who met in August 1969 and confirmed integration with Indonesia without a formal vote.<sup>92</sup> Soon after the closely orchestrated vote, the Free Papua Movement (*Organisasi Papua Merdeka* or “OPM”) formed with a core of 200 fighters and began a low-intensity insurgency.<sup>93</sup> Papua was declared an Operational Military Zone (*Dareah Operasi Milite* or “DOM”) in 1969 in order to combat the OPM.<sup>94</sup> However, the OPM has “never coalesced into the united or organized form its name implies.”<sup>95</sup> This armed separatist movement has been accompanied by a civilian movement, including the Forum for the Reconciliation of the Irian Jaya Society (“FORERI”) and the Papua Presidium Council, that “has repeatedly expressed its commitment to pursuing its goals [of a national referendum for independence] through peaceful means.”<sup>96</sup>

The post-Suharto government has been unable to reconcile the Papuans’ desire for independence with its vision of a unified Indonesia. When President Habibie met with a delegation of 100 provincial representatives (“Team of 100”) in February 1999 to launch a “National Dialogue” regarding Papuan autonomy, the delegation declared its desire for

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<sup>89</sup> HUMAN RIGHTS WATCH, VOL. 12, NO. 2(C), HUMAN RIGHTS AND PRO-INDEPENDENCE ACTIONS IN PAPUA, 1999-2000 2 (2000) [hereinafter PRO-INDEPENDENCE ACTIONS IN PAPUA].

<sup>90</sup> Historically, Papua has been referred to as Irian Jaya and West Papua. For the sake of simplicity, this Comment refers to the province as Papua.

<sup>91</sup> SIMONS, *supra* note 13, at 93.

<sup>92</sup> RABASA & CHALK, *supra* note 5, at 38; Danilyn Rutherford, *Waiting for the End in Biak: Violence, Order, and a Flag Raising*, in VIOLENCE AND THE STATE IN SUHARTO’S INDONESIA 189, 191 (Benedict R. O’G. Anderson ed., Cornell Southeast Asia Program, 2001).

<sup>93</sup> PRO-INDEPENDENCE ACTIONS IN PAPUA, *supra* note 89, at 6.

<sup>94</sup> *Id.* The DOM was not lifted until October 1998, and was the longest in Indonesia’s history. *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 9-10.

independence.<sup>97</sup> After this clear call for independence, Habibie reverted to the practices of his predecessor, "attempting to round up independence supporters and censor discussion on the subject."<sup>98</sup> Jakarta's response to the call for independence was to ban all discussion or dissemination of information on independence or autonomy.<sup>99</sup> On April 17, 1999 Papua's police chief issued an Order banning all mention of the National Dialogue meeting.<sup>100</sup> Human Rights Watch decried the Order as calling for "systemic violations of free expression, assembly, and association rights."<sup>101</sup>

After President Wahid was elected in October 1999, he acknowledged the Indonesian government's human rights violations and "moved quickly to allow greater freedom and to permit the open expression of pro-independence views."<sup>102</sup> Initially Wahid permitted peaceful raisings of the Papuan "Morning Star" independence flag.<sup>103</sup> On December 1, 1999, the Dutch-created Papuan Independence Day, the raisings were held without police interference in at least a dozen locations within Papua.<sup>104</sup> Yet, on December 2, 1999, when demonstrators in Timika, on Papua's south coast, refused to take down a Papuan flag flying in a church courtyard the day after the ceremonies, security forces fired into an angry crowd, wounding sixteen.<sup>105</sup> There were similar instances of violence at flag raisings in Genyem and Sorong.<sup>106</sup>

In May 2000, Wahid funded a Papuan congress, called the Great Consultation, to address the regional autonomy issue.<sup>107</sup> Several hundred representatives from 254 indigenous tribes met in the provincial capital, Jayapura, and concluded that the annexation process was illegal and that the territory was legally independent. The representatives then raised a Morning Star flag to symbolize their stand.<sup>108</sup> Wahid was unwilling to meet the Congress' demands. Instead he publicly declared that the Indonesian

<sup>97</sup> Rutherford, *supra* note 92, at 193.

<sup>98</sup> PRO-INDEPENDENCE ACTIONS IN PAPUA, *supra* note 89, at 3.

<sup>99</sup> *Id.* at 17.

<sup>100</sup> *Id.* at 16-17. The Order No. POL: MK/01/IV/1999 banned all "activities related to the discussion and dissemination of the results of the meeting with president B.J. Habibie with delegates of Irian Jaya[.]" "the formation of the National Committee of West Papuan Youth . . . and similar organizations in the Irian Jaya police district[.]" the building of communications posts (*pos komunikasi*) used as meeting posts, and the formation of neighborhood patrols. *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 3.

<sup>103</sup> *Id.* at 3, 5.

<sup>104</sup> *Id.*

<sup>105</sup> WORLD REPORT 2001, *supra* note 87.

<sup>106</sup> *Id.*

<sup>107</sup> Mietzner, *supra* note 11, at 34; HUMAN RIGHTS WATCH, VOL. 13, NO. 2(C), VIOLENCE AND POLITICAL IMPASSE IN PAPUA 10 (2001) [hereinafter POLITICAL IMPASSE IN PAPUA].

<sup>108</sup> RABASA & CHALK, *supra* note 5, at 38.

government did “not recognize the congress,” and that it was “illegitimate” because it did not evenly represent all sectors of Papuan society.<sup>109</sup> Despite the fact that the Papuan Congress was encouraged by the central government, three members of the Papua Presidium Council were charged with subversion for their leadership at the Congress; the leaders were later acquitted.<sup>110</sup>

As a stopgap measure, Wahid announced that the Papuan independence flag could be flown until the annual session of the DPR.<sup>111</sup> When this period expired in October 2000, the police attempted to take the flags down, leading to bloody clashes between demonstrators and police.<sup>112</sup> In at least six instances during 2000, police broke up peaceful demonstrations in which Papuans raised the Papuan independence flag and, after demonstrators resisted, killed, and injured many demonstrators.<sup>113</sup> Police also broke up several peaceful demonstrations.<sup>114</sup> Wahid suggested that Irian Jaya should be renamed Papua in deference to local sentiment—this proposal was accepted in 2001 as part of a special autonomy law.<sup>115</sup> On October 26, 2000, President Wahid declared that because the Morning Star flag was a separatist symbol, Papuans would need to find “another cultural symbol.”<sup>116</sup> After Wahid’s announcement, the military engaged in “periodic and often violent raids . . . on gatherings where independence symbols are on display.”<sup>117</sup>

In June 2001, the Indonesian government proposed a regional autonomy package that would allow Papua to retain 70% of provincial revenues starting January 1, 2002; this autonomy bill was passed by the DPR on October 23, 2001.<sup>118</sup> While this law is an important gesture, it has failed to address the region’s human rights issues.<sup>119</sup>

On November 10, 2001, Theys Eluay, the chair of the Papua Presidium Council, was abducted on his way home from a ceremony

<sup>109</sup> POLITICAL IMPASSE IN PAPUA, *supra* note 107, at 11.

<sup>110</sup> Eriko Uchida, *Indonesian District Court Clears Papuan Leaders of All Charges*, GEOCITIES, Mar. 7, 2002, <http://www.geocities.com/aroki.geo/0204/INA-papuanleadersdeclared.html>. The three Papuan Presidium Council leaders were acquitted on March 4, 2002 by the Jayapura District Court. *Id.* The Judge held that the three “could not be sentenced to imprisonment because they had organized the congress with the full knowledge and support of the local and central governments.” *Id.*

<sup>111</sup> MIETZNER, *supra* note 11, at 34.

<sup>112</sup> *Id.*

<sup>113</sup> UNITED STATES DEPT. OF STATE, *supra* note 52.

<sup>114</sup> *Id.*

<sup>115</sup> POLITICAL IMPASSE IN PAPUA, *supra* note 107, at 11; Uchida, *supra* note 110.

<sup>116</sup> POLITICAL IMPASSE IN PAPUA, *supra* note 107, at 22.

<sup>117</sup> *Id.*

<sup>118</sup> Belloni, *supra* note 79; WORLD REPORT 2002, *supra* note 71.

<sup>119</sup> Belloni, *supra* note 79.

marking Heroes Day at the local headquarters of Kopassus (the Indonesian army's Special Forces) and later found dead.<sup>120</sup> Under President Megawati's direction the National Investigation Commission ("KPN") completed an investigation of the murder.<sup>121</sup> Recently the Papua Presidium Council has taken its case to the United Nations ("UN"), presenting a petition to the UN Secretary-General Kofi Annan, asking the UN to acknowledge its negative role in accepting the discredited Act of Free Choice.<sup>122</sup> The Council is also in the process of preparing an international law case against the UN and the countries involved in the Act of Free Choice.<sup>123</sup>

Since the passage of the political laws, the Indonesian central government has vacillated between encouraging political association in Papua and employing military force to dismantle pro-independence groups. President Megawati is deeply concerned that the violence in Aceh and Papua could lead to the break-up of Indonesia and, since taking office in July 23, has "steadfastly insisted on national unity and quickly ordered the military to crack down on secessionist groups."<sup>124</sup> While OPM's small low-intensity insurgency poses less of a threat to the central government than GAM, its claims for independence, based on the questionable Act of Free Choice, are generally accepted as more legitimate than Aceh's. The very legitimacy of Papua's independence movement is what makes it threatening to the central government.

The civil society-based pro-independence movement, including FORERI and the Papuan Presidium Council, has consistently advocated its pro-independence referendum platform in a peaceful manner; however, the movement has been denied access to the political system created by the political laws. The central government has labeled FORERI and the Papuan Presidium Council as subversive and a danger to national unity, thus alienating them from the scope of the laws.<sup>125</sup> Because the central government refuses to legitimize the political aspirations of Papuan pro-independence activists through the political laws, the only remaining method of dialogue is state-sponsored violence and suppression.

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<sup>120</sup> Human Rights Watch, *Indonesia: Investigate Death of Papuan Leader*, HUMAN RIGHTS NEWS, Nov. 11, 2001, <http://www.hrw.org/press/2001/11/indonesia1111.htm>.

<sup>121</sup> *Dead Papua Leader's Group Take on the UN*, INDON. OBSERVER ON THE WEB, Mar. 22, 2002, [http://www.indonesian-observer.com/include/isi\\_all.php?ID=395](http://www.indonesian-observer.com/include/isi_all.php?ID=395).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*; see *supra* Part III.B (describing Act of Free Choice).

<sup>124</sup> *Megawati Says Indonesia Faces Break-Up*, *supra* note 82.

<sup>125</sup> See Law Concerning Political Parties No. 2, art. 3 (Rep. of Indon., Dept. of Info., trans., 1999) ("The formation of Political Parties may not endanger the national unity and integrity."); see *infra* Part VI.



#### IV. CONSTRAINTS IN THE PROCESS OF DRAFTING THE POLITICAL LAWS

An examination of the cases of Aceh and Papua demonstrates that the political laws have been ineffective at providing an instrument for the legitimization of political grievances. The failure of these laws to protect the right of association at the periphery can be attributed to several factors. First, the political laws were passed quickly to satisfy international donor organizations. Moreover, the Suharto-era elite involved in the drafting process was keen to protect its own interests. After decades of authoritarian rule, the right of association that has emerged from Indonesia's 1999 political laws is both exceedingly fragile and reflective of the elite's distrust of political pluralism. Unsurprisingly, the political laws are a combination of old and new. While the laws do liberalize the right of association, they are also a reflection of the *Pancasila*-based ideals and the lopsided center-periphery balance of the New Order.

##### A. *International Loan Organization Intervention*

The shortcomings of the political laws are partially due to the perfunctory nature of the 1999 legislative reforms, which were driven by Indonesia's dire need for International Monetary Fund ("IMF") and World Bank loans. When the political laws were passed, Indonesia was in the depth of an economic crisis; the government was desperate to satisfy various multilateral organizations and qualify for successive loan disbursements.<sup>126</sup> Indonesia's substantive legal reform has been characterized as the International Monetary Fund ("IMF"), the World Bank, and other loan institutions "placing ticks . . . on the *reformasi hukum* ["legal reform"] shopping list."<sup>127</sup> While the 1999 political reform was not an explicit loan condition, political reform was, in effect, an implicit precursor of receiving continued aid. The IMF had made it clear that "good governance" was a necessary antecedent to economic stability, and this included "encouraging the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption."<sup>128</sup>

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<sup>126</sup> SIMONS, *supra* note 13, at 216-17.

<sup>127</sup> Timothy C. Lindsey, "Corruption" as Rational Response in the Aspal State: The Failure of Reformasi Hukum, in *INDONESIA AFTER SOEHARTO: REFORMASI AND REACTION INTERNATIONAL COLLOQUIUM PROCEEDINGS MARCH 19, 1999* 176, 176 (Drew Duncan & Timothy C. Lindsey eds., 1999).

<sup>128</sup> Michel Camdessus, Managing Director of the Int'l Monetary Fund, The IMF and Good Governance, Address Before Transparency Int'l in France (Jan. 21, 1998), Int'l Monetary Fund, <https://www.imf.org/external/np/speeches/1998/012198.htm>. In February 1999, a World Bank and IMF report was leaked by AGENCE FRANCE-PRESSE which was very self-critical of their New Order economic

Moreover, Indonesia's social unrest was seen as a serious barrier to economic reform. Analyst Pande Raja Silalahi from the Center for Strategic and International Studies (CSIS) reported that "international agencies have warned that political conditions would determine their decisions on loan assistance for the country."<sup>129</sup> Silalahi explained, "[s]uccess in the economic program is impossible under the prevailing situation with conflicts continuing between the political leaders and riotin[g] and communal clashes hampering all economic programs."<sup>130</sup> Michal Camdessus, the former managing director of IMF, explained countries' hesitance to make contributions to the Indonesian economy:

Understandably, market participants are waiting to see if, this time, there will be concrete evidence of policy reform. But there are some good reasons to expect that the program *will* be carried out. To begin with, the Indonesian officials with whom IMF staff have [sic] been working have made a serious effort to address the country's fundamental problems, while seeking ways to mitigate the increased social costs of adjustment.<sup>131</sup>

When President Habibie came into office in May 1998, the IMF had frozen the next disbursement in Indonesia's \$40 billion rescue package, pending a review by the IMF Asia director.<sup>132</sup> Habibie was under severe pressure to show that he was a credible figure committed to reform and to convince the IMF that the money would be put to good use.<sup>133</sup> On May 25, 1998, Habibie used his first cabinet meeting to announce his intention to support the passage of new political laws liberalizing Indonesia's restrictive election

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development efforts in Indonesia: the report opined that "[w]hile the [Indonesian] government's development strategy has had remarkably positive results, issues of poor governance, social stress and a weak financial sector were not addressed and contributed to the depth of the crisis[.]" Paul Blustein, *World Bank Cites Own Failures in Indonesia: Internal Critique Says Officials Overlooked Signs of Impending Financial Crisis*, WASH. POST A10, Feb. 23, 1999, 1999 WL 7402385. Weary of repeating the same mistakes, the IMF and World Bank were more willing to address problem of poor governance once Habibie took power.

<sup>129</sup> *Doubts Arise Over Indonesia Govt's Ability to Secure Loans*, ASIA PULSE, Jan. 28, 1999, 1999 WL 5082406.

<sup>130</sup> *Id.*

<sup>131</sup> Michel Camdessus, Managing Director of the Int'l Monetary Fund, Australia and Asia in the Global Economy, Address at the "Australia Unlimited" Round Table in Melbourne, Australia (May 5, 1998), Int'l Monetary Fund, <http://www.imf.org/external/np/speeches/1998/050598.htm>.

<sup>132</sup> SIMONS, *supra* note 13, at 216-17.

<sup>133</sup> *Id.* at 216. Author Simons comments that as of May 1998 the IMF was "hesitant about supplying additional loans to buttress the ruined economy. It was now plain that Habibie would not have long to demonstrate that he had the political skills to overcome the protracted crisis." *Id.*

laws and allowing every Indonesian the right to form a political party.<sup>134</sup> Despite this lip service to reform, critics were weary of delays and searching for signs of change. Indonesia signed a Letter of Intent with the IMF on June 24, 1998, which recited that “[t]he revised economic program . . . despite a promising start, has been driven well off track by the social disturbances and political change that occurred in May.”<sup>135</sup> The Letter acknowledged that “[a]s a result of the social and political upheavals in May, the economic situation and outlook have worsened considerably, and the economy faces a very serious crisis. The distribution network has been badly damaged, economic activity, including exports, generally disrupted, and business confidence severely shaken.”<sup>136</sup> The government needed to reign in the mayhem in order to regain the confidence of loan institutions.

In response to this strong international pressure, Indonesia’s political laws were hastily drafted. Various Indonesian NGO’s and government entities presented proposals for new political laws, but the proposals were only available for public review and comment between August and December 1998.<sup>137</sup> After receiving limited public input, a seven-member team from the Department of the Interior drafted the political laws and submitted them to the DPR and MPR.<sup>138</sup> On January 28, 1999, the DPR endorsed four new political laws: the political party law, the general election law, the law on the composition of the representative bodies, and the law on the party membership of civil servants.<sup>139</sup> When the three bills were endorsed by the DPR on January 28, 1999, President Habibie indicated that they would undergo a one-month period of public dissemination and comment before Habibie signed them into law. This comment period, however, was revoked without explanation, severely limiting the opportunity for public discussion and input.<sup>140</sup> On February 1, 1999, President Habibie signed the legislation into law. Thus, in a mere six months, Indonesia’s entire political system was completely restructured and reinvented.

The international reaction to the passage of the political laws was overwhelmingly positive. The international community viewed them as a

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<sup>134</sup> *Id.* at 217.

<sup>135</sup> Indonesia—Second Supplementary Memorandum of Economic and Financial Policies (June 24, 1998), Int’l Monetary Fund, <http://www.imf.org/external/np/loi/O62498.htm>.

<sup>136</sup> *Id.*

<sup>137</sup> The Indonesian Institute of Science (LIPI), the National Legal Reform Consortium (KRHN-LBH), the Islamic Students Association (HMI) and the Department of Justice presented proposals. REFORM IN INDONESIA, *supra* note 26, at vol. 1, 113.

<sup>138</sup> Vedi R Hadiz, *Contesting Political Change After Soeharto*, in REFORMASI: CRISIS AND CHANGE IN INDONESIA, *supra* note 38, at 108, 122.

<sup>139</sup> VAN DIJK, *supra* note 7, at 317.

<sup>140</sup> *Habibie Enacts Three New Political Laws*, JAKARTA POST, Feb. 5, 1999, 1999 WL 563218.

mechanism to end the deep social unrest that was interfering with economic reform. In February 1999, U.S. Secretary of the Treasury, Lawrence Summers, met with President Habibie and "praised the government for its achievements in political reforms and said there was a great opportunity to further entrench democracy and restore the potential for rapid economic growth."<sup>141</sup>

Despite their warm reception, as this comment argues below, the political laws were not well tailored to the disparate needs of Indonesians.<sup>142</sup> Many of the shortcomings of Indonesia's commercial courts are analogous to the problems faced by the new political laws. The commercial courts were created under duress, although they are distinguishable because the creation of the courts was an explicit IMF loan conditionality. Since their inception, the commercial courts have been widely noted as totally ineffective at enforcing creditor rights—judges were poorly trained and the courts lacked the institutional strength to face up to pressure from Indonesia's elite.<sup>143</sup> As Daniel Lev points out,

It did not help that the commercial courts were erected under pressure from the World Bank and IMF, whose concerns for speed have more to do with the short term problem of debt repayment and economic restructuring than Indonesia's more imperative longer term interest in creating an effective legal system. Haste, in this case, may indeed have made waste.<sup>144</sup>

The political laws, too, suffer from the World Bank and IMF's short horizon. While international pressure did work to convince the Indonesian government that political reform was imminently necessary, the fast-track

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<sup>141</sup> *Results of June Elections Key to Recovery: Summers*, JAKARTA POST, Feb. 23, 1999, 1999 WL 5632836. Despite this progress, the international community recognized that there was still need for additional progress to achieve political stability. An editorial in *The Straits Times* of Singapore contended that Indonesia

must do all it can to re-establish political stability first, in order for the economy to recover. This is going to be an uphill struggle, both on the political and economic fronts. Politically, the Habibie government lacks popular support and finds it hard to rein in the growing lawlessness that has done much to damage the country's prospects.

*More Help for Jakarta*, STRAITS TIMES, Feb. 11, 1999, 1999 WL 8245933.

<sup>142</sup> See *infra* Part V. and VI.

<sup>143</sup> William A.W. Neilson, *The Rush to Law: The IMF Legal Conditionalities Meet Indonesia's Legal Culture Realities*, in *INDONESIA AFTER SOEHARTO: REFORMASI AND REACTION*, *supra* note 127, at 103.

<sup>144</sup> Daniel Lev, *Comments on the Course of Law Reform in Modern Indonesia*, in *INDONESIA AFTER SOEHARTO: REFORMASI AND REACTION INTERNATIONAL COLLOQUIUM PROCEEDINGS MARCH 19, 1999* at 88, 102 (Drew Duncan & Timothy C. Lindsey eds., 1999).

nature of the reform hindered political debate and discussion of the laws.<sup>145</sup> Thus, it is not surprising that Indonesia as a nation failed to solve, or even address, problems of regional conflict and state terror.<sup>146</sup> Moreover, international pressure to quickly pass a political reform package allowed the Indonesian elite to keep the process of drafting behind closed doors, to the detriment of *reformasi*.<sup>147</sup>

### B. *The Involvement of Indonesian Elite's in the Political Reform Process*

From the beginning, those involved in the drafting of the political laws sought to limit political participation. As one commentator notes, Indonesia's elite feared "a politically mobilised *rakyat* [people] more than anything else."<sup>148</sup> While Habibie's official platform was "commitment to a multiparty system, there was always a lot of unease in government and military circles about elections that were open for contestation by an unlimited number of political parties."<sup>149</sup> Indonesia's elite wanted to ensure that very few political parties met the requirements to participate in the general election, in order to ensure that fewer, more nationalized, parties would exist to question their use of power. There is a longstanding debate among academics over why the rule of law (or *negara hukum*) has failed to establish itself in Indonesia. One emerging theory is that the elite has prevented the implementation of legal reforms "precisely because [legal reform] would conflict with elite rentseeking activity."<sup>150</sup> Preventing the rule of law from taking hold became exponentially more important once the Suharto regime collapsed, because there was no longer a consenting government protecting the existing power structure. Within this post-Suharto power vacuum, Indonesia's ruling economic and military elite used its influence during the legislative drafting process to limit political participation.

Initial drafts of the political laws required that political parties operate offices in all fourteen of Indonesia's provinces and demonstrate party

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<sup>145</sup> At the time the political laws were passed, there was no formal legal mechanism for gathering public comments; thus, even without international pressure, there was no procedural barrier to the laws' quick passage. Interview with Professor Veronica Taylor, *supra* note 83. The DPR is currently in the process of creating formal processes for public review and comment. *Id.*

<sup>146</sup> See *supra* Part III.

<sup>147</sup> See *infra* Part IV.B.

<sup>148</sup> David Bourchier, *Conservative Political Ideology in Indonesia: A Fourth Wave?*, in *INDONESIA TODAY: CHALLENGES OF HISTORY*, *supra* note 11, at 120.

<sup>149</sup> Hadiz, *supra* note 138, at 114.

<sup>150</sup> David K. Linnan, *Indonesian Law Reform, or Once More Unto the Breach: A Brief Institutional History*, in *INDONESIA AFTER SOEHARTO: REFORMASI AND REACTION*, *supra* note 127, at 108.

support by collecting the signatures of one million people.<sup>151</sup> Both requirements would have imposed great financial and logistical burdens on new and burgeoning parties. These proposals seem implausible when one remembers that the political party laws were scheduled to come into effect in February 1999, and parties would need to meet all requirements well before the June 1999 election.<sup>152</sup> This meant that new political parties would have had approximately four months to gather one million signatures and establish offices in fourteen Indonesian provinces—a truly Herculean task.

Based on these drafts, which were created by a hand-picked group from Suharto's old cohort,<sup>153</sup> student activists widely rejected the laws as a product of the old power structure.<sup>154</sup> The drafts of the political laws, instead of fulfilling the *reformasi* dreams of participatory democracy, became a battle cry for further demonstrations. An editorial in the Jakarta Post blasted the draft laws as written by self-interested, corrupt elite:

We have to constantly remind ourselves that most of those in the government . . . are essentially the same people who barely six months ago gave their unquestionable support not only to Soeharto, but also to the corrupt political system . . . . [G]iven their recent history, their intentions must be questioned. They cannot and must not be trusted. They are giving as little as possible, responding only to demands . . . . [T]he nation should not simply sit and watch. We can exert pressure, even greater pressure than we have been exerting, through demonstrations and discourses to let them know of our position . . . . Democracy, and therefore the future of our nation, is far too precious to be left in the hands of the likes of Habibie and his inner circle.<sup>155</sup>

*Reformasi* had little confidence that the elite would draft liberal political laws. As the editorial notes, the same elite that was involved in drafting the political laws was enmeshed in the corrupt schemes of the Suharto regime

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<sup>151</sup> 40 *New Parties Protest Proposed Political Laws*, JAKARTA POST, Oct. 30, 1998, 1998 WL 13124329.

<sup>152</sup> *Government Confirms Political Reform Agenda*, JAKARTA POST, June 23, 1998, 1998 WL 13120022.

<sup>153</sup> Hadiz, *supra* note 138, at 108, 122. A seven-member team from the Department of the Interior drafted the political laws and submitted them to the DPR and MPR. *Id.*

<sup>154</sup> It was not until a student meeting was held in February 1999 that student leaders agreed to support the laws in their final form and participate in the June 1999 general elections. *Students Support Poll as Lesser Evil*, JAKARTA POST, Feb. 23, 1999, 1999 WL 5632850.

<sup>155</sup> *Playing with Politics*, JAKARTA POST, Sept. 21, 1998, LEXIS.

“barely six months ago.”<sup>156</sup> During the New Order, a complex web of corruption surrounded former President Suharto and his clan.<sup>157</sup> The Suharto clan and its allies managed to “amas[s] vast personal wealth through countless business involvements and relying on the brutal armed forces and corrupt courts to protect the entire framework of exploitation.”<sup>158</sup> Many of the profits were made through free handouts, or “concessions,” given to domestic and international companies interested in mining Indonesia’s vast natural resources, often at the expense of indigenous population in peripheral provinces.<sup>159</sup>

The military was also involved in corrupt schemes, not to mention human rights violations. During the New Order, each district command of the military “operated a variety of (loosely ‘legal’) businesses that generated thousands of dollars a month as well as offering free ‘services’” and garnished “proceeds from bribes and lucrative illegal businesses.”<sup>160</sup> In August 1998, General Wiranto, the chief of the Indonesian military, admitted that Indonesian troops were involved in kidnapping political activists and shooting demonstrators during the May 1998 riots in Jakarta.<sup>161</sup> At the same time, mass graves were uncovered in Aceh, and some estimates suggest that as many as 39,000 people had been killed by the military.<sup>162</sup> At the time of drafting, the elite had much to hide.

After limited debate in the DPR, the final version of the political party laws was somewhat more generous—the province requirement was reduced to eight<sup>163</sup> and the signature requirement was scrapped altogether. However, a searching review of the laws and their implementation reveals that the Indonesian elite was successful in limiting political participation.

The political laws codify the principle of *Pancasila* democracy,<sup>164</sup> which was developed to bind a diverse nation together with a common ideology.<sup>165</sup> While this common ideology might be beneficial to elite whose primary interest is in stability, *Pancasila* limits political thought and debate. One of the principles of *Pancasila*—a commitment to national

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<sup>156</sup> *Id.*

<sup>157</sup> SIMONS, *supra* note 13, at 34-35.

<sup>158</sup> *Id.* at 34.

<sup>159</sup> *Id.* at 43.

<sup>160</sup> Adrian Vickers, *The New Order: Keeping Up Appearances*, in *INDONESIA TODAY: CHALLENGES OF HISTORY*, *supra* note 11, at 76.

<sup>161</sup> SIMONS, *supra* note 13, at 226.

<sup>162</sup> *Id.*

<sup>163</sup> Law Concerning General Elections No. 3, art. 39, § 1 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* art. 9, a.

unity<sup>166</sup>—automatically makes any attempt to form a peaceful pro-independence, and perhaps even pro-autonomy party, illegal. Thus, the *Pancasila* provision has serious ramifications for Acehnese and Papuan activists calling for an act of self-determination. The requirement that parties adhere to the principles of *Pancasila* reinforces the central government's demand for stability and homogeneity throughout Indonesia; however it overlooks the fact that the Indonesian commitment to unity from diversity has historically come at a high price—state-sponsored violence.

The ideology of *Pancasila* is also reflected in the laws' proclivity to concentrate power at the national level. The three national Suharto-era parties—*Golkar*, PPP and PDI—were grandfathered into the system, making the transition easier for parties dominated by the national elite.<sup>167</sup> The number of parties who are currently eligible to compete in general elections will be further limited in the next elections. The requirement that parties gain at least 2% of the seats in the DPR or 3% of the seats in the DPRD in order to participate in the next election will effectively cull out parties that lack broad national support.<sup>168</sup> If a party fails to meet the seat percentage requirements in 1999, it would be forced to join another political party in order to compete again.<sup>169</sup> Over time, this combination requirement will likely create a consolidation of party power at the national level, and further entrench the national elite. In the June 1999 general election, approximately one-third of registered political parties was able to meet the requirements of the political laws<sup>170</sup> and "the political parties that survived the contested elections of 1999 are still very largely those of the Suharto era."<sup>171</sup> While this power consolidation may make Indonesia's political system more stable, it also will stifle the development of regional and grassroots movements.

The requirement that parties be national in scope in order to participate in general elections also creates serious rifts at the provincial level. In the outlying provinces of Aceh and Papua, political sentiments are often closely linked to views on independence from the central government; pro-independence views, however, fail to gather national appeal. Thus, through the political laws, the political views of the periphery are effectively

<sup>166</sup> *Id.* art. 9, b-c.

<sup>167</sup> Law Concerning Political Parties No. 2, art. 20 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>168</sup> Law Concerning General Elections No. 3, art. 39, § 3 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>169</sup> *Id.* art. 39, § 4. Of course, this law does not prevent political parties from existing, it only hinders their participation in General Elections. *Id.* Parties may also choose to disband and reform under another name. *Id.*

<sup>170</sup> 48 Parties Eligible to Contest Election, *JAKARTA POST*, Mar. 5, 1999, 1998 WL 13120022. Forty-eight parties were declared qualified to contest the June 7, 1999 general elections out of 141 who registered at the Ministry of Justice. *Id.*

<sup>171</sup> TRANSITION INDONESIA: POLITICAL REFORM A MAJOR WORK IN PROGRESS 3 (2000).



silenced by the political whims of a national majority. By precluding the participation of provincial parties in general elections, the elite removed key provincial issues of independence and human rights violations from the national political agenda.

## V. SHORTCOMINGS OF THE EXISTING POLITICAL LAWS

Ultimately, the existing political laws and constitution fail to canonize a full right of association for Indonesians in the provinces of Aceh and Papua. The political laws provide for the suppression and disbandment of political associations that advocate for provincial autonomy or independence, thus endangering national unity; moreover, the laws prevent important provincial issues from reaching the national spotlight. While legal reform, without an attendant shift in the cultural attitudes of the government and people, will never work a complete solution, the existing laws are clearly flawed and should be revised.

### A. *Proposed Amendments to the Political Laws*

Indonesia's MPR (People's Consultative Assembly) is expected to pass Indonesia's third constitutional amendment, which would create a system of direct (rather than parliamentary) presidential elections.<sup>172</sup> In the meantime, there is much discussion about attempting to amend the existing political laws to better fit the new constitutional framework. The government is experimenting with ways to tighten requirements for new political parties to participate in the 2004 general election.<sup>173</sup> One draft amendment would require all new parties to have Rp 150 million (approximately \$14,000 US) in bank deposits in each of its provinces.<sup>174</sup> Another draft amendment would require that political parties establish branches in two-thirds of the country's provinces and in two-thirds of the regencies/municipalities in the respective provinces where they have branches.<sup>175</sup> Both of these proposed amendments would further limit Indonesians' rights to association and further marginalize opposition parties.

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<sup>172</sup> *Late Amendment Harms Elections*, JAKARTA POST, Nov. 13, 2001, LEXIS; *Gov't Tightens Up Election Procedures*, JAKARTA POST, Nov. 24, 2001, LEXIS.

<sup>173</sup> *Gov't Tightens Up Election Procedures*, *supra* note 172.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

### B. *The Need for Further Reform*

By refining the language of the political laws and closing gaps that allow for state suppression of the right of political association, Indonesia might better codify the right of association. In addition, Indonesia might provide a mechanism for peaceful political association in Aceh and Papua.

Under Law 2/1999 Concerning Political Parties and Law 3/1999 Concerning General Elections, all political parties are bound by the requirement that they comply with the five principals of *Pancasila*.<sup>176</sup> *Pancasila* was created by Indonesia's first president, President Sukarno, Suharto's predecessor, as the national ideology that would hold the disparate provinces of Indonesia together. *Pancasila* is a self-contained ideology that focuses on national unity, centralized power, and common belief. While *Pancasila* may be "general enough to give room to various value orientation[,] it is less certain that *Pancasila* "is general enough to include various value orientations other than those of the Javanese [who populate the province of Java at Indonesia's center]."<sup>177</sup> Thus, the ideological glue that has purportedly bound Indonesian society together for decades may act to create a Javanese hegemony rather than foster political pluralism. Because *Pancasila* designates acceptable and unacceptable political ideologies, the freedom to create a *Pancasila*-compliant political party does not equal a right to political association. The requirement that all parties comply with the principles of *Pancasila* should be removed from Laws No. 2/1999 and 3/1999.

The concept of *Pancasila* is reflected through the political laws' focus on national unity and centralized power. While the language of the Law Concerning Political Parties, Law 2/1999, indicates that any party may legally exist that does not "endanger the national unity or integrity,"<sup>178</sup> in practice, groups that peacefully advocate a greater degree of provincial autonomy or a referendum on independence have been suppressed through state-sponsored violence.<sup>179</sup> Thus, the state has chosen to interpret the term "endanger" to encompass the discussion of a political idea. The political party laws should be amended to distinguish between parties that peacefully advocate greater autonomy or independence and those that make a call to arms or incite violence. The blanket-ban against parties that "endanger the

<sup>176</sup> See INTERNATIONAL COMMISSION OF JURISTS, *supra* note 17.

<sup>177</sup> DARMAPUTERA, *supra* note 17, at 202.

<sup>178</sup> Law Concerning Political Parties No. 2, art. 3, art. 9 (b)-(c) (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>179</sup> See *supra* Part III.

national unity or integrity”<sup>180</sup> must be amended to clarify that “endanger” means endanger through violence, not political expression. In addition, the General Election Law’s requirement that the parties have offices in at least eight of the provinces<sup>181</sup> keeps peaceful pro-independence activists from placing their issues on the national political agenda. The eight-province requirement alienates provincial activists and draws power away from grassroots movements; thus, it should be removed.

Finally, beyond the shortcomings of the political laws, the ambiguous language of Indonesia’s 1945 Constitution leaves the right of political association vulnerable to changing political winds. Article 28 of the Constitution should be amended to guarantee an independent Constitutional right of political association. Through the late 1990s “state institutions [were] manipulated by a succession of authoritarian regimes, using the ambiguity of the 1945 Constitution to legalise their grip on power.”<sup>182</sup> The plain language of Article 28 points to its major inadequacy: the article relies on separate laws to protect the freedom of association.<sup>183</sup> The current Article 28 depends completely on the DPR to pass laws that establish a liberal right of association. While laws that attempt to codify a right of association may exist today, they have not in the past, and may not in the future.

## VI. THE CONSEQUENCES OF SHORTCOMINGS IN THE 1999 POLITICAL LAWS

Since the inception of the political laws, Indonesia’s executive has wavered between pledging support to the freedom of association and engaging the military to eliminate political dissent. Under Indonesia’s 1945 Constitution, the executive “must execute the State policy.”<sup>184</sup> State policy surely includes the implementation of the 1999 political laws; however, the executive has repeatedly employed the military to suppress political

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<sup>180</sup> Law Concerning Political Parties No. 2, art. 3, and art. 9 (b)-(c) (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>181</sup> Law Concerning General Election No. 3, ch. VII, art. 39, § 1(b) (Rep. of Indon., Dept. of Info., trans., 1999) (Requirements of Participation in General Elections).

<sup>182</sup> *Id.*

<sup>183</sup> The gap in the existing political framework was pointed out early on during the Reform period by activists such as Joseph Saunders of the New York-based Human Rights Watch, who warned that “[f]ailure to institutionalize political openness this time around in a climate of relative freedom will lead to the old trap of gags on freedom of expression.” *Activist Urges RI Not to Let Freedoms Fade*, JAKARTA POST, Sept. 10, 1998, LEXIS.

<sup>184</sup> INDON. CONST. (1945) art. 3, § 3, translated in MASS MEDIA LAWS AND REGULATIONS IN INDONESIA 183, 184 (Abdul Razak ed. & trans., 2000), available at <http://inic.utexas.edu/asnic/countries/indonesia/ConstIndonesia.html>.

association in the outlying provinces of Aceh and Papua.<sup>185</sup> This military suppression is in some sense justified by the executive's broad reading of the requirement that political parties refrain from "endanger[ing] the national unity and integrity" of Indonesia.<sup>186</sup> Presidents Habibie, Wahid, and Megawati have been deeply concerned with the stability and unity of Indonesia. Thus, they have often viewed even the peaceful utterance of pro-independence views as a threat to state unity.<sup>187</sup>

Yet the Indonesian government's refusal to distinguish between the incitement of resurrection and violence against the state and the peaceful expression of pro-independence views facilitates violence. Drawing a line between peaceful advocacy of independence and incitement to violence is not a novel concept. For instance, the International Covenant on Civil and Political Rights of December 16, 1966 proclaims that "[a]ll peoples have the right of self-determination[.]" acknowledges that all persons have "the right[s] of peaceful assembly" and "association with others," but still states that "[a]ny advocacy of national . . . hatred that constitutes incitement to . . . hostility or violence shall be prohibited by law."<sup>188</sup>

Unfortunately, there is no indication that Indonesia's pattern of resorting to the military to suppress peaceful advocacy of provincial independence, or a referendum for independence, will end in the near future. While addressing the Indonesian military in December 2001, President Megawati told troops that violence was necessary to "hold the country together" and that if the soldiers "keep within the law," they "should do [their] duty without worrying about being involved in human rights abuses."<sup>189</sup> Of course, any interpretation of Megawati's assertion hinges on what exactly "the law" permits and what exactly endangerment of national unity means. Megawati's speech to TNI was interpreted by human rights groups as giving the military permission to continue human rights abuses in Aceh and Papua.<sup>190</sup>

For many, the political laws have been a disappointment. As one Indonesian scholar comments,

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<sup>185</sup> See *supra* Part III.

<sup>186</sup> Law Concerning Political Parties No. 2, art. 3 (Rep. of Indon., Dept. of Info., trans., 1999).

<sup>187</sup> See *supra* Part III.

<sup>188</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, arts. 1, 20, 21, 22, 999 U.N.T.S. 171, available at Univ. of Minn. Human Rights Library, <http://www1.umn.edu/humanrts/instr/b3ccpr.htm>.

<sup>189</sup> Press Release, Tapol: The Indonesia Human Rights Campaign, Megawati's Carte Blanche to Troops an Alarming Setback for Human Rights in Indonesia (Dec. 30, 2001), <http://tapol.gn.apc.org/pr011230.htm>.

<sup>190</sup> *Id.*

In the last days of May 1998, as the Soeharto era drew to a close, it appeared that we in Indonesia might finally have escaped our historical pattern of violence and state suppression . . . . When reform was first embarked upon there were hopes that democracy, peace and justice could become a reality for Indonesians. However, the old story has been repeating itself, and violence is still the order of the day.<sup>191</sup>

Ultimately, the government has refused to distinguish between peaceful and violent pro-independence groups in Aceh and Papua. Because violence is employed equally against both groups, there is little incentive for indigenous persons to engage in peaceful political dialogue. Thus, Indonesians in both provinces have failed to reap the benefits of the political system and rights of association created by the political laws. The political laws were written in a manner that alienates persons who desire to peacefully discuss the possibility of independence. While on their face the political laws seem to offer an alternative scheme of conflict resolution through political association and debate, in practice this scheme has proven unworkable for Aceh and Papua.

The political laws do not provide Acehnese and Papuans with the right to peacefully express their pro-independence views; thus, there is little alternative to the armed separatism of GAM or OPM. Under the New Order regime, Indonesian unity was enforced through state violence via an all-powerful military. To further the process of democratization, Indonesia should explore ways to create unity through a strong civil society rather than state-sponsored violence. In the meantime, the provinces remain polarized, with GAM and OPM on one side and the military on the other, with little room for middle ground. Thus, the political laws promise little more than an uneasy stalemate, institutionalizing an on-going cycle of state-sponsored violence and suppression. Unless alternative avenues of expression are created, this cycle of violence may escalate into a reliving of the East Timor debacle.

## VII. CONCLUSION

The 1999 political laws represented a historical shift in Indonesia's political system. While the political laws' facilitated the development of

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<sup>191</sup> Nursyahbani Katyasungkana, *Exchanging Power or Changing Power? The Problem of Creating Democratic Institutions*, in *INDONESIA IN TRANSITION: SOCIAL ASPECTS OF REFORMASI AND CRISIS*, *supra* note 1, at 15.

new political parties and free and fair general elections, they failed to secure a right of political association for all Indonesians. The political laws were drafted hastily to satisfy international loan organizations. This drafting process was effectively co-opted by Indonesian elite. Beyond problems in drafting and implementation, the political laws fail to canonize a true right of association. Instead, the current political laws alienate provincial activists and prevent provincial issues from reaching the national political agenda.

These shortcomings in the political laws are compounded by the executive's ready resort to military force to suppress both peaceful and armed pro-independence activists. The bloodshed in Aceh and Papua has gathered international attention and disdain. Yet, because the executive refuses to distinguish between civil society-based movements and armed insurgent groups when employing military force, there is no window for peaceful political dissent with central government policies. By allowing an opportunity for the peaceful debate of provincial independence and autonomy issues, Indonesia might forge a new national solidarity that is rooted in discussion and compromise rather than the coercive combination of *Pancasila* "democracy" and state-sponsored violence. Moreover, Indonesia might defuse the risk of a second East Timor by presenting an alternative to the cycle of violence and suppression.

