



POLICY BRIEF

*The Court of Populist Opinion:
How Populism Compromises Social Justice
in Indonesian Legal Institutions*

June 2018

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YOUNG AUSTRALIANS in
INTERNATIONAL AFFAIRS

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Image: Joko Widodo meeting constituents; President Widodo's Facebook Page, Creative Commons

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Executive summary

Populism has recently re-emerged as a political force, empowering citizens to redirect power by changing the structure of society against classical elites. However, as populist rhetoric intensifies across the world, the independence of legal institutions is increasingly coming under threat. In Indonesia, populist backlash against the political elite and religious or ethnic minorities has compromised the social justice of marginalised groups. This ultimately affects how citizens and civil organisations in Indonesia demonstrate their human rights and freedom of speech from the state's secular ideology.

This policy brief examines the impact of populism within Indonesia's legal institutions. The purpose of this policy brief is to understand how populist rhetoric informs legislation, the judicial process, and the actions of other legal actors in Indonesia. The brief provides an overview of the rise of populism in Indonesia, particularly Islamic populism, and the future direction of this political ideology within policy and legal proceedings.

The following recommendations are made to the Australian Government, with the objective of promoting social justice while respecting Indonesian autonomy in the management of its internal affairs:

1. Develop and deepen professional exchange programs between Australia and Indonesia
2. Increase funding to Indonesian civil society organisations that have a focus on social justice
3. Emphasise the importance of the rule of law in diplomatic channels, with appropriate respect to both nations' political and cultural contexts
4. Where warranted, make use of aid programs and trade policies to incentivise the Indonesian government to take more immediate action

Background

Indonesia is the world's fourth largest state, third largest democracy, and has the world's highest Muslim population. A constitutionally secular state, Indonesia has recently experienced a surge in populism led by conservative Islamist organisations. The Islamic Defenders Front (FPI) and similar groups use inflammatory religious rhetoric to capitalise on distrust of minority groups, and to emphasise the need for protest and dissent to protect Islam. This rhetoric intensified in 2017 and is expected to continue to taint political discourse in Indonesia, particularly in the lead up to the next general election in 2019. Under this rising pressure of religious-driven populism, Indonesia has increasingly failed to protect the rights of minority groups. For example:

- In 2017 Islamist groups brought down Basuki “Ahok” Tjahaja Purnama, Jakarta’s Chinese-Christian governor, on highly questionable blasphemy charges. Such charges had been rare in Indonesia before 2004 but have been used in more than 120 cases since, often as a political strategy. Ahok had previously received high approval ratings, but after extreme Islamic rhetoric targeted against him, combined with an outpouring of anti-Chinese sentiment, Ahok’s public approval declined dramatically and he was ultimately jailed.
- Forced evacuations that target members of the Gafatar religious group, who follow a combination of Christian, Islamic and Jewish teachings. These members are associated with ‘deviant teachings’ and had their settlements burned down by locals. In March last year the movement’s founder and president were both jailed for blasphemy.
- Indonesia has reinstated the death penalty for drug offenders after a long hiatus, moved by strong public opinion against drug smugglers.

These examples demonstrate the extent to which populist rhetoric can inflame dormant intolerance and directly influence legal outcomes.

While Indonesia has historically been a relatively moderate Muslim state, the constitution permits every individual the freedom of religion. The administration of President Joko Widodo, plagued by a stalling economy and increasing religious tensions in local elections, is increasingly acceding to populist demands and failing to adequately protect against religious-based discrimination. This is clearly evident in the government’s limited response to serious calls to enforce Sharia law in Indonesian provinces. Despite standing as a conciliatory and reform-minded candidate, discrimination against minorities has proliferated in the legal system under Jokowi. Populist rhetoric now heavily influences Indonesia’s legal institutions and Jokowi’s actions – or lack thereof – are concerning signs that violent populism is gaining ground and will continue to compromise social justice.

Looking forward, the phenomenon of ‘fake news’ and the ability for populist groups to disseminate false information is likely to increase. Islamic groups outside of the mainstream Islamic parties continue to wedge voters and undermine the stability of the Indonesian government. This raises important questions for social justice and the

human rights of citizens affected by the law. Human rights groups are already concerned with Aceh's Islamic criminal code, which applies to both Muslims and non-Muslims. Additionally, there is the possibility of implementation within other Sunni-majority areas of Indonesia that would further harm the legitimacy of the Indonesian court system.

Recommendations

1. Support professional exchange programs between Australia and Indonesia

Australia has a significant opportunity to improve the long-term legal, policing, and regulatory culture in Indonesia by building stronger people-to-people links across legal communities in both nations.

Organisations and professionals that would suit this program include:

- Lawyers - this could be organised through bar associations, and should focus on those involved in criminal law, including judges.
- Police - across various divisions of national and local police forces.
- Universities - both students and faculty, for law and related subjects; this could include both short-term and longer programs.
- Government departments - Relevant agencies include the Indonesian Ministry of Law and Human Rights and the Australian Attorney-General's Department, as well state and provincial equivalents, at various levels.

To succeed, such programs should:

- Be broadly accessible
- Last at least 6 months, although shorter term programs can also be of value
- Be funded for the long term (at least 5 years)
- Be facilitated by both countries

2. Increase funding to Indonesian civil society

Civil society has an important role to play in promoting social justice. Legal aid is important to ensure defendants are properly represented and to keep people informed of their rights. NGOs can scrutinise legislation, police or court practice, advocate on behalf of minorities, and work to develop and promote legal norms. Activists are an effective instigator of political change.

However, intervention in the civil society of a foreign state can be difficult. Governments fear foreign interference, and there can be backlash against organisations seen to be under foreign influence. It is important to remember that Indonesia is culturally distinct from Australia.

For these reasons, we recommend:

- Increased funding to Indonesian civil society organisations that have a focus on social justice.
- Focused funding on organisations providing direct social services, rather than those engaged in advocacy work.
- When funding advocacy work, give preference to those involved in direct advocacy rather than public.

3. *Diplomacy*

Diplomacy is imperative to creating strong bilateral ties between Indonesia and Australia. With effective communication, any potential issues can be discussed before they exacerbate. Australia and Indonesia strive to be effective strategic partners, and with this we suggest the following actions:

- Emphasise the importance and application of international law when dealing with Indonesia; to encourage the discussion to develop.
- Encourage people-to-people diplomacy between the two countries. This should not be limited to those with an interest in Indonesia, as this should be an opportunity to create a more dynamic network between the two countries.

4. *Aid and trade*

Australia has a long history with regards to donating aid money to the Pacific. Indonesia received over AUD\$300 million through the Australia Aid program in 2017, where 36% was invested towards creating effective governance. It is not Australia's place to critique Indonesia in such a way as to infringe on their state sovereignty. However, it is critical that Australia helps to maintain and uphold the international rules-based order and the rule of law in the Asia-Pacific region. We suggest Australia:

- Place specific conditions on aid programs that will incentivise the Indonesian government to take more immediate action.
- In more specific cases, money should be withheld from certain programs until the Indonesian government amends injustices within the legal system.

The above four recommendations are not exhaustive and should be treated as a mechanism to minimise the impact of populism within Indonesia's legal institutions, as opposed to solutions that more broadly combat extremism and discrimination.

Conclusion

The policy brief illustrates that the rise of populism in Indonesia affects the political and social landscape within the state. The populist rhetoric from political Islam organisations such as Islamic Defenders Front demonstrates the impact of sectarian discourse and nationalism within the state. The use of populist discourse can radicalise ordinary citizens and lead to the persecution and prosecution of religious and ethnic minorities. The impact of legalisation can cause serious political consequences for the future of Indonesian democracy.

Indonesia is one of Australia's most important bilateral partners. The impact of populism with Indonesia's legal system can affect Australia, and the government should consider measurable outcomes to protect the social justice of minority religious groups, particularly within legalisation. The impact of stability, prosperity and democracy in Indonesia is significant for Australia's own security and well-being. It is imperative that Australia continues to build a strong partnership with Indonesia to enhance community engagement and mutual understanding of current political and cultural contexts.