Legal Reform in Indonesia

Overview

Building on decades of support for legal development in Indonesia and other countries in the region, The Asia Foundation launched a comprehensive legal reform program in 2000. Foundation grants and technical assistance support the legal development efforts of government and civil society partners at the national and regional level. The Foundation's three-pronged program strategy strengthens the institutional and human resource capacity of the judiciary, police, and other public institutions, promotes increased access to information and informed public dialogue on legal reform options, and helps to build constituencies for legal reform and counter-corruption initiatives.

The Asia Foundation’s Approach to Legal Reform

A well functioning legal system helps to advance broad-based political, economic, and social development by creating an environment in which individual rights and security are protected, contractual obligations are enforced, property rights are secure and transferable, and public decision making authority is exercised in a transparent and predictable manner. Following the 1999 national parliamentary election, Indonesia's political leaders declared a commitment to uphold the rule of law, affirming the importance of law reform in advancing Indonesia's broader national development and democratization efforts. While the creation of the National Law Commission and other initiatives affirmed an early commitment, the government has made minimal progress in passing critical legislation, reforming the judiciary and other legal institutions, reducing corruption, or coordinating the reform efforts of key agencies. Filling the void, dynamic civil society organizations, have assumed a leadership role in advancing national law reform efforts.

It is now widely recognized by most international donors that, despite its important technical dimensions, legal reform is not so much a technical challenge as a political problem. Reforming legal institutions, lawmaking procedures, and the administration of justice requires a combination of leadership and incentives within government, together with pressure from the outside. The Foundation's law program strategy emphasizes the linkages between the political, economic, and social dimensions of reform processes in Indonesia. The Foundation builds the capacity of key government institutions and non-governmental
organizations (NGOs) that are attempting to meet the fundamental challenges facing the courts, the police, the legal profession, and legal education institutions. The Foundation also encourages public information and advocacy, building public support and constituencies for legal reform through education and media campaigns. This approach has a pragmatic focus on making institutions work. It emphasizes open collaboration among government agencies, the academic community, business and professional associations, and the general public.

The Foundation and its partners recognized that legal reform is a long-term process in which modest advances in select areas will help to generate momentum for broader sectoral reforms. The Foundation is particularly encouraged that civil society organizations previously critical of government now acknowledge the importance of working collaboratively with public agencies that demonstrate a will to reform. To further this trend, the Foundation encourages its local partners to identify opportunities to engage with elected officials at the national, provincial, and local levels on legal reform issues.

Program Highlights

**STRENGTHENING LEGAL AND ADMINISTRATIVE INSTITUTIONS**

It is not possible to advance the rule of law and improve access to justice in Indonesia without changing the operations and culture of core legal institutions such as the judiciary, the police, executive agencies, and educational institutions. Foundation support for institutional development helps to increase the capacity of key government institutions to refine and administer a more transparent and corruption-free legal system.

**National Law Commission:** Foundation support to the National Law Commission (NLC) helps to increase its capacity to advise the President on legal matters and to formulate a national law reform agenda. Working closely with the NLC leadership, the Foundation helps the Commission to raise its public profile and independence through more effective information sharing. These efforts in turn help to stimulate public dialogue and raise expectations on the pace and progress of law reform efforts.

**National Ombudsman Commission:** Founded to help reform state administration and combat corruption, the National Ombudsman Commission (NOC), with Foundation support, is refining its unique watchdog role to assist citizens when government agencies fail to perform their legal duties. Foundation grants include support for NOC efforts to educate the public officials and the general public on the need for an Ombudsman Law, which will confer greater investigative jurisdiction on the Commission and give its directives binding authority.

**Judicial Reform:** With Foundation support, the Indonesian Institute for Independent Judiciary is conducting an institutional audit of the Supreme Court in collaboration with the Court. The audit will identify priority institutional and procedural reforms, and advise the Court on the broad judicial oversight responsibilities that it will assume under the pending Supreme Court law. The Foundation also supports the Indonesian Institute for Conflict Transformation and the Indonesian Center for Environmental Law in their respective collaboration with the Supreme Court in designing and pilot testing a court-administered mediation program to reduce case backlog and developing new regulations for class action lawsuits.

**Police Reform:** The Center for Human Rights Studies of the Islamic University of Indonesia, with support from the Foundation, has developed programs in collaboration with the Yogyakarta police on human rights training and community policing. The training program is one of the first instances of the police taking the lead on a professional development initiative of this kind. The curriculum will be pilot tested in Yogyakarta and later replicated in other Indonesian communities. Foundation assistance to the Retired Women Police Officers’ Association supports a research and curriculum development project on police sensitivity to women’s rights. The research will be used to develop a gender section for the national police training curriculum. In addition, the Foundation is collaborating with the United Nations High Commission for Refugees and the Center for Security and Peace Studies of Gajah Mada University in designing and implementing an evaluation instrument to assess the impact of police training programs in Indonesia.

**Professional Development:** The combined challenges of national legal reform and the adoption of international business standards place unprecedented demands on Indonesian legal professionals, including the legal staff of government agencies. With support from the Foundation,
more than 30 legal officers of the Ministry of Justice and Human Rights and the Cabinet Secretariat are undertaking graduate legal studies. A Foundation-funded study by the Indonesian Center for Law and Policy Studies reviews current professional regulatory standards, provides recommendations on a standard code of conduct for the Indonesian legal profession, and calls on professional regulatory associations to assume a more vigorous role in enforcing high ethical standards.

**Formal Legal Education:** To help prepare the next generation of legal professionals, the Foundation supports the development of clinical legal education programs at the University of Indonesia Faculty of Law and select regional law schools. Four third-year law students attended the annual American Society of International Law (ASIL) conference and participated in a Foundation-arranged program to study the clinical legal education curriculum of American law schools. On their return to Indonesia, they visited law schools around Indonesia to report on their experience and generate student demand for legal education reform.

**PROMOTING GREATER PUBLIC AWARENESS OF LAW REFORM ISSUES**

While institutional accountability is a critical component of legal reform, institutions rarely reform themselves without external pressure. To this end, the Foundation supports legislative reform, creative use of the media and information technology, and other efforts to promote public access to information and dialogue on the national law reform agenda.

**Citizen Perceptions of the Justice Sector:** The Foundation's national survey on public perceptions of the justice sector, conducted in collaboration with AC Nielsen, provides a unique perspective on public needs and expectations that have been largely overlooked in setting the national legal reform agenda. As an important planning tool for donors, the study focused on the choices that Indonesians make in resolving legal disputes. The survey studies citizens' basic legal knowledge, their familiarity with the courts and police, and the factors that influence their preference for formal or alternative solutions to legal problems.

**Information Technology:** Through Indonesia's first web site devoted exclusively to law, Hukumonline.com provides public access to information on the legal reform process. The web site includes a news service on national legal issues, as well as dialogue spaces in which users can exchange views. With Foundation support, Hukumonline.com has introduced a database of Indonesian laws, regulations, and court decisions that serves as a valuable source of information for legal scholars, civil society organizations, and the public at large.

**Freedom of Information:** The Coalition for the Freedom of Information is conducting a national advocacy campaign to challenge the government's traditional monopoly hold on information. The campaign, supported by the Foundation, promotes greater transparency in public policy development and presses for the passage of a Freedom of Information law through education of the public and Members of Parliament, and preparation of a draft law.

**Mass Media:** Foundation support for a popular weekly legal reform program produced and broadcast by Radio 68H has helped to stimulate informed public dialogue on legal reform issues. To further improve the quality and substance of newspaper, television, and radio reporting, the Foundation will support the development of resource materials and professional development programs for print and broadcast journalists, drawing on its extensive contacts with leading media training organizations.

**MOBILIZING CONSTITUENCIES FOR REFORM**

Indonesia's democratic transition has created new opportunities for NGOs, business associations, and civil society actors to press for increased transparency and accountability in the legal sector. The Foundation supports individual and collective efforts of leading civil society organizations that specialize in judicial and constitutional reform, consumer protection, counter-corruption, among other issues. In marked contrast to the gradual pace and uncertain resolve of public institutions, legal NGOs staffed by determined young reformers are playing a lead role in promoting public awareness and dialogue on the national legal reform agenda. Foundation grants also support the Center for Indonesian Law and Policy Studies, the Indonesian Center for Environmental Law, the Indonesian Institute for Independent Judiciary, Indonesia Corruption Watch, Somasi NTB, and several coalitions of civil society organizations. The Foundation's local partners enjoy exceptional access to the Supreme Court, National Assembly, and other institutions and public officials.
Constitutional Reform: Current procedures for amending Indonesia’s 1945 Constitution provide little opportunity for citizen input. With support from the Foundation, the NGO Coalition for New Constitution is conducting a national public advocacy campaign on the need for broad-based public engagement in constitutional reform. The campaign includes position papers, regional public forums, and media events to focus public attention on the problems associated with the present Constitution. In her 2001 Independence Day address, President Megawati addressed the efforts of the Coalition, underlining the need for constitutional reform and the prospect of appointing a constitution commission.

Legal Empowerment: Building on its recent, seven-country study on Legal Empowerment for Supporting Governance for the Asian Development Bank (ADB), the Foundation is assisting The Institute of Legal Aid Yogyakarta and other Indonesian partner organizations to develop strategies for legal empowerment - the use of law to increase the control that the poor, women, and other disadvantaged groups exercise over their lives. In addition, the Foundation is designing a plan for a legal empowerment program to be included as a component of the ADB’s new national irrigation management project. The program will assist water user associations and communities served by irrigation projects to better understand their legal rights and to more effectively engage in local decision-making processes that are critical to their economic security.

Consumer Protection: While Indonesia has taken positive steps to establish a legal basis for consumer protection, further efforts are needed to ensure that consumer rights are actually enforced. This includes a combination of education, advocacy, and incentives for those responsible for the enforcement of consumer laws. With Foundation support, the Public Interest Advocacy Center (PIRAC) is conducting a legal advocacy program on consumer protection. Activities include the development of a training curriculum on general and specialized consumer issues; regional training programs; research on the new Consumer Protection Act; introduction of a consumer complaint service; and media campaigns and publications to raise public awareness of consumer rights.

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