

## INDONESIA

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## Free speech restraints struck down

On December 6, the Indonesian Constitutional Court de-criminalised the act of insulting the President or Vice-President by scrapping Articles 134, 136 and 137 of the Indonesian Criminal Code (KUHP) on the basis that they hampered the right to freedom of expression as guaranteed by the 1945 Constitution. The vote was a 5-4 majority.

Under those articles "insulting the President or Vice-President" was punishable by up to six years' imprisonment. These articles had

been widely used under the Soeharto regime to silence and imprison political opponents and other critics of the government. Prosecutions ceased after Soeharto's fall in 1998, but were resumed in 2001 under the government of Megawati Sukarnoputri and directed against an array of critics including labour activists, journalists and independence activists in the provinces of Aceh and Papua.

The case before the court was brought by two activists who had been charged with insulting the current President, Susilo Bambang Yudhoyono. One of the men had been arrested during a peaceful demonstration in May 2006, while the other filed a graft complaint against the President and his staff with the Corruption Eradication Commission (KPK) for allegedly accepting an improper gift.

The Constitutional Court stated that the three articles no longer have binding legal power with immediate effect.

Those still incarcerated for convictions based on these articles may be expected to seek judicial review, and the court's decision is silent on how the ruling should affect such cases.

## Anti-corruption court declared unconstitutional

On December 19, the Constitutional Court declared unconstitutional the special Anti-corruption Court created under the 2002 law which also established the Corruption Eradication Commission (KPK). The decision is seen as a blow to the anti-corruption efforts of President Susilo Bambang Yudhoyono, who has made the fight against collusion, corruption and nepotism (KKN) a pillar of his administration.

In delivering its decision, the court expressed its concern for the development of a "duality" in the judiciary, because suspects tried in two different courts could receive different treatment. The court observed that there exists a "double standard in fighting corruption" and that this has led to an "absence of legal certainty".

Under the current legal framework, the Anti-corruption Court is empowered only to hear cases initiated by the KPK, while the general courts are empowered to hear corruption cases initiated by the Attorney General. Decisions of both these courts are appealable to the High Court and/or the Supreme Court.

In practice, a double standard has indeed developed in that nearly all defendants brought before the Anti-corruption Court have been convicted and sentenced to imprisonment, while

relatively few cases brought before the general courts have resulted in conviction, much less incarceration.

Turning a blind eye toward legal inconsistency, the court also ruled that the Anti-corruption Court (now declared unconstitutional) may continue its functions for three more years to allow the legislature time to enact new acceptable legislation. The court's rationale for the grace period was to allow time for a new law to be enacted.

This delayed effective date of the decision calls into question not only the legal authority of the Anti-corruption Court to continue hearing cases, but also all prior convictions handed down since its inception. Some observers have already called for all pending cases of the Anti-corruption Court to be transferred to the general courts under the prosecutorial responsibility of the Attorney General.

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