

## INDONESIA: MORE RESTRICTIONS ON WORKERS

Severe labor rights violations in Indonesia continue, despite a warning to the Indonesian government from the Clinton administration on June 25, 1993 that trading benefits could be at stake if restrictions on those rights persist. In May and June 1993, the Indonesian military intervened in labor negotiations and attempted to prevent meetings of an independent union from taking place. A young woman labor organizer named Marsinah was murdered within days of a strike at the factory where she worked, although it is not yet clear who was responsible. Military intervention in that strike was extensive. In late July, the government banned a meeting of the independent labor union, Serikat Buruh Sejahtera Indonesia (Prosperous Workers Union of Indonesia) or SBSI, and subjected participants to threats, interrogation and petty harassment. In August, it closed down an art exhibition commemorating the death of Marsinah.

All of these incidents illustrate the tight restrictions on freedom of association, assembly and expression in Indonesia. Any effort to challenge governmental authority or assert independence from government-controlled organizations can lead to harassment from the army and police. But the labor issue is particularly sensitive for several reasons.

First, the Indonesian government is justifiably proud of its rapid economic development and its image as a dragon-in-the-making, and it does not want labor activity discouraging growth and foreign investment. Its attractiveness to investors is tied in part to cheap labor costs, and it does not want to respond to pressure to increase the minimum wage to the point that Korean, Taiwanese, Japanese and American capital begins to move elsewhere.

Second, despite the collapse of communism internationally, the Suharto government continues to associate labor activism with the Indonesian Communist Party, banned in 1965 and subsequently annihilated. As the Indonesian government noted in a submission to the United States Trade Representative in November 1992, "One possible inroad for communist subversion is through worker unrest. The Government especially fears that the communist ideology might be attractive to young people who did not live through the national distress of the 1960's, and

many of those young people can best be reached on the job through labor disputes."<sup>1</sup> After banning the

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<sup>1</sup> *Statement of the Government of Indonesia before the Office of the United States Trade Representative, Trade Policy Staff Committee, Generalized System of Preferences Subcommittee*, November 16, 1992, pp.88-89.

SBSI national congress in July, a police spokesman said one reason for maintaining a single labor union was that the labor issue had "political and security elements which required vigilance."<sup>2</sup>

Finally, thanks to the efforts of workers themselves, Indonesian labor practices are increasingly coming under international scrutiny, as exemplified by the June decision of the U.S. Trade Representative to review Indonesian labor practices with a view toward deciding whether trading benefits, under the so-called Generalized System of Preferences (GSP) program, should be cut.<sup>3</sup> The U.S. Trade Representative has given Indonesia until February 15, 1994 to demonstrate progress in upholding labor rights, particularly freedom of association.

### **SBSI and its Problems**

On July 29, 1993, the Indonesian government prevented the independent trade union, the SBSI from holding its first national congress. The police said they were closing down the meeting in Cisarua, Bogor (West Java) because the organizers did not have a permit. They did not have a permit, although they had requested one on July 6, because the police refused to grant them one on the grounds that they needed recommendations from the Ministries of Manpower and Home Affairs. The recommendations were not forthcoming because, according to the Manpower Ministry, the SBSI was not a true labor union. It was the creation of legal aid lawyers and non-governmental organizations, they said, not workers. If it had been the creation of workers, it would have upheld a 1973 Declaration of Workers, recognizing the one single union as a force for national unity and the best guarantor of workers' welfare.<sup>4</sup>

That statement goes to the heart of the problem. Since the New Order government of President Suharto came to power in 1966, there has been only one officially-sanctioned labor union which claims to negotiate with employers on behalf of workers. That union is the Serikat Pekerja Seluruh Indonesia (SPSI), the All-Indonesian Workers Federation.<sup>5</sup> It is not only government-sanctioned; it is also government-controlled.

In 1990, a group of activists in Jakarta attempted to form an independent union called Setiakawan (Solidarity) but it lacked a real base among workers and eventually disintegrated. On April 25, 1992, a second effort began. Led by Muchtar Pakpahan, a well-known labor lawyer from North Sumatra, a group of labor activists convened a three-day "national workers' meeting" in Cipayung, West Java. Over 100 workers from 18 provinces attended, and at the end of the three days, they announced the formal establishment of

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<sup>2</sup> "SPSI Sebagai Wadah Tunggal Kurang Sesuai Dengan Realitas", *Kompas*, August 3, 1993.

<sup>3</sup> For a full discussion of the background to the GSP debate, see Asia Watch, "*Indonesia: Charges and Rebuttals Over Labor Rights Practices (An Analysis of Submissions to the U.S. Trade Representative)*", Vol.5, No.2, January 23, 1993.

<sup>4</sup> "Govt says SBSI's status justifies ban on congress," *Jakarta Post*, August 3, 1993; see also *Harian Terbit*, August 6, 1993.

<sup>5</sup> Until 1983, it was called Federasi Buruh Seluruh Indonesia or FBSI. The government now claims that the Indonesian Teachers' Association, PGRI, has been a legally registered union since 1991, but it functions more as a government-run professional association than a union.

SBSI. Its executive committee consisted of 11 people, all but two of them workers; one of the two was Muchtar himself. The opening ceremony was attended by several prominent activists from local non-governmental organizations (NGO), perhaps giving rise to the Manpower Ministry's charge over a year later that SBSI was the creation of lawyers and NGOs. But in fact, the SBSI leadership had a better claim to being by and for workers than did its counterpart in the government union.

From the beginning, SBSI was open about its intention of trying to organize as many workers as possible so that it could formally register as a union.<sup>6</sup> But also from the beginning, it was clear that the government had no intention of letting it do so. This was clearly demonstrated in October 1992 when local police broke up a meeting of the SBSI leadership in Tangerang, West Java, and held the participants overnight for interrogation. Muchtar Pakpahan himself was subsequently picked up by military intelligence for questioning.<sup>7</sup>

On June 14, 1993 seven workers of a commercial shrimp farm, P.T. Tambaksari Jalmorejo, in Medan, North Sumatra, were dismissed for being leaders of SBSI. A representative from the Ministry of Manpower visiting the company on June 13, 1993 declared the trade union illegal. The seven workers were Sugiono, Efendi, Abdul Maha, Mustapha, Umiyati, Nurhasanah and Tugiman. The next day, some 175 workers at the shrimp farm went on strike on behalf of the seven who were fired. The seven were hired back as a result.

On June 25, the chair and vice-chair of SBSI's Medan branch, Amosi Telambanua and Soniman Lafoa, were arrested, without warrant, on the street in Medan by four members of the subdistrict military command (Koramil Medan Deli) and accused of having fomented the strike. They were then taken from the subdistrict to the district command (Kodim 0201) by several military officers and the deputy head of the PT Tambaksari farm. They said they were beaten and kicked while their captors laughed.<sup>8</sup> Their families were not informed of their whereabouts. On July 2, the military released Amosi and Soniman; both showed visible marks of the beatings.

On June 29, they brought a suit in Medan District Court against the district military commander, claiming mental and physical damages. The commander said he could only be accused in a military court and urged the judge to throw out the case. He also claimed that the interrogation of Amosi and Lafoa had been undertaken at the behest of the provincial office of the internal security agency, Bakorstanasda of North Sumatra, and a letter from the head of the social-political affairs director of the Medan city government dated June 22, 1993.

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<sup>6</sup> When SBSI was founded, the requirements for registration, according to Ministry of Manpower Regulation PER-05-MEN/87 on labor union registration, were that the union have representation in 20 of Indonesia's 27 provinces and in at least 1,000 workplaces. In a new regulation that went into effect in February 1993, the requirement was reduced to five provinces with at least 100 workplace units and 10,000 members, but the new union would have to have a recommendation from an officially registered union -- i.e. the SPSI. Other conditions in the new regulation make registration almost as difficult as in the earlier version of the law.

<sup>7</sup> See Asia Watch, *op.cit.*, p.7.

<sup>8</sup> "Mencoba Praperadilan untuk Kodim," *Forum Keadilan*, Vol.2, No.8, August 5, 1993.

## **Plans for the Congress**

Despite these incidents, membership in SBSI continued to grow, and Muchtar and other SBSI leaders decided to go ahead with plans for their first national congress. On July 5, 1993, the organizing committee for the congress sent a letter to Indonesia's police commander requesting permission to hold a meeting of about 350 people from July 29 to August 1 in Taman Mini, a park in Jakarta. Copies were sent to the Ministries of Home Affairs and Manpower. The following day, the committee sent letters to both those ministries, asking that they endorse the request to the police for a permit. SBSI understood at the time that no permit would be issued without the two recommendations.

The SBSI leadership followed up the letters with repeated visits to the police and the two ministries. They were told each time that the request was being processed. At the same time, the SBSI office began to receive regular visitors from the district military command, the Kodim. The visitors were usually low-ranking officers who would come in, have a cup of coffee and depart. But their presence was a clear reminder that SBSI activities were being closely watched.

A week before the congress was scheduled to begin, the steering committee of SBSI asked for a clarification about the status of request, and on July 26, they asked again: would the permit be granted or not? By this time, delegates to the congress had already begun to arrive in Jakarta from all over the country, and military intelligence stepped up its monitoring of the SBSI office.

On July 27, Muchtar Pakpahan met with Lt. Col. L.M. Azhari of the police, who said that the police were still awaiting recommendations from the two ministries.

On July 28, the steering committee held a press conference with 42 of the delegates and announced SBSI's intention of holding the conference whether or not the permit was issued. The venue for the meeting was changed to the Hotel Lembah Nyiur in Cisarua, a resort area in the hills south of Jakarta. At this point, it should be remembered, the board had no indication that the permit had been refused. That night, the SBSI office was surrounded by soldiers and police, who in addition to "playing games" with the delegates such as in one instance, pointing a gun at one man's head, also ate at the foodstalls outside the office and charged the bills to SBSI. Muchtar Pakpahan's home was also ringed by soldiers.

About 5:30 a.m. on July 29, about 50 members of the security forces, representing the police, three different military commands, and the intelligence agencies, poured into the narrow alleyway where the office is located and began interrogating the delegates, some of whom had been sleeping at the office. One soldier pointed his gun at the driver of a van rented to take some of the group up to Cisarua; other delegates were ordered to get out of a taxi, and the driver was sent off.

Delegates began arriving at the Hotel Lembah Nyiur by 7 a.m., but the military was already there. All keys to hotel rooms had been impounded, and the delegates were told they would not be permitted to stay. At about 12 noon, a letter dated July 28 was delivered to the steering committee. Addressed to Muchtar Pakpahan and signed by Col. Drs. Soedaryono, of the directorate of intelligence and security of the national police, the letter said, "We hereby inform you that your request [of July 5] cannot be granted since the full conditions for doing so, in this case the recommendations from the Ministries of Manpower and Home

Affairs, have not been met. Because of this, the said activities cannot be undertaken."

Copies were sent to the director general for social and political affairs at the Home Affairs Ministry; director general of industrial relations at the Manpower Ministry; the police at the national and local levels; military intelligence; and the intelligence coordinating board. Attached to the letter was a form used by the directorate of intelligence and security to check off the materials they needed before a permit could be granted. (This checklist would apply to any organization seeking a permit for a meeting.) It included:

- a schedule of events
- a list of the members of the organizing committee
- a list of the steering committee of the organization
- a list of all participants or invitees, and for foreigners, the number and date of their passports as well as their nationalities.
- the articles of incorporation of the organization holding the meeting
- the proposal for the meeting itself

At the same time the letter was delivered, the local police resort and the district military command ordered the congress stopped. Leaving the delegates milling about, the steering committee, headed by Muchtar Pakpahan, went to the Cisarua subdistrict office to try and negotiate with the police and military. The end result of the negotiations was that Muchtar was given 15 minutes to explain to the delegates why the congress was being cancelled.

Instead, delegates, representing 61 of the 77 SBSI branch offices around Indonesia, used the time to read a protest, authorize the board to implement its five-year work plan, and announce new officers. They then dispersed, with the delegates from nearby towns and cities going home, and those from further away intending to stay overnight in the area. They found, however, that security forces had ordered the managers of all local hotels and guesthouses not to allow more than five SBSI delegates to stay in one place.

That evening, five members of the SBSI steering committee were asked to go to the police resort in Bogor. Then the five were taken into separate rooms and interviewed by six police officers in rotation. The interrogation began at about 7 p.m. and continued until midnight in what one participant described as a calm and non-threatening atmosphere. They were mainly questioned about why they had used the 15 minutes allotted them to deliver a proclamation, rather than just telling the delegates to go home.

The SBSI office continued to be under surveillance until August 2.

## **Is SBSI a Labor Union?**

After the congress was shut down, the Indonesian government began justifying its action, and Payaman Simanjuntak of the Manpower Ministry led the way with his charge that SBSI was not a real labor organization because it was not founded by workers. (Even if true, it would hardly be an adequate reason, since the same could be said of SPSI, the official union.)

Instead, said Payaman, SBSI should be considered a non-governmental organization dealing with labor affairs. The director general of social and political affairs in the Home Affairs Ministry, Soetojo, picked up this theme a few days later, saying SBSI with all of its members constituted a mass organization rather than a labor union, and therefore had to register with the Home Affairs Ministry under the terms of the Social Organizations Law of 1985 (a law which many human rights organizations including Asia Watch believe violates freedom of association). Soetojo explained the problem this way:

In order to register with Home Affairs, SBSI has to have a recommendation from the relevant "technical agency" as stipulated in the 1985 law. In the case of SBSI, this agency would be the Manpower Ministry. Then Home Affairs would have to study the charter of SBSI to ensure it meets the requirements of the law. If they do not meet the requirements, Home Affairs will not process their application. Will Home Affairs accept SBSI? The answer will have to await coordination with the Manpower Ministry.<sup>9</sup>

## **Impact of the Ban**

It would be a mistake to see SBSI as the solution to all of Indonesia's labor ills. It is not the case that all workers disaffected with the government union are clamoring to join SBSI. Some labor activists believe that it would be possible for the government to recognize SBSI and still impose severe restrictions on the ability of workers to organize themselves independently in the workplace. (In fact, many believe that the Indonesian government, in banning the SBSI congress, lost a golden opportunity to throw a bone to its critics without making any substantive concessions.) Some have even suggested that SBSI has been more effective in promoting the SBSI leadership than in promoting worker rights.

But the fact remains that quite apart from its role in the development of Indonesia's labor movement, the existence of SBSI is an important test of Indonesia's willingness to allow independent associations to flourish, and the results thus far are no cause for optimism.

## **The Killing of Marsinah and Other Labor-Related Abuses**

The banning of the SBSI congress was preceded by several other incidents. On June 15, 1993, a meeting on labor rights education in East Jakarta was stopped by security forces on the grounds that the organizations holding the meeting did not have a permit. Fewer than 20 people were present, but they included representatives of two independent unions, SBSI and Setiakawan. The director of the Jakarta office of the International Labor Organization was also in attendance. The meeting was broken up by local police

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<sup>9</sup> "Dirjen Sospol: SBSI Belum Tercatat di Depdagri", *Suara Pembaruan*, August 10, 1993.

and military.

The murder of a young woman labor activist named Marsinah on May 8, 1993 highlights the climate of fear created by military intervention in attempts by workers to organize. As of late June, the murderer had not been apprehended, and it was not clear who was responsible. The fact that she was killed within days of a strike, however, raised concerns that the two events were connected and underscores the need for a full investigation. On August 14, three months after Marsinah's death, an art exhibit held in her memory was shut down by police in Surabaya on the grounds that art was being used for political ends.

The case of Marsinah began with a strike. On May 3-4, workers of a clock factory, P.T. Catur Putra Surya (PT. CPS), in Porong, a village in the district of Sidoarjo, East Java, staged a two-day sit-down strike, demanding compliance with the March 1993 minimum wage law; the dissolution of the factory unit of SPSI (*Serikat Perburuhan Seluruh Indonesia*), the government-sponsored union; and ten other demands.

By noon on the first day, 18 workers were taken to the subdistrict military headquarters (Koramil) in Porong, interrogated and accused of inciting the strike. One worker was given a summons to appear the next day at the district military headquarters (Kodim 0816) in Sidoarjo for further interrogation. The man returned to the Kodim in the morning, where the military reportedly forced him to confess that he had masterminded the strike.

On May 4, a delegation of 15 workers, including Marsinah, met with the district leader of SPSI, together with a factory representative, the subdistrict military commander and the subdistrict police chief, to discuss the workers' 12 demands.<sup>10</sup> All were eventually met except for the demand to dissolve the SPSI unit, and by the next morning, May 5, the workers were back on the job.

But later that morning, the Sidoarjo military command summoned 16 men in for questioning; only 13 appeared. All were asked, in the presence of the SPSI representative, to submit letters of resignation on the grounds that they had held illegal meetings and forced other workers to strike. Such pressure to resign is in clear violation of Law No.12/1964 on worker lay-offs which requires resignation to be at the initiative of the worker.

At 7:30 p.m., Marsinah set out to visit the workers who had been detained in their homes, but found none had returned. She then drove with a friend by motorcycle to the district military command in Sidoarjo to inquire about the workers. There she was told that the workers had already left. Marsinah went back to Porong where she met with three other workers, one of whom had a copy of the letter of agreement with the company on the outcome of the strike negotiations. At approximately 9:30 p.m., Marsinah left on foot to get some dinner.

Three days later, on May 8, her body was found 200 kilometers from Porong in a hut by a rice paddy in the village of Jedong Desa, 17 kilometers from her parents' home. A post-mortem conducted at the

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<sup>10</sup> Indonesian Law No.22/1957 on the resolution of labor disputes strictly outlaws the interference of military in labor affairs, but Ministry of Labor Regulation No.342 (KEP.342/MEN/1986), allows the involvement of local government officials and district-level military and police in labor negotiations.

Nganjuk General Hospital found evidence that Marsinah died as a result of injuries inflicted during torture. Lesions on her neck and both wrists indicated she had been severely beaten and suffered internal hemorrhaging, and had been raped with a sharp object, 15-20 cm in diameter.

The killing generated a public outcry throughout Indonesia and was the subject of editorials in most of the major newspapers. In Surabaya, Indonesia's second-largest city, the Surabaya Arts Council planned a commemorative exhibition on the 100th day after Marsinah's death, but the exhibit was shut down three hours before its scheduled opening at 7 p.m. on August 14. Featuring works by Moeljono, 36, an artist known for his socially conscious "community art", it was considered by the Surabaya police command to be a threat to stability and public order. "There are elements who are trying to politicize the death of Marsinah through art," the head of information for the police was quoted as saying. The director of the arts center said it was the first time in 21 years that an exhibition had been closed down.<sup>11</sup>

## Future Developments

All of these incidents -- the ban on the SBSI congress, the intervention by the military in the strike in Marsinah's factory, the interrogation and beating of the two SBSI leaders in Medan and the shutting down of the art exhibition -- are clear violations of the rights to freedom of assembly, association and expression. The activities of the military and police, in such as obstructing the granting of the permit to hold the congress, delaying a response to the SBSI steering committee until the day of the congress itself, threatening delegates and impounding hotel room keys, are indicative of the routine harassment to which labor organizers are subject.

But despite the obstacles, labor leaders and NGO representatives are pressing for change in a number of laws that would enable workers to organize more freely. The most important of these, as far as the NGOs are concerned, is Manpower Ministry Regulation KEP.342/MEN/1986 on the resolution of labor disputes, or Regulation 342 for short. In Article 2(2)(1), that regulation authorizes labor mediators to coordinate with the district police and military commands to ensure that disputes are settled peacefully, thereby opening the door to military intervention. On August 23, 1993, an NGO called the Workers Solidarity Forum held a press conference announcing its decision to demand a judicial review of this regulation in court, on the grounds that among other things, it violates Law No.22 of 1957 on the need for neutrality in labor negotiations.<sup>12</sup>

The Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia or YLBHI) issued a statement a week and a half earlier calling for repeal of Regulation 342 but citing the need to repeal or amend a number of other laws including:

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<sup>11</sup> "Disesalkan, Pelarangan Pameran "Marsinah", *Kompas*, August 13, 1993.

<sup>12</sup> The NGOs also maintain that Regulation 342 also allows workers who engage in wildcat strikes to be laid off without consultation, in violation of Law No. 12 of 1964. See Forum Solidaritas Untuk Buruh, *Konferensi Pers tentang Peangajuan Gugatan Hak Uji Materiil (Judicial Review) Terhadap Surat Keputusan Menteri Tenaga Kerja No. Kep.342/MEN/1986*, August 23, 1986.



- Manpower Ministry Regulation No. Per-03/MEN/1993 on registration of labor unions which YLBHI says serves to close off the possibility that any independent unions can register.

- Manpower Ministry Regulation No. KEP-438/MEN/1992 on guidelines for labor unions in private companies, which YLBHI said, allowed for interference in union formation on the part of management, the Manpower Ministry and SPSI;

- Manpower Ministry Regulation No. KEP-1108/MEN/1986 on resolution of labor disputes which reduces the role of unions in handling mass lay-offs;

- Manpower Ministry Regulation No. KEP-04/86 on lay-offs which allows a company to fire workers who have not come to work (as in a wildcat strike) for six consecutive days. The regulation says those workers will be considered as having resigned.<sup>13</sup>

Much of the debate in July and August 1993 over labor rights has been sparked by the announcement of the U.S. Trade Representative's office about possible economic sanctions against Indonesia because of abusive labor rights practices. While many commentators in the Indonesian press have questioned the motives of the U.S. government in threatening to withdraw GSP benefits, they have also acknowledged that the situation of workers is cause for grave concern. Lifting restrictions on freedom of association would be one way to address their plight.

### **For More Information**

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*Asia Watch is an independent organization created in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg, the Vice Chair is Orville Schell, the Executive Director is Sidney Jones and the Washington Director is Mike Jendrzeczyk.*

Asia Watch is a division of Human Rights Watch, which also includes Africa Watch, Americas Watch, Helsinki Watch and Middle East Watch. The Chair of Human Rights Watch is Robert L. Bernstein and the Vice Chair is Adrian DeWind. Kenneth Roth is Acting Executive Director; Holly Burkhalter, Washington Director; Susan Osnos, Press Director.

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<sup>13</sup> Yayasan Lembaga Bantuan Hukum Indonesia, *Siaran Pers tentang Ancaman Pencabutan Fasilitas GSP Bagi Pemerintah Indonesia*, August 12, 1993.