

INDONESIA: NEW DEVELOPMENTS ON LABOR RIGHTS

Even as the Indonesian government repealed a controversial decree and stated its concern for the welfare of workers, Asia Watch continued to receive reports of labor rights violations. On January 16, 1994, one day before the arrival of U.S. Treasury Secretary Lloyd Bentsen and less than one month before the U.S. Trade Representative's office must recommend whether or not to revoke tariff benefits given Indonesian exports to the United States under the Generalized System of Preferences (GSP) program, Indonesia's Minister of Manpower announced the repeal of Decree No.342 of 1986. That regulation authorized military interference in the settlement of labor disputes. But as the legal basis for such interference was thus being eroded (but not removed), developments in the highly publicized case of the murder of a labor organizer, Marsinah, were raising new questions about the military's role.

The Minister of Manpower also announced that organizations other than the one officially-recognized government union would be permitted to engage in collective bargaining. Formidable obstacles to the recognition of independent unions, however, remained in place, and incidents of harassment against members of the Serikat Buruh Sejahtera Indonesia (SBSI), a non-government union, continued.

The Indonesian government on December 24, 1993 announced that the minimum daily wage would be raised twenty-seven percent to Rp.3,800, effective January 1. Asia Watch does not monitor wages and working conditions, per se, except insofar as they constitute violations of political and civil rights (as in the case of bonded labor). It is worth noting, however, that in reaction to the announced increase, Indonesian economists agreed that it was still below the amount necessary to meet basic physical needs.

No effort has been made, to Asia Watch's knowledge, to investigate reports of debt bondage among workers in Irian Jaya. Recent press reports suggest that the practice continues unchecked.

Repeal of Regulation 342

One of the main issues of contention with regard to labor rights in Indonesia has been military interference in labor disputes. One of the key legal grounds for this interference since 1986 has been Ministry of Manpower Decree No.342 of 1986 (Kep.342/Men/86), "Guidelines for Mediating Industrial Labor Disputes, Especially Those Regarding Overtime, Strikes, Contract Labor, Dismissals and the Change in Status or Ownership of Companies." That regulation was officially repealed on January 16, 1994 with the issuing of a new ministerial decree, No.15A/1994.

Labor and human rights groups in Indonesia generally welcomed the decision but pointed out that as long as the internal security agency BAKORSTANAS and its regional branches continued to have a broad mandate under Decree No. 02/Stanans/1990 to keep an eye on and if necessary, intervene in strikes and demonstrations in the interests of political and social stability, the repeal had little significance. The Indonesian Legal Aid Foundation cited the intervention of the military in a strike of 8,300 workers on

January 17 -- the day after the repeal of Decree 342 -- at the PT Naga Sakti Parama Shoe factory in Tangerang, West Java, as evidence that little had changed.¹

Indeed, the Jakarta military commander, Major General Hendropriyono, warned that repeal of the regulation "does not mean the army won't be paying attention to labor issues." If "difficult" issues arose where a party requests assistance from the military, the military would still get involved. Asked if repeal of the regulation meant that the army was reducing its reliance on the "security approach" to political and social problems in Indonesia, the commander responded by comparing the repeal with the purported change in 1988 in the internal security agency. (Since that change was in name only and had virtually no impact on the operation of the agency, General Hendropriyono seemed to be implying that repeal would make little difference.)²

When the announcement of the repeal was made, a petition was pending in the Supreme Court to declare the regulation illegal. The petition had been submitted in August 1993 by four human rights lawyers, acting on behalf of four workers. The lawyers said they would not withdraw their petition, as they still were seeking a formal response from the Court. They also wanted to establish the principle of judicial review of ministerial decrees that have the force of law.

The petition underscores why the regulation was considered so injurious to labor rights. The plaintiffs argued that it was contrary to the provisions of two earlier laws, Law 22 of 1957 on Resolution of Labor Disputes, and Law 12 of 1964 on Dismissals of Workers in Private Companies. They raised in particular Article II 2(3) of Regulation 342. In the case of wildcat strikes, this article gave labor mediators the authority to:

- relay an announcement from the company that workers had to return to work within a specified time and require workers to fill in a form indicating their readiness to return to work.
- determine sanctions to be imposed on striking workers, including not paying them wages for the duration of the strike
- state that any workers who did not want to work were displaying an attitude indicating that they did not wish to continue in a work relationship and they had no need of work.

These provisions, the lawyers argued, changed the role of mediators from the Ministry of Manpower from neutral and objective arbiters to defenders of the company's interests.

The same Article II authorized a labor mediator to coordinate with the local government, police and

¹ Siaran Pers Yayasan LBH Indonesia tentang Pencabutan Kepmenaker No.342/1986 dan Pemberlakuan SK Menaker No.15 A/1994.

² "Aturan yang Libatkan ABRI Soal Buruh Dicabut," *Republika*, January 17, 1994. In 1988, the internal security agency called The Command for the Restoration of Security and Order (KOPKAMTIB) became The Coordinating Board for Assisting in the Consolidation of National Stability (BAKORSTANAS). In practice, the same military officers who doubled as KOPKAMTIB officers performed the same functions, including arrest of dissidents, in their BAKORSTANAS roles.

military to prevent the use of violence. The plaintiffs argued that this provision opened the way to interference by the military and police in labor actions that were carried out peacefully, without the use of force. If violence broke out, they argued, it should be dealt with according to the provisions of the Criminal Procedure Code, not by institutionalizing a role for the armed forces in the resolution of labor disputes.

To give a role to the military, they said, clearly violated Articles 3(1) and 4(1) of Law 22 of 1957. Those provisions stated that if negotiations break down and the parties do not intend to turn the dispute over to a separate party for arbitration, they must send a letter to the appropriate government official informing him or her of this fact. "Informing" means requesting that official to mediate the dispute, and mediation must then be offered. After receiving the request, the official must investigate the positions of the disputing parties and the cause of the dispute. Within seven days of the receipt of the letter, mediation must take place according to the regulations set by the Regional Committee for Dispute Resolution. Thus, mediation comes at the request of one of the disputing parties, not by fiat from the mediator.

Regulation 342 also was contrary to Law 12 of 1964, the plaintiffs said. That law states that if all efforts to settle a dispute fail, the employer must discuss its intention to dismiss workers with the labor union involved or the workers themselves if they are not members of a union. If that discussion does not result in an agreement, the employer can only dismiss workers after obtaining a permission from the Regional Committee for Dispute Resolution.

The lawyers argued that Regulation 342 had violated the rights of their four clients, including the right to negotiate a settlement to a labor dispute; the right to work, since they had been dismissed arbitrarily by their boss; the right to strike; and the right to be free from the fear that accompanied intimidation by the army and police.

The Marsinah Case: Military Interference in a Different Guise

If one key legal underpinning for military interference has now been formally removed, the practice will be harder to eradicate. The problems are well illustrated by the government's handling of the Marsinah case. Marsinah was a young woman labor organizer murdered in May 1993 in East Java. The murder galvanized the movement for labor rights as no other incident has in memory. Suspicion from the beginning centered on senior figures in the watch factory, PT Catur Putra Surya or CPS) where Marsinah worked, and members of the local military, but it was not until October 1993 that any arrests in the case were made. When the details of the killing came out in the press, it seemed a textbook example of unscrupulous factory owners suppressing a nascent labor movement with marginal support from the military. But questions soon began to emerge about whether the factory owners were being framed to protect the military.

The details of Marsinah's murder as presented by the prosecution were as follows. On May 5, at about 4:30 P.M., a group of CPS managers gathered in the office of the director of the CPS plant in Porong, Sidoarjo, East Java, where Marsinah worked, and plotted her death. Earlier that day, Marsinah had sent a letter to the factory management, protesting the firing of thirteen employees after they went on strike, demanding an increase in wages and threatening to expose the production at the factory of false name brand watches. That evening, a security guard at the plant named Suprpto came to the dormitory where Marsinah lived about 9:30 P.M. and invited her out to eat. She got on the back of his motorcycle and was then driven to an intersection where a company-owned car was waiting. In the car sat Ayip Karyonowongso, the head of production at the CPS factory; Bambang Wuryantoro, a general supervisor there; Captain Kusaeri, the

commander of the Porong subdistrict military command; and two others. Marsinah was told she was being taken to the house of the managing director of CPS, Yudi Susanto, on Jalan Puspita 8, Surabaya, to discuss a letter she had written protesting the firings. On the way she was bound and gagged. At the house she was tied to a chair, left for three days without food and water, beaten and tortured. On May 7, the group who abducted her, led by Ayip, decided to take her to Nganjuk, where she was taken out of the car and killed. An autopsy showed she had bled to death. A sharp instrument had been inserted in her vagina, reportedly on Yudi Susanto's orders, so that her death would look like a rape-murder, rather than a result of her labor activism. A woman named Mutiari, aged 26, head of personnel for CPS, was also arrested, charged with knowing of the plot to kill Marsinah and failing to report it to the authorities.

For months, nothing seemed to happen in the case. Then, very suddenly, eight people connected to the company and one local military commander were arrested, but the arrests of the civilians violated both domestic and international law. On October 1, a group of men believed to be soldiers took the eight into custody in an operation that amounted to abduction. The men were not wearing uniforms, had no warrants and did not inform the families of the accused where they were being taken. For eighteen days, the families had no word of their whereabouts; they were finally told that their relatives were being held at the regional police headquarters in Surabaya. Warrants were finally issued at the same time. All of the detainees were interrogated by the military without counsel present and at least one of the detainees claims to have confessed under extreme duress. In November, Mutiari became the first of the alleged conspirators to go on trial.³

Captain Kusaeri remains in detention at the military headquarters of the 5th Military Division (Brawijaya) in Surabaya. He claims he had no knowledge of the intent to murder Marsinah and was in the company car only because he wanted a lift to Sidoarjo, and when others talked of "getting rid of" Marsinah, he thought they meant they wanted to transfer her. He is expected to be charged in a military court not with complicity in the crime but with failing to report his knowledge of the case to his superiors. He admits having been paid sums of money each month by the director of the Porong plant.

Another military officer, Captain Sugeng of the intelligence unit of the Sidoarjo district military command (KODIM 0816 Sidoarjo), is also expected to be prosecuted in a military court

for his role in the firing of the thirteen workers; he was reportedly paid Rp.250,000 (\$125) for the job. His superior, the KODIM commander, is being transferred.

Indonesian human rights lawyers suspect that involvement of the army is in fact much deeper than published accounts of the actions of Captains Kusaeri and Sugeng would suggest, and the eighteen-day disappearance of the company employees was designed to give military officers a chance to build a bogus case out of coerced confessions. A lawyer for one of the defendants, who is expected to argue for the dismissal of his client's case, has received threatening telephone calls, warning him that he had better drop the case.

Tempo, a leading news magazine, has speculated that the reason for the extraordinary procedures used in the arrest of the eight civilians, which violated Indonesia's own Criminal Procedure Code as well as

³ "Janji Pembunuh Berdarah Dingin," *Tempo*, December 4, 1993, p.79.

international standards banning arbitrary arrest and detention, may have been the U.S. threat to withdraw GSP benefits. That pressure, it said, turned a criminal case into a highly-charged political one.

Harassment of SBSI members

Numerous incidents of harassment of SBSI members were reported in late 1993 and early 1994.

- Adi Wiyono, head of the SBSI branch in Jombang, East Java, tried to renew his KTP (identity card) in July 1993, and subsequently in October and December. Each time he was told that unless he resigned from SBSI, his card would not be renewed. A valid KTP card, which must be renewed every two years, is critical to everything from applying for a job to opening a bank account.

- In November 1993, military officers from the KOREM (regional military command) warned the head of SBSI in Pematang Siantar, North Sumatra, that he had better resign from the union.

- On December 27, in Bandar Lampung, South Sumatra, the branch-level office (DPC) of SBSI held a meeting to inaugurate the opening of a plant-level "commissariat" of SBSI at the C.V. Bumi Waras plant -- which, according to SBSI, now has 600 employees as members. On January 4, the commissariat reported the new SBSI presence to the management of the factory. That afternoon, 11 SBSI members were sacked:

1. Ujang Komara, chairman
2. Sontris Wibowo, vice-chairman
3. Deliman, secretary
4. Asdiana, vice-secretary
5. Sobirin, treasurer
6. Hanifah, vice-treasurer
7. Sabirin, coordinator
8. Julianto, coordinator
9. Ersondy, coordinator
10. Dodi, staff
11. Umar, staff

Moreover, four of them (Ujang Komara, Sontris Wibowo, Deliman and Sabirin) were summoned by police and ordered to withdraw from SBSI. They were interrogated and warned three times: on January 8, from 12:30 P.M. to 8.30 P.M.; on January 11 from 9 A.M. to 6 P.M.; and on January 12, from 9 A.M. on. (We received this news on January 13 and do not know how the interrogations ended.)

- On January 6, three soldiers appeared at SBSI headquarters on Jl. Tegalan in Jakarta, when Mughtar Pakpahan, secretary general of SBSI, was meeting with the Jakarta-based representative of the Asian-American Free Labor Institute and Gary Moore, vice-president of the American Federation of State, County, and Municipal Employees. The soldiers kept the meeting under surveillance but did not attempt to break it up.

Bonded Labor in Irian Jaya

In an earlier report, Asia Watch noted charges that local workers employed by logging companies had become bonded labor through debts allegedly incurred through the use of credit at company stores.⁴

An article published in *Tifa Irian*, a weekly newspaper published in Jayapura, confirms that this practice is widespread, and it is worth translating in full:

Month's end, no wages. This can be the experience of the people of Tipuka, Hiripau, Kaugapu, Muare and Pigapu who work as laborers at PT Prasarana Marga [a logging company]. It's because of the way they get entangled in debt to a few kiosks and shops in Mapurujaya.

From data collected by *Tifa* from several sources including a number of the workers in question, the problem originates with the supply of basic foodstuffs by the company in the camp on the site of the timber concession. The supply of foodstuffs is not there to be just divided up among the workers but to be sold to them. This is understandable enough. But a problem arises because the workers are allowed to buy the food on unlimited credit at the shops and kiosks.

This invitation does not go unheeded. Every afternoon before going home, workers crowd about the entrance to the camp to take food in accordance with their needs. The problem comes at the end of the month when they receive their wages. They never receive more than Rp.30,000 (\$15), and some only receive Rp.10,000 (\$5), even though their wage is Rp.5,000 a day. Even this daily rate is an irritant, because it turns out that the amount of the daily wage is determined by the company without collective bargaining and without consideration for the difficulty of the labor in the jungle around Mimika, full of mud and mosquitoes.

Workers do not know the price of basic foodstuffs sold in the camp. They only know they can take what they need. But the wage cuts based on the total of what they take is determined by the company. "Sometimes we're shocked because we're told that our debt exceeds our wages so the next month's wages will be cut as well," one worker told us. "And because it goes on like this, we've decided not to buy anything on credit any longer. We will only buy after receiving our wage, and in this way we will be able to calculate our buying power."

The process of paying wages in this manner becomes a vicious circle for the workers, who in general have a difficult time managing their finances, and it is their families who suffer.

In practical terms, it is the traders who become the victims of the workers who buy their goods on credit, and the workers who fall victims to the manipulations of the timber company. It's even more ironic because PT Prasarana Marga has a regulation that if any of its tools or equipment are damaged, the person using the equipment has his wages cut

⁴ *Indonesia: Charges and Rebuttals over Labor Rights Practices -- Analysis of Submissions to the U.S. Trade Representative*, Asia Watch, Vol.5, No. 2, January 23, 1993.

accordingly, even though the logging is being done for the company.

Sugeng, the secretary of the company, whom we contacted, was not prepared to say anything about the debt bondage and the accusation of "entrapment" which some suspect of being a deliberate effort to lower the wages of the workers.

A situation that is similar but not identical is found in Asmat area. The difference in Asmat is that kiosks are owned directly by the companies, so that the money from wages is absorbed back into the company through the kiosks.

The subdistrict head of Mimika Timur, Drs. W. Haurissa, who was asked for an explanation, told Tifa that the wages of the people must be paid. If wages are not paid, the workers should report that fact immediately, so that the problem can be addressed jointly by his office, the company and the workers. Thus far, no workers have come forward.

Many of our sources deplore this pattern of wage payment, which is clearly wrong. The indigenous people of Mimika are hunter-gatherers and not yet used to a cash economy.⁵

Conclusions

Increased industrial unrest, activism on the part of non-governmental organizations and international pressure have resulted in some useful but inadequate measures by the Indonesian government to address violations of internationally-recognized worker rights. Freedom of association remains restricted, and harassment of independent labor activists continues. Military interference in labor disputes remains possible under an internal security agency decree; the repeal of Ministry of Manpower Decree No.342 is welcome, but it will have to be judged in terms of whether it in fact results in a reduction in military oversight of labor negotiations, dismissals of workers, and interference in strikes. The statements of General Hendropriyono are not encouraging. Finally, reports of bonded labor in Irian Jaya have not been investigated. Indonesia has made some tentative steps in the right direction, but it has a long way to go.

⁵ "Buruh PT Prasarana Marga Terlilit Utang, Habis Bulan, Habis Gaji" (Workers at PT Prasarana Marga in Debt Bondage: Month's End, No Wages), *Tifa Irian*, Third Week, August 1993

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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 Representative is Mike Jendrzeczyk.

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