



INDONESIA

Turning Critics into Criminals

The Human Rights Consequences
of Criminal Defamation Law in Indonesia

HUMAN
RIGHTS
WATCH

TURNING CRITICS INTO CRIMINALS

Summary



My husband said, “You are fighting with a tycoon and cannot win.” It’s like the law of the jungle. There is no justice here. All of us tell the truth but they put us in jail.

FIFI TANANG, CONVICTED OF DEFAMING A REAL ESTATE DEVELOPER IN A LETTER TO THE EDITOR OF A NEWSPAPER.

Fifi Tanang, convicted of criminal defamation for writing letters to the editors of newspapers about alleged real estate fraud.

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Holding public demonstrations protesting corruption, writing letters to the editor complaining about fraud, registering formal complaints about acts of impropriety by politicians, and writing and publishing news reports about sensitive subjects are common practices in a democratic society. But in Indonesia, such criticism can lead to criminal charges and land you in prison, even if what you say is true.

Indonesia in recent years has eliminated many of the most pernicious laws that officials once used to silence critics, but criminal defamation and insult laws remain on the books. Those laws remain potent weapons and continue to be used by officials and powerful private actors seeking to silence non-violent criticism and opposition.

Defamation laws exist to protect individuals from having their reputations intentionally and falsely tarnished by others. Civil defamation laws allow an injured party to sue and seek remedies ranging from monetary compensation to an apology or retraction and exist in all or virtually all countries. Some countries, however, also impose criminal penalties, including imprisonment, for reputational harm.



Bersihar Lubis, convicted of criminal defamation for writing an opinion column in a newspaper that criticized the Attorney General's decision to ban a history textbook.

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Khoe Seng Seng in his Jakarta store. Seng Seng was convicted of criminal defamation for writing letters to the editors of newspapers regarding alleged fraud in connection with the sale of his store.

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International human rights law allows for restrictions on freedom of expression to protect the reputations of others, but such restrictions must be necessary and narrowly drawn. Together with an increasing number of governments and international authorities, Human Rights Watch believes that criminal penalties are always disproportionate punishments for reputational harm and should be abolished. As repeal of criminal defamation laws in an increasing number of countries shows, such laws are not necessary: civil defamation and criminal incitement laws are sufficient for the purpose of protecting people's reputations and maintaining public order and can be written and implemented in ways that provide appropriate protections for freedom of expression.

Criminal defamation laws are also impermissible because they are more open to abuse than civil defamation provisions, and when such abuse occurs, victims can experience very harsh consequences, including imprisonment. Although civil

defamation laws can also be abused, their impact is not as devastating as criminal defamation laws can be. As one Indonesian charged with criminal defamation told Human Rights Watch, "In a civil case, there is no threat of being in prison—the sanction is much lighter.... But a criminal case will rob you of everything, including your freedom."

This report details the continuing negative impact of criminal defamation laws in Indonesia and urges their repeal.

Indonesian law contains a number of different criminal defamation provisions. One provision of the Indonesian Criminal Code prohibits individuals from intentionally publicizing statements that harm another person's reputation, in many cases even if those statements are true, and punishes such conduct with imprisonment for up to 16 months. In circumstances in which the accused is allowed to assert truth as a defense, the penalty goes up to four years should they fail to prove what they wrote or said was true.



I sent a private email to friends about what really happened and suddenly I am made a criminal. I had to go to prison, I had to go to court, I had to go a second time, and it's still happening. I'm worried about the future. I want to continue my life.

RITA MULYASARI, PROSECUTED ON CHARGES OF CRIMINAL DEFAMATION FOR SENDING AN EMAIL CRITICIZING HER DOCTORS TO FRIENDS.

Rita Mulyasari, who was detained and tried on criminal defamation charges in Jakarta related to an email she sent to friends criticizing doctors at a hospital where she had medical problems.

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My eyes filled with tears as I kissed the cheeks of my little kids. What will happen to them? I told them, “don’t be embarrassed that I’m going to prison because of my writing. Take care of the children,” and kissed my wife.

RISANG BIMA WIJAYA, IMPRISONED FOR PUBLISHING UNFLATTERING NEWSPAPER ARTICLES ON A LOCAL MEDIA FIGURE ACCUSED OF A CRIME.

Risang Bima Wijaya, formerly the general manager of a Yogyakarta newspaper, who was convicted of criminal defamation for publishing articles discussing criminal charges that had been filed against the general manager of another Yogyakarta newspaper.

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Kwee "Winny" Meng Luan in the Jakarta store she used to own. Winny was convicted of criminal defamation for writing letters to the editor alleging real estate fraud in connection with the purchase of the store.

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Tukijo, convicted of criminal defamation for asking a local official in Kulon Progo to disclose the results of a land assessment.

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Another provision imposes somewhat longer sentences where the defamed party is a public official acting in official capacity: deliberately “insulting” a public official, even if one’s statements are true, can land one in prison for 18 months.

Finally, a new law enacted in 2008 punishes defamation sent over the internet with up to six years’ imprisonment and fines of up to Rp1 billion (approximately US\$106,000 as of January 1, 2010).

All of these laws contain extremely vague language. As a result, whether by design or as a result of poor drafting, public officials can use defamation laws to criminalize not only the intentional spreading of malicious lies but also citizen complaints or reports of corruption and other misconduct by public officials, airing of business disputes and consumer complaints, and critical reporting by the media. We present examples of each in this report.

For example, Bersihar Lubis, a veteran reporter in Medan, was convicted of criminal defamation in February 2008 after he wrote an opinion column criticizing the Indonesian attorney general’s decision to ban a high school history textbook. Khoe Seng Seng, Kwee “Winny” Meng Luan, and Fifi Tanang of Jakarta were found guilty of criminal defamation in 2009 for writing letters to the editors of local newspapers alleging that they had been victims of fraud—which they had also reported to the police. Tukijo, a farmer in Kulon Progo regency of Yogyakarta, was convicted of criminal defamation in January 2010 for asking the head of his sub-district for information about the results of a land assessment.

Recognizing that media freedom, “whistleblowing” by consumer and corruption watchdogs, and other forms of expression are valuable and should be protected, Indonesian law enforcement officials and legislators have articulated a number of policies and enacted laws that are intended to



Jupriadi "Upi" Asmaradhana, who was tried on criminal defamation charges in Makassar after he filed a complaint against a local police official and coordinated a protest accusing him of restricting press freedom.

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Emerson Yuntho, deputy coordinator at Indonesia Corruption Watch. The Office of the Attorney General (AGO) accused Emerson of criminal defamation for statements he made at a press conference suggesting the AGO had misstated the amount of money it had recovered from graft cases.

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safeguard the right to freedom of expression. However, in several cases Human Rights Watch investigated, these legal and policy measures proved inadequate to address the threat to free expression posed by defamation laws, even when they were brought to the attention of law enforcement officials.

Criminal defamation laws are also open to manipulation by individuals with political or financial power, who can influence the behavior of investigators. In one of the cases profiled in this report, the complainant had the ability to interfere directly with the subsequent investigation: the police chief of a major city brought defamation charges against a journalist, Jupriadi "Upi" Asmaradhana, and then ordered his subordinates to investigate the charges.

In the majority of the criminal defamation cases we examined, powerful national or local-level actors filed criminal defamation complaints with the police as a direct response to allegations of corruption, fraud, or misconduct made against

them. Occasionally, the investigations that followed involved improper or intimidating conduct by the authorities, raising suspicion of improper influence over the implementation of the defamation laws.

For example, in October 2009, after Indonesia Corruption Watch activists Emerson Yuntho and Illian Deta Arta Sari criticized law enforcement officials for investigating officials of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK) on trumped-up abuse of power charges, police summoned them for questioning on a criminal defamation complaint that had been filed against them nine months earlier, in January 2009. The suspicious timing of the summons suggests that authorities hoped to use the criminal defamation charges against the activists to deter criticism of their trumped-up charges against the KPK officials, charges later shown to have been based on fabricated evidence.



Illian Deta Arta Sari, deputy coordinator at Indonesia Corruption Watch. The Office of the Attorney General accused Illian of criminal defamation for statements she made during a press conference.

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Bambang Kisminarso, currently under investigation on criminal defamation charges related to an election complaint he filed with a government body in April 2009.

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In April 2009, Bambang Kisminarso filed a complaint with a local election supervisory commission alleging that supporters of the son of Indonesia's president, then a candidate for parliament, had been giving money to prospective voters. Three days later, police arrested him and his son-in-law M. Naziri on charges that they had defamed the president's son in violation of the defamation provisions of Indonesia's new internet law (Undang-Undang Informasi dan Transaksi Elektronik or ITE law). The ITE law contains the only defamation-related offense in Indonesian law for which pre-trial detention is permitted. This is despite the fact that there were no allegations that either Bambang or Naziri had made any of their allegations online.

Investigations and prosecutions under criminal defamation laws can have a disastrous and long-lasting impact on the lives of those accused. Journalists accused of defamation told us they found it difficult or impossible to find work after

charges were filed. Other individuals charged with defamation have lost their jobs and suffered serious professional setbacks as a result of being required to submit to interrogations, complete twice-weekly check-ins with authorities, attend weekly trial sessions, and endure bureaucratic procedures that can last for years without resolution. And the threat of imprisonment hangs over all individuals accused of defamation or convicted and sentenced to probation.

Prita Mulyasari spent three weeks in pre-trial detention in May 2009 on internet defamation charges stemming from an email she wrote to friends criticizing doctors who had misdiagnosed her. In November 2009, after prosecutors demanded a six-month sentence, Prita told Human Rights Watch she feared she would be unable to endure the punishment, saying of her earlier detention, "21 days was like 21 years."

The application of criminal defamation laws in Indonesia gives rise to a damaging, chilling effect on speech central to



M. Naziri, currently under investigation on criminal defamation charges related to an election complaint filed by his father-in-law in Naziri's presence.

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M. Dadang Iskandar, currently under investigation by authorities on a criminal defamation charge related to an anti-corruption demonstration he coordinated in Gunungkidul.

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the effective functioning of a democratic society. It can seriously undermine the work of local NGOs and community-level actors working to combat corruption.

Mohammad Dadang Iskandar, the director of Gunungkidul Corruption Watch in Yogyakarta province, says that since he was accused of criminal defamation by local legislators following an anti-corruption demonstration he coordinated, former fellow activists refuse to work with him. "They are scared, worried. They feel threatened because the police are questioning them," he told Human Rights Watch.

Similarly, Jamaludin bin Sanusi and Badruzaman, members of the West Java student group the Coalition of Students and People of Tasikmalaya (Koalisi Mahasiswa dan Rakyat Tasikmalaya, or KMRT), and their advisor, Zamzam Zamaludin, continue to feel the effects of the criminal defamation process they faced. All three men were accused of criminal defamation by a local education official after they held a demonstration

protesting the official's refusal to cooperate with an inquiry by the local legislature into allegations that he had engaged in misconduct. Even though he and his colleagues were eventually acquitted on criminal defamation charges, Zamaludin told Human Rights Watch that, "Even today, KMRT is seen as a public enemy by local government [officials] and civil society organizations ... I felt like a public enemy [during the criminal trial], and I still do now."

Another consequence of Indonesia's criminal defamation laws is their ability to encourage media self-censorship—inside and outside Jakarta—on issues of great importance when they involve powerful public figures. One journalist, who declined to be named in this report, told Human Rights Watch that more than one media outlet has deliberately refrained from reporting news about the president's son as a reaction to the heavy-handed official response that accompanied reports of the election complaint against his



Jamaludin, Zamzam Zamaludin, and Badruzaman, tried on criminal defamation charges related to an anti-corruption demonstration they coordinated in Tasikmalaya.

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supporters, saying “[w]hatever [he] does is newsworthy, but now we’re not able to report about it.” As Risang Bima Wijaya, a reporter formerly based in Yogyakarta who was convicted and imprisoned for criminal defamation, told Human Rights Watch, “It was like an infection with other journalists when they found out” about his conviction.

The increased prison terms provided for in the ITE law, Indonesia’s new internet law, pose an increasingly powerful threat to private citizens who express their thoughts or opinions online. As Prita, who spent over 12 months in the criminal justice process and faced six months in prison simply for sending an email to friends, lamented, “I don’t know how to complain again.” In these and other ways, criminal defamation laws undermine democracy, the rule of law, and freedom of expression in Indonesia.

Human Rights Watch believes that Indonesian officials should promptly initiate repeal of the defamation provisions of the Criminal Code and the new internet law, replacing them with civil defamation provisions that contain adequate safeguards to prevent unwarranted limitations on freedom of expression.



Usman Hamid, coordinator of NGO Kontras, in front of a banner depicting the late Munir Thalib, the founder of Kontras. Usman was accused of defamation by a senior official of the National Intelligence Agency (BIN) who was tried and acquitted on charges that he ordered Muir's murder.

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Human Rights Watch also urges the Indonesian government to:

- **Acknowledge that criminal law is an inappropriate and disproportionate response to the problem of reputational harm and commit to the repeal of all criminal defamation provisions in Indonesian law.**
- **Until the criminal defamation provisions of the Criminal Code and internet law have been repealed, ban government officials from filing criminal defamation complaints.**

Turning Critics into Criminals

The Human Rights Consequences of Criminal Defamation Law in Indonesia

Holding public demonstrations, writing letters to the editor, asking questions about government studies, and publishing media reports on sensitive subjects are common practices in a democratic society. In Indonesia, however, publicly voicing criticism of officials and powerful individuals can lead to criminal charges and, in some cases, imprisonment.

While media freedom and freedom of expression have expanded significantly in the 12 years since Indonesia began its transition from authoritarianism to democracy, a number of laws criminalizing speech remain on the books. These include criminal libel, slander, and “insult” laws. Punishments under the laws include stiff fines and prison sentences of up to six years.

“*Turning Critics into Criminals*” documents recent cases in which such laws have been used by public officials and powerful individuals in Indonesia to the detriment of anti-corruption activists, human rights defenders, journalists, consumers, and others. Based on interviews with more than 30 defendants and witnesses, it reveals the disastrous and long-lasting impact criminal defamation investigations and prosecutions can have on the lives of those accused. It also argues that such laws can have a damaging, chilling effect on civil society, the media, and private citizens’ willingness to express critical thoughts or opinions, especially online.

The report urges Indonesia to repeal its criminal defamation laws and craft appropriate civil defamation provisions to better safeguard freedom of expression while still adequately protecting reputational interests.

Prita Mulyasari upon her release from the Women’s Correctional Institution (Lembaga Permasyaratan) in Tangerang, a city close to Jakarta, on June 3, 2009. Prita was held in pre-trial detention at the prison for 21 days for sending an email to friends criticizing doctors at a hospital where she had been treated. Nearly seven months later, in December 2009, a court acquitted Prita on the criminal defamation charges, but prosecutors have appealed the verdict.

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