

# detainees in indonesia a lawyer's view

It is hard to know where to start an appraisal of the legal situation of the Indonesian detainees. The material in this publication suggests that the rule of law no longer exists in Indonesia in that persons may be arrested without any reason being given, without any possibility of challenging their arrest and that they may subsequently be tried for any offence and under conditions which are not subject to any regulations. They are subject to treatment which is contrary to almost every article of the Universal Declaration of Human Rights which relates to the rights of persons arrested and detained.

## WHIM OF AUTHORITY

It would seem that the selection of persons for arrest and detention is in many cases arbitrarily determined. Equally, the place of detention, the terms under which they live in detention, and, most important, the length of detention, appear to depend upon the whim of authority, and possibly even the whim of a particular official. It is this quality of uncertainty and dependence on personal decision which is the most alarming aspect of the situation from the lawyer's point of view. For example, people may quite commonly find themselves in prison for no better reason than that they happened to be present at the home or place of arrest of a suspect when the arrest is made. This is a matter for exceptionally grave concern when it happens to children, who may find themselves indefinitely imprisoned because they entered a place of detention simply to avoid being

separated from a parent from whom they have now in any case been separated whether by death or otherwise. There is evidence to show that people have been arrested and detained for no better reason than that the local military commander dislikes them, or covets their possessions. One imagines that in the prevailing situation almost any excuse will suffice to justify an arrest to his superiors, in the unlikely event that he is called upon to do so.

This state of affairs is possible because there apparently exists in Indonesia today no regulations regarding the arrest of persons which effectively circumscribe the powers of the military. Even if these regulations did exist no individual detainee would have the power to challenge his arrest. Since there is no right to challenge it in the courts nor any opportunity to do so, since detainees are it appears never allowed to see a lawyer. Even the comparatively very small number of 'A' category detainees who have been brought to trial have not generally been allowed to have the lawyer of their choice to represent them, and have not been allowed to discuss their case with their lawyer before the trial began.

## NO ACCESS TO LEGAL ADVICE

The Government has decided that the vast majority of detainees cannot ever be brought to trial, because there is no evidence sufficient to convict them. It is therefore a horrifying fact that the avowed policy of the government of

Indonesia is that tens of thousands of people will be deprived of normal life for the foreseeable future without it ever being established that they have done anything in particular to warrant it. Instead of taking steps to reduce the number of detainees, the policy appears to be to establish large encampments of detainees in exile in remote parts of Indonesia on a permanent basis.

Further, in most cases the detainees are never told why they are being arrested, and sometimes never have any indication of what caused their detention. Although the government categorises detainees, it does not appear that they themselves are ever informed which category they belong to.

Since there is no right to challenge detention in the courts, and most prisoners are never brought to trial, the fact that there is no access to legal advice is almost irrelevant. More important to the ordinary detainees is that from the time they are arrested to the time of their release, if that ever comes, they may have no news of their families for they may not write or receive letters and may not be allowed any family visits even if the place of detention is near enough to their homes for their families to visit.

Just as there are no laws which effectively regulate the circumstances under which people may be arrested and detained, there are no regulations which safeguard the conditions under which they are kept in detention. They may be dealt with at the discretion of the military commander, and may even be used as slave labour to his profit.

## MALNUTRITION

Accounts of the treatment of detainees strongly suggest that the authorities do not accept any responsibility for providing more than the basic minimum diet for prisoners. If this is not supplemented by parcels from the prisoner's family (who will usually be suffering very severely financially from his arrest in any event) he may well suffer from malnutrition. Even more horrifying is the fact that if a prisoner falls seriously ill he will probably receive no medical treatment, or very inadequate treatment and may die.

There is not space available for more than this brief summary of the legal situation of detainees but it may be sufficient to indicate what a totally unacceptable situation at present exists. It would appear that a very large number of people in Indonesia today are regarded by the authorities as having forfeited the right to be treated as human beings and citizens, and as having no rights before the law.

## indonesian attitudes

*"Then there are the 'B' prisoners. We know for certain they (the 'B' prisoners) are traitors, that they are ideologically conscious, but there is not enough evidence to bring them before a court".*

The Attorney-General, Sugih Arto, September, 1971.