

# MAKALAH

Peluncuran Buku Ajar “Hukum Hak Asasi Manusia”  
bagi Mahasiswa Fakultas Hukum

*Yogyakarta, 19 April 2008*

## Enforcing Human Rights in Indonesia: seen from abroad

*Oleh : Professor Mads Andenas  
MA DPhil (Oxford) PhD (Cambridge)  
Director, Norwegian Centre for Human Rights*



# Enforcing Human Rights in Indonesia: seen from abroad

**Professor Mads Andenas**

MA DPhil (Oxford) PhD (Cambridge)

Director, Norwegian Centre for Human Rights

# What are human rights based on

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)

See also International Humanitarian Law: Geneva and Hague Conventions, and International Criminal Law: Rome Statute of the International Criminal Court

# What are human rights

- Duties on states towards individuals: state as bearer of duties and individuals as bearers of rights
- Some rights can be derogated from (expression, detention). Proportionality, balancing against other rights
- Others never (torture)
- No distinction between poor and rich countries. Countries must fulfil minimum standards.
- Countries must to the maximum extent of their available resources fulfil economic and social rights, for instance the right to health and education.

# How are human rights enforced

- International level
  - UN Human Rights Committee (RI report due 2007), UN Human Rights Council (UPR April 2008), other UN monitoring (Special Rapporteurs, 2007 visits)
  - Other international organisations
  - Other states
- National level
  - Legislation
  - Public administration
  - Courts
  - National human rights bodies
- NGOs and role of civil society at both levels

# Human rights in Indonesia

- The Constitution, amendments in 2002
- Human Rights Act 1999
- Human Rights Court Act 2000
- Human Rights Commission (Komnas HAM)
- Ratification of ICCPR and ICESCR 2005
- ASEAN Charter

# Human rights enforcement in Indonesia?

- Democracy and human rights
- Civil society
- Courts
- Attitude and approach of legislature and civil administration
- Attitude and approach of army and police
- Problems: limited effect. Compliance and implementation.

# Looking at six areas

1. The Human Rights Court, the cases of Tanjung Priok and East Timor
2. The Indonesian Truth and reconciliation Commission
3. The Munir Investigation
4. Palm Oil Extraction
5. Forced Evictions in Jakarta
6. The education reforms

# 1. The Human Rights Court

1. Tanjung Priok

2. East Timor

# The Indonesian Truth and Reconciliation Commission

Law 27/2004 mandated the Indonesian Truth and Reconciliation Commission with clarifying abuses before 2000 and awarding amnesties and reparations for victims.

Annulled by Constitutional Court in December 2006

# The Munir Investigation

The death of Munir Said Thalib and its investigation.

Acquittals and the conviction of one Garuda boss

# Palm Oil Extraction

- Rights of indigenous population

# Forced Evictions in Jakarta

- Marginalised city dwellers

# The education reforms

- The new 9 years education policy

# The reality according to these experiences

An absurd world?

Compare these experiences with international human rights treaties, UPR April 2008, RI legislation, Government statements.

An utter disconnection (tidak nyambung)?!?

# Status and prospects

- Measures are taken
- Efficiently at the formal level in legislation and institutional compliance
- Less efficient at the actual level
- Apologetic and endorsing impunity
- After 40 years of setting HR aside, their implementation require massive effort.

# Hukum Hak Asasi Manusia

- The most fundamental condition: knowledge of the law
  - All actors need to know their rights and responsibilities
  - In particular civil servants, law-makers, judges, lawyers and community leaders
  - The role of law, legal concepts, classification, taxonomy and legal procedures
- Joining up the learning, scholarship and practical experiences
- Assist actors in giving effect to international human rights obligation