

LEAGUE TO DEFEND 1965 VICTIMS

8 August 2011

1965 VICTIMS REQUEST JUDICIAL REVIEW

THE PRESIDENT OF INDONESIA SHOULD REPEAL KEPPRES 28/1975

On 4 April 2011, a Judicial Review was conveyed to the President of Indonesia to repeal Presidential Decision (Keppres) 28/1975 by a group of 24 NGOs, lawyers and individuals headed by

Haris Azhar, Constitutional Law Advocate and Coordinator Kontras, Commission for the Disappeared and Victims of Violence.

Bedjo Untung, chairman of the Investigation Institute

Sumaun Utomo of 1965/66 (YPKP) Victims.

The basis for this Judicial Review is as follows:

From the historical and political point of view, the events of 1965/1966 still raise many questions; this is because the Indonesian government has done nothing to examine the truth and justice of the 1965/1966 Humanitarian Tragedy.

Millions of people were 'charged' with being affiliated to or sympathetic with the Indonesian Communist Party (PKI) and extra-judicially executed without due process.

As a result of the 1965 incident, persons who were alleged to be affiliated to or sympathisers of the PKI suffered a number of human rights violations, including their civil and political rights. These included murder, arrest, torture, detention, banishment, sexual abuse, seizure of property and land, dismissal from jobs, as well as social and political stigmatisation towards them directly as well as towards their relatives and offspring.

To this day there has been no legal process or legal decision regarding the vast majority of these people who continue to suffer the violation of their rights.

One cause of the discrimination is the continuance in force of Presidential Decision No 28/1975 on the Treatment of those who were Involved in the G.30.S [this stands for *Gerakan 30 September, or 30 September Movement*] C Group. This law has prevented the receipt of pensions for persons alleged to have been involved in the PKI even though there have been no legal proceedings on investigations proving that these persons were involved in the G.30.S.

At the time of the 1965 Tragedy, a large number of civil service government employees who were 'alleged' to have been involved in the G.30.S. were dismissed without due process and have suffered trauma and injustice.

To legitimise their dismissal, the government issued Keppres 28/1975, which was subsequently backed by the Commander of Kopkamtib [Military Command for Security and Order created by Suharto after seizing power in 1965].

[A number of regional and local decisions are listed which led to the discrimination of 1965 victims.]

Since the issuance of Keppres 28/1975, thousands of government employees have lost their jobs and have been denied their pensions to which they were entitled as government employees.

.....

In 2000, there was a new development with the issuance of Keppres 38/2000 which disbanded Kopkamtib and which was intended to eliminate subjective elements within governing hierarchy so as to ensure that all government employees are treated equally as citizens before the law, in accordance with Article 28 of the Indonesian Constitution.

However, Keppres 28/1975 and the Kopkamtib Decision nevertheless remain in force resulting in the violation of the pension rights of former tapols (political prisoners).

The Judicial Review then presents a number of legal justifications in Indonesian law including Article 23 Of Law 8/1974 regarding the rights of government employees and goes on to state that Keppres 28/1975 is in violation of Law 39/1999 on Basic Human Rights which states the following:

'All persons without discrimination have the right to justice, to submit requests, charges and complaints under both civil and criminal law and the right to be tried in open, impartial courts in accordance with the rule of law which guarantees objective investigation by honest and just judges, to receive a just and true verdict.'

Keppres 28/1975 is also in violation of Article 26 of the UN Covenant on Civil and Political Rights which was ratified by Indonesia by virtue of Law 12/2005. Article reads as follows:

'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Keppres 28/1975 is also in breach of Constitutional Court Decision 011-017/2003 which states:

..... regardless of the provisions of MPRS Decision XXV/MPRS/1966 ,,,, persons who are former members of the Indonesian Communist Party or mass organisations related thereto must be treated in the same way as other citizens, without discrimination;

.....There are many ways in which this can be done, including reconciliation by means of a law that is in conformity with the 1945 Indonesian Constitution and universal human rights instruments or by means of reconciliation through political policies within the framework of general rehabilitation and amnesty.

That with the decision to disband Kopkamtib, Keppres 28/1975 and Kopkamtib decision 03/KOPKAM/VII/75 regarding Keppres 28/1975 are no longer valid because the afore-mentioned institution has been disbanded.

Several decisions have been adopted by state institutions calling on the President to rehabilitate those who are victims of PKI charges/allegations/stigmas such as:

- The Constitutional Court on 12 June 2003 wrote to the President with regard to the request for rehabilitation of persons who were accused or stigmatised as PKI, calling on the President to take measures to settle demands for rehabilitation, by restoring the good name and dignity of these citizens as stipulated in Article 14, para (1) of the fourth amendment of the Indonesian Constitution.
- The Indonesian Legislative Assembly – DPR-Republik Indonesia - wrote to the President in 2003 regarding the follow-up of a letter from the Constitutional Court which forwarded the request and aspirations of victims of the 1965 event;
- The National Human Rights Commission of the Republic of Indonesia wrote to the President in 2003 – KS.02/3947/DPR-RI/2003 - regarding the follow-up of the letter from the Constitutional Court about the aspirations of victims of the 1965 incident and suggested that the President use his prerogative to reply to the said request.

REQUEST:

Taking account of the afore-mentioned arguments for a request for Judicial Review of Keppres 28/1975, we herewith make the following request to the Constitutional Court:

- 1) To declare that Presidential Decision 28/1975 on the Treatment of those who were deemed to be Involved in the G.30.S C Group issued on 25 June 1975 is invalid, together with all subordinate regulations related thereto.
- 2) The President should speedily issue a Presidential Regulation repealing Presidential Decision 28/1975 on the Treatment of Persons alleged to have been involved in the G.30.S which was issued on 25 June 1975.
- 3) The President should immediately rehabilitate the victims by restoring their good name and dignity as citizens, which should be followed up by a Presidential Regulation regarding measures and mechanisms for the rehabilitation of the victims of Presidential Decision 28/1975 on the Treatment of those who were alleged of Involvement in the G.30.S, Group C.

Herewith our request for Judicial Review 28/1975 submitted by the Advocacy Team on Constitutional Rights of Citizens to the Constitutional Court:

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[This is an abridged version translated into English by TAPOL]