



HUMAN RIGHTS  
AND  
DEMOCRACY  
IN INDONESIA  
AND MALAYSIA

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# **Human Rights and Democracy in Indonesia and Malaysia**



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# Human Rights and Democracy in Indonesia and Malaysia

*Editors:*

Azmi Sharom

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Strategic Information and Research Development Centre  
Petaling Jaya, Malaysia

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# Contents

<i>Introduction</i>	vii
<b>PART A: FREEDOM OF EXPRESSION AND DEMOCRACY</b>	
<b>CHAPTER 1</b> Freedom of Expression in Malaysia <i>Mohd Azizuddin Mohd Sani</i>	3
<b>CHAPTER 2</b> Freedom of Expression, Law, and Politics in Indonesia <i>Herlambang P Wiratraman</i>	53
<b>PART B: THE JUDICIARY, HUMAN RIGHTS AND DEMOCRACY</b>	
<b>CHAPTER 3</b> The Role of The Constitutional Court of Indonesia and Factors That Support and Undermine Its Independence <i>Luthfi Widagdo Eddyono</i>	83
<b>CHAPTER 4</b> Judicial Independence in Malaysia: Myth or Reality? <i>Dr Saroja Dhanapal and Dr Johan Shamsuddin</i>	111
<b>PART C: THE PROTECTION OF MINORITY RIGHTS IN DEMOCRACIES</b>	
<b>CHAPTER 5</b> Obligation to Protect Freedom of Religion in Indonesia: A Critical Study <i>Eko Riyadi</i>	145

<b>CHAPTER 6</b>	Constitutionalising Religious Freedom in Malaysia: Judicial Approaches <i>Dian AH Shah</i>	165
<b>CHAPTER 7</b>	The Marginalization of Indigenous People by Fellow Nations and An Evaluation of The Laws Protecting The Rights of Indigenous Communities in Indonesia <i>Joeni Arianto Kurniawan</i>	191
<b>CHAPTER 8</b>	Realising Orang Asli Customary Land Rights and Its Challenges: Some Lessons for Democratic Governance in Malaysia <i>Yogeswaran Subramaniam</i>	223

#### **PART D: GENDER, HUMAN RIGHTS AND DEMOCRACY**

<b>CHAPTER 9</b>	Battered Democracy and The Elusiveness of Womens Rights in Malaysia <i>tan beng hui and masjaliza hamzah</i>	257
<b>CHAPTER 10</b>	Democratising The Womb: Girls' Human Rights Amid Fear of Zina <i>Dewi Candraningrum and Anita Dhewy</i>	287

#### **PART E: EXAMINING THE ELECTORAL PROCESS**

<b>CHAPTER 11</b>	Designing Intra-Party Democracy in Indonesia <i>Feri Amsari</i>	313
<b>CHAPTER 12</b>	Competitive Elections and Regime Stability in Malaysia <i>Faisal S Hazis</i>	331

# Introduction

It is a truism that democracy is more than just elections. For example, the need for a free press and independent institutions such as election commissions and the judiciary are seen as pre-requisites to a healthy democracy. It is also a truism that democracy and human rights are integrally related. Article 21 of the Universal Declaration of Human Rights explicitly states:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Other rights like the right to expression, assembly and opinion are also deeply relevant to a working democracy. This book will explore these issues as well as other, perhaps less obvious ones in order to study through the lens of human rights, the state of democracy in Indonesia and Malaysia.

These two nations were chosen due to the various similarities that they share in terms of human rights and democratic practices, primary amongst these is the fact that both were once ruled by authoritarian regimes. Indonesia made the move away from what was once described by the Suharto regime as “guided democracy” in 1998 with their Reformasi, or Reformation movement which ousted said regime. Twenty years later Malaysia followed suit, albeit in a less dramatic fashion by electing out the ruling National Front coalition which had been in power for sixty-one years.

It is interesting to see if there are any lessons to be learnt from Indonesia which has had two decades of sometimes turbulent adjustment from authoritarianism to democracy. In contrast it would be of equal interest to examine the problems faced by Malaysia and to see if there

are major differences between the two countries, separated as they are by years of differing experience with regard to democracy and human rights. Conversely, it is also important to note if there are no differences.

In order to do this, this book covers six themes. Each theme has one chapter from Malaysia and one from Indonesia. Some of these themes show a more direct correlation between human rights and democracy. For example, Mohd Azizuddin Mohd Sani and Herlembang Wiratraman write about the freedom of expression in Malaysia and Indonesia respectively. Aziz examines the freedom of expression from a historical and philosophical context. His work exposes the lack of any sort of philosophy among the ruling elite of Malaysia which appreciates the concept of freedom and human rights. This has led to frequently used “justifications” of national security and stability to curb and suppress expression. In Indonesia, Herlembang points out that although times have changed and there is much improvements in terms of the freedom of speech, there is a need to be wary of complacency. This is because although the more blatant repressive laws and suppression of the past may be gone, there are now less direct methods of controlling speech which is arguably more insidious in its subtlety.

The need for a judiciary dedicated to and willing to protect democracy is studied by Luthfi Eddyono from Indonesia and Saroja Dhanapal and Johan Shamsuddin from Malaysia. The point of comparison to be made between the two judiciaries is based on the structure of the court system. Does the fact that Indonesia has a specific Constitutional Court make a difference compared to Malaysia’s unitary civil court system? Are the differences the result of structural and institutional readjustments or perhaps it is the more intangible factor of judicial attitude?

Another aspect of democracy is that although the majority rules, the rights of the minority must still be protected. The tyranny of the majority has to be avoided and in both Malaysia and Indonesia, religious minorities face continued discrimination and oppression. This is examined by Eko Riyadi and Dian Shah as they explore the growth of Islamisation in Indonesia and Malaysia respectively and how it has affected religious freedom. The human rights of the minority are also studied from the context of indigenous peoples. How does the right to self-determination work in a democratic nation and is it sufficiently recognised and protected by the legal system? These are questions explored by Joeni Kuniawan from Indonesia and Yogeswaran Subramaniam from Malaysia.

## Introduction

Gender issues in a democracy goes beyond universal suffrage. In Malaysia, tan beng hui and masjaliza hamzah use the experience of civil society in their work opposing violence against women to study how the lack of democratic space has resulted in the continued phenomenon of gender violence. In Indonesia, Dewi Candraningrum and Anita Dhewy looks at how gender equality is stunted by the continued practice of child marriages. They argue that poverty, growing religious conservatism and poor education has meant growing numbers of girls being married off by their families leading to the real possibilities that the future of these girls may be compromised.

Feri Ansari places Indonesian democracy under the microscope by going beyond general elections. He argues that even before that process, the method with which political parties select their candidates are democratically flawed and undermines the possibility of a truly representative system. Faizal Hazis traces how the authoritarian regime of the National Front of Malaysia was challenged. His chapter provides a historical context to the recent developments in Malaysia and a reminder of the sort of repressive measures an authoritarian government will take in order to maintain control and how for the “New Malaysia” a return to that state of affairs must not be allowed to occur.

We hope that this book will convey the complexities and subtleties of human rights and democracy in these two Southeast Asian countries. At the time of writing there is a deficit of human rights and democracy in this region. For all its flaws both Malaysia and Indonesia are currently, arguably, the most democratic countries in the region. It is vital therefore to understand the issues related to human rights and democracy to ensure that there is continued progress and no regression.

This book is the result of the leadership of Dian Shah and Sharon Kaur with funding from the Strengthening Human Rights and Peace Research and Education in Southeast Asia (SHAPE-SEA) programme. The SHAPE-SEA Programme is a collaboration between the ASEAN University Network-Human Rights Education (AUN-HRE) and the Southeast Asian Human Rights Studies Network (SEAHNRN), with funds coming from the Swedish International Development Cooperation Agency (SIDA). It aims to develop the capacity of universities in ASEAN and the Southeast Asian region to contribute to the improvement of human rights and peace situation in Southeast Asia through applied research and education. All those involved in this project would like to record our thanks to the programme.

**Azmi Sharom**

*January 2019*





## **Part A**

# Freedom of Expression and Democracy



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This book is the result of a project encompassing fifteen university and civil society researchers from Malaysia and Indonesia. The objective of the project was to study democracy and human rights in both of these countries. The goal was not to merely describe the relationship between the two concepts but instead to examine in depth how these concepts work symbiotically and how they may be enhanced or threatened. And this was to be done not merely in the more obvious areas of intersection between human rights and democracy but also in fields that are perhaps not studied enough or studied more commonly from different perspectives.

There are five parts and twelve chapters in this book which explore human rights and democracy in Indonesia and Malaysia. This examination is done within the themes of freedom of expression, the judiciary, minority rights, gender and the electoral process. The breadth of scope of the chapters reflects the central intellectual foundation of the project that human rights and democracy are not only related, but they are an integral part of society and vital in ensuring an inclusive, just and progressive future for these two nations. It is hoped that the lessons learnt here will be of use and relevance not just for Malaysia and Indonesia but also the region.

This project would not have been possible without the research grants provided by the Strengthening Human Rights and Peace Research and Education in ASEAN/Southeast Asia (SHAPE-SEA) programme. SHAPE-SEA is a collaboration between the ASEAN Universities Network - Human Rights Education (AUN-HRE) and the Southeast Asian Human Rights Studies Network (SEAHRN) with funding from the Swedish International Development Agency (SIDA).

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