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Indonesia: ARTICLE 19 Gives Expert Evidence to Court

On 23 July 2008, Toby Mendel, Senior Director of Law at ARTICLE 19, appeared before the Indonesian Constitutional Court as an expert witness in a case challenging, among other things, the possibility of imprisonment for defamation. Mendel, who appeared before the Court via video-link, argued that imprisonment for defamation is inconsistent with international guarantees of freedom of expression and that it is increasingly rare for democratic States around the world to impose criminal penalties, particularly imprisonment, in defamation cases.

The constitutional challenge arose from two cases, one involving Risang Bima Wijaya, a journalist who was imprisoned for 6 months upon conviction for criminal defamation for making allegations of sexual misconduct against a local businessman and newspaper owner. The second case involved Bersihar Lubis, who was criminally convicted for defaming the Attorney General by calling his actions in banning a book 'dumb'. The lead lawyer in the case is Anggara, representing LBH Pers, an Indonesian organisation that provides legal support to the media.

At issue in the case are provisions of the Indonesian Criminal Code that allow for imprisonment upon conviction for defamation, and for public bodies as such to bring defamation cases. These provisions are, it is submitted, in contravention of Indonesian constitutional guarantees of freedom of expression. In giving evidence before the Indonesian Constitutional Court, Mendel argued that imprisonment for defamation is unnecessary, and hence contrary to international guarantees of freedom of expression since civil penalties provide sufficient protection for reputation. He also argued that public bodies should not be allowed to sue for defamation since they do not have a reputation of their own as such, and represents an abuse of public funds.

Hearings in the case continue. A decision is expected later this year or early next year. If successful, the case would provide an important precedent in the Southeast Asian region, building on the example of Cambodia, where the possibility of imprisonment for defamation was abolished in 2006.

NOTES TO EDITORS:

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- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.

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