

## Indonesia: Defying the State

### I. OVERVIEW

Local institutions in Indonesia, empowered by decentralisation, are defying the country's highest courts with impunity, undermining judicial authority and allowing local conflicts to fester. District councils, mayors and regional election commissions have learned that there is little cost to ignoring court rulings on electoral or religious disputes, pandering instead to local constituencies and pressure groups. Decisive leadership from the president could make a difference; instead, slow and ineffective responses from Jakarta brew more insubordination. If the regions become overconfident in their new powers and the central state continues to respond weakly, this lack of commitment to rule of law could encourage more conflict as the national political temperature rises ahead of the 2014 presidential election.

The problem of local officials defying the courts is a direct result of two steps taken by Indonesia in its post-1998 drive toward democratisation. One was its "big bang" decentralisation in 1999 that devolved political and fiscal power down to sub-provincial units: districts (*kabupaten*) and cities/municipalities (*kota*). The second was the introduction in 2005 of direct elections for local executives, including district heads (*bupati*) and mayors (*walikota*). Both were essential for the consolidation of Indonesian democracy, but the combination has made for a very powerful stratum of local authorities which feel neither beholden to the central government nor always compelled to comply with rulings from the nation's top two courts.

The Supreme Court (*Mahkamah Agung*) is the court of final appeal for most civil and criminal cases; it also hears appeals on cases decided by the state administrative courts (*Pengadilan Tata Usaha Negara*), which rule on complaints against decisions taken by state officials or institutions. The Constitutional Court (*Mahkamah Konstitusi*) since 2008 has become the sole arbiter of election results that are disputed at the local level. The Supreme Court and the Constitutional Court are equals; decisions of both are final and binding. But a clear policy is missing on how those rulings should be enforced or an obvious penalty for failing to comply.

Three cases illustrate the point. In West Kotawaringin district, Central Kalimantan province, the Constitutional Court in July 2010 disqualified the winner of the district's local election on vote-buying allegations and ruled that

the defeated incumbent should get a second term. It may have been a questionable decision, but for the sake of re-inforcing judicial authority, it should have been enforced. The local district council, however, saw the ruling as an intrusion by Jakarta in a local race and refused to accept it. More than two years later, the *bupati* who was awarded the victory by the court still cannot govern because of local resistance. In Bogor city and Bekasi district in West Java province, local officials have refused to allow the construction of churches despite court rulings that there were no grounds for sealing off the disputed building sites.

In all three cases, as tensions left unresolved by the rulings threatened to – and occasionally did – erupt into violence, the best the central government could do was to send an official to try and negotiate a compromise between contending parties and even then, Jakarta only reacted when the dispute made national headlines.

But if courts are to have any authority at all, the president, as chief executive, needs to do more than urge compromise. He has other tools at his disposal: issuing presidential decrees; withholding funds from local authorities; direct personal lobbying and making strategic use of the media. Allowing local officials to defy the courts is not just hurting the prospects of local conflict resolution. It sends the message that the power of the majority can take precedence over institutions of justice in a way that emboldens mobs, threatens minorities that feel they cannot depend on the state for protection, and ultimately undermines Indonesia's democracy.

### II. RELATIONS BETWEEN CENTRAL AND LOCAL GOVERNMENTS

As Indonesia moved from authoritarianism to democracy after the fall of President Soeharto in 1998, political reformers were eager to prevent any possibility of the return of a strongman. Presidential terms were limited to two, powers of the legislative relative to the executive branch were considerably strengthened, and a massive decentralisation program was launched.<sup>1</sup> When amended laws on

<sup>1</sup> For previous reports on conflict and decentralisation in Indonesia, see Crisis Group Asia Briefings N°37, *Decentralisation and Conflict in Indonesia: The Mamasa Case*, 3 May 2005; N°64,

regional governance authorised direct local elections beginning in 2005, architects of the law ensured that it would be nearly impossible for a president or home affairs minister in Jakarta to dismiss an elected official unless he or she had committed a serious crime. As a result, when local officials, often backed by powerful constituents, refuse to accept Supreme or Constitutional Court rulings, Jakarta's response has been to dither and hope the problem will go away or, less frequently, try to negotiate a way out that sometimes entails disregard for the law.

The change in the power balance between the central government and the regions began in May 1999, through two laws enacted during the euphoria that followed Soeharto's resignation. Overnight, Indonesia went from being one of the most centralised countries of the region to one of the most decentralised.<sup>2</sup> Six areas were left as the sole preserve of the central government: foreign policy, defence, security, the legal system, monetary and fiscal policy and religious affairs. Everything else was devolved down to the regions; mostly to the districts and municipalities, with provinces bypassed for fears that giving power to large units would stoke separatist tendencies. Under President Susilo Bambang Yudhoyono, religious affairs, through the central government's combination of action and inaction, have effectively been devolved as well.<sup>3</sup>

By transferring authority down to the district level, the aim was to bring government closer to the people and improve service delivery, but there were few provisions for how the process would be overseen by Jakarta. There was some concern about the creation of local warlords; one reason the police remained a centralised institution was to prevent the emergence of private armies or at least reduce the likelihood that police would become embroiled in local politics.<sup>4</sup> There was also concern about the likely decentralisation of corruption; when the country's Corruption Eradication Commission (Komite Pemberantasan Korupsi, KPK) was created in 2002, one of its prime targets became

local officials who had misappropriated state funds.<sup>5</sup> But most of the initial worries focused on whether such a dramatic transfer of power from the centre could take place so quickly without disruption of services and whether local officials would have the skills to ensure good governance.<sup>6</sup>

The process went remarkably smoothly, and early assessments of the impact of the "big bang" were generally positive. By the end of the first full year of implementation, most local administrations with their enhanced powers were functioning; public participation in local governance was on the rise and the program overall was popular. As time went on, the lack of capacity of many local officials in planning, budgeting and administration appeared and corruption became a major problem.<sup>7</sup> With a few exceptions, if social services were not disrupted, neither were they significantly improved by the transfer of power; and in some cases, they deteriorated.<sup>8</sup> Many local government offices became bloated with the transfer of employees from the centre whose skills did not match those needed but whom they had no power to reject.<sup>9</sup> Lines of authority were often confused among central, provincial and district govern-

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Indonesia: Decentralisation and Local Power Struggles in Maluku, 22 May 2007; and Asia Report N°60, *Indonesia: Managing Decentralisation and Conflict in South Sulawesi*, 18 July 2003.

<sup>2</sup> The two laws were Law No. 22/1999 on Regional Government and Law No. 25/1999 on Financial Balance Between the Central and Regional Governments.

<sup>3</sup> The government has not attempted to review, let alone overturn, many local regulations that touch on religion, many of which seem on the surface to violate constitutional protections against discrimination (for example requiring all candidates for office to be able to read the Koran in several predominantly Muslim regions). A 2006 joint ministerial decree, discussed in more detail in Section IV, set up "religious harmony forums" at the local level to resolve disputes on religious matters without intervention from Jakarta.

<sup>4</sup> Adrianus Meliala, *Problema Reformasi Polri* (Jakarta, 2002), pp. 54-55.

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<sup>5</sup> KPK investigations have led to sentencing of 29 mayors and district chiefs in the period 2006-2011 while the home affairs ministry revealed that more than 150 regional leaders have been tainted by corruption since 2004. Researchers at Gadjah Mada University in a 2007 study contended that *bupatis* and mayors constituted the biggest group of actors implicated in graft cases that year. See Firman Noor, "Tren Korupsi 2007: Fenomena Melokalnya Korupsi dan Alternatif Pemberantasannya", Pusat Penelitian Politik Yearbook 2007: Democracy Pilkada, Lembaga Ilmu Pengetahuan Indonesia (Jakarta, 2007). Procurement of materials and services and distribution of land-use and resource permits is a frequent source of corruption. Districts and municipalities also receive a central government grant called the *dana alokasi umum* (DAU) that can make up 80 per cent of their revenue. In July 2012, Amran Batalipu, the *bupati* of Buol, Central Sulawesi, was arrested for allegedly receiving bribes from a politically well-connected businesswoman who wanted to secure land permits for planting palm oil. "KPK Perpanjang Masa Penahanan Bupati Buol", *Suara Pembaruan*, 30 July 2012.

<sup>6</sup> Syaikh Usman, "Indonesia's Decentralization Policy: Initial Experiences and Emerging Problems", paper prepared for the Third EUROSEAS Conference Panel on Decentralization and Democratization in Southeast Asia, September 2001.

<sup>7</sup> One of the initial success stories was Kabupaten Kutai, a coal-rich area that used its economic potential to improve services and develop new infrastructure, including a suspension bridge that became a source of local pride. But the bridge collapsed in 2011 amid allegations of corruption after the *bupati*, Syaikhani Hasan Rais, went to jail for financial abuse in 2007.

<sup>8</sup> Nina Toyamah, Syaikh Usman, Vita Febriany and M. Sulton Mawardi, "Mencari Alternatif Penyempurnaan Kebijakan Desentralisasi dan Otonomi Daerah: Beberapa Pelajaran dari Daerah", paper presented at SMERU-LIPI Workshop, Jakarta, 20 August 2002, p. 7.

<sup>9</sup> Ibid, p. 8.

ments, and the proliferation of new districts through a process known as *pemekaran* gave rise to land and resource disputes.<sup>10</sup>

As early as 2002, voices raised concerns about “excessive autonomy” under decentralisation.<sup>11</sup> Members of President Megawati Soekarnoputri’s government proposed ways to rein in the newly empowered regions, largely by pulling authority back from the districts and strengthening the provinces.<sup>12</sup> They also wanted to give Jakarta more control over the management of land, sea and natural resources.<sup>13</sup> District chiefs and mayors saw the proposed changes as an effort at recentralisation and lobbied hard against them;<sup>14</sup> and they got most of what they wanted. In 2004, two new laws replaced the 1999 ones, giving national and provincial governments a little more supervision over the districts but without more tools for enforcement.<sup>15</sup> One of them, Law No. 32/2004, allowed for direct polls for the posts of *bupati*, *walikota* and *gubernur* (provincial governor). The ability to appeal directly to constituencies for votes gave elected officials a power base and legitimacy that their indirectly elected predecessors never had.<sup>16</sup> In some

cases, elections and access to the spoils of office have led to the emergence of local strongmen and family dynasties.<sup>17</sup>

The sheer growth of regions has also made supervision from the centre more difficult. In 1999, when the decentralisation laws were passed, Indonesia had 26 provinces and some 260 districts. In 2012, it had 33, soon to be 34, provinces, well over 500 districts and many more in various stages of formation.<sup>18</sup> The ministries most directly involved with local governance are the finance ministry, which oversees the allocation of funds to the regions, and the regional autonomy directorate of the home affairs ministry. The latter, among other things, is mandated to review all decrees and regulations from local executives and legislatures to ensure they are not in violation of national law. If they are, they can be cancelled by a presidential decree, but the executive or legislature can appeal to the Supreme Court.<sup>19</sup> In practice, almost the only ones that have been overturned have been related to local taxation.<sup>20</sup>

In theory, provincial governors are supposed to be the extension of the central government in guiding and supervising the districts.<sup>21</sup> In reality, they have no operational authority to play this role – neither power of the purse nor powers of discipline or dismissal. In the words of one international aid official, *bupatis* have become “little kings”, independent of the governor and not answerable to the provincial government.<sup>22</sup>

Home Minister Gamawan Fauzi, who was a *bupati* and then governor in West Sumatra before being tapped by President Yudhoyono in 2004, said publicly that the current system has produced worse local leaders than during Soeharto’s time. In the old days, he said, when they were all appointed, they had to attend leadership training and had at least some preparation for the job. Now, he said, “anyone

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<sup>10</sup> The *pemekaran* (blossoming) process divides provinces, districts and sub-districts into smaller units in the interests of better service delivery, more equitable resource distribution and more representative government. Nineteen potential regions may receive approval in 2012, including the province of North Kalimantan. According to the finance ministry, only one of them has a valid economic potential to run by itself. “Perhitungan Teknis 19 Calon Daerah Otonomi Baru Dari Aspek Kemampuan Ekonomi dan Kemampuan Keuangan”, Kementerian Keuangan Republik Indonesia, 1 July 2012.

<sup>11</sup> Syarif Hidayat, “Mengurai Peristiwa – Meretas Karsa: Refleksi Satu Dasawarsa Reformasi Desentralisasi dan Otonomi Daerah”, *Prisma*, vol. 29, no. 3 (July 2011).

<sup>12</sup> Pernyataan Sikap Asosiasi Pemerintah Kabupaten Seluruh Indonesia (Apkasi), Asosiasi Pemerintah Kota Seluruh Indonesia (Apeksi), Asosiasi DPRD Kabupaten Seluruh Indonesia (Adkasi) dan Asosiasi DPRD Kota Seluruh Indonesia (Adeksi), Terhadap Penyempurnaan Undang-Undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah. This is the joint public statement from four associations that represented the mayors, district chiefs and local councils.

<sup>13</sup> “Ketua Apkasi: Tunda Revisi UU No. 22/1999 Hingga Usai Pemilu”, 12 December 2003, available at [kutaikartanegara.com](http://kutaikartanegara.com).

<sup>14</sup> “Revisi UU Otonomi Daerah: Apkasi Khawatirkan Terjadi Resentralisasi”, *Kompas*, 20 June 2004. Apkasi stands for *Asosiasi Pemerintah Kabupaten Seluruh Indonesia* (Association of District Governments in Indonesia).

<sup>15</sup> Law No. 32/2004 replaced Law No. 22/1999 while Law No. 33/2004 replaced Law No. 25/1999.

<sup>16</sup> Before 1999, district and provincial legislatures would submit names of three to five individuals pre-vetted by the home affairs ministry, which would return two names to these legislatures to choose from, often with a clear indication of Jakarta’s choice for the *bupati*, mayor or governor. From 1999 to 2004, these legislatures would elect a regional leader from a pool of

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party-endorsed candidates without any interference from the national government.

<sup>17</sup> For details on how one family controls multiple elected and unelected positions in Banten province, which is adjacent to Jakarta, see Leo Agustino, “Dinasti Politik Pasca-Otonomi Orde Baru: Pengalaman Banten”, *Prisma*, vol. 29 (July 2010). See also examples of dynasties in Riau Islands, Alim Bathoro, “Perangkap Dinasti Politik Dalam Konsolidasi Demokrasi”, *Jurnal FISIP UMRAH*, vol. 2, no. 2 (2011).

<sup>18</sup> Indonesia’s potential 34th province is North Kalimantan, which would be carved out of the existing East Kalimantan.

<sup>19</sup> Law No. 32/2004, Article 145.

<sup>20</sup> The home affairs ministry has cancelled around 2,000 local regulations since 2002, 351 of them in 2011. Almost all of them were related to taxation but several provided restrictions on alcohol that contradicted national laws. “352 Perda Dibatalkan Selama 2011”, Yayasan Pengkajian Hukum Indonesia, 11 January 2012.

<sup>21</sup> Law No. 32/2004, Articles 37 and 38.

<sup>22</sup> Crisis Group interview, decentralisation expert of a Jakarta-based international aid agency, Jakarta, 2 July 2012.

popular can run and win without knowing anything about finance, management, bureaucracy or law”.<sup>23</sup>

Jakarta’s weakness with respect to regional governments is evident in the three case studies that follow. How much of this is due to decentralisation and how much to lack of leadership and political will is also addressed in Sections III and IV below.

### III. THE 2010 WEST KOTAWARINGIN ELECTION

West Kotawaringin is a resource-rich, timber-producing district in Central Kalimantan province, on Borneo, that is known outside Indonesia as one of the last sanctuaries for orangutans. It is known inside the country for a long-running election dispute that should have been settled two years ago.<sup>24</sup> Instead, a group of rebel district councillors have defied a 2010 ruling by the Constitutional Court that took victory away from one contender on the grounds of widespread fraud and gave the position to his rival. They have continued to obstruct the functioning of the district government ever since. Some aspects of the court’s decision were certainly questionable but under Indonesian law, this court’s rulings are final and not subject to appeal. The case highlights Jakarta’s failure to realise the seriousness of the problem but also to utilise the few tools at its disposal to deal with recalcitrant officials when contempt of court is not a crime.

#### A. THE PLAYERS

Only two candidates ran in the 2010 elections for district head (*bupati*): incumbent Ujang Iskandar from President Yudhoyono’s Democrat Party and challenger Sugianto Sabran from the main opposition party, the Indonesian Democratic Party Struggle (Partai Demokrasi Indonesia Perjuangan, PDIP). Both were timber barons with strong family business interests that they hoped could be advanced in office, through the *bupati*’s ability to grant or withhold

land use and mining permits in a district whose economy was growing faster than any other in the province.<sup>25</sup>

Both candidates were natives who called themselves Malays while their running mates were Javanese, the largest ethnic group in West Kotawaringin that descend from Java.<sup>26</sup> Each also had supporters among the Madurese, an economically successful immigrant group from the island of Madura, east of Java, and the most sensitive non-indigenous community in the district that became victim of native hostility in the past.<sup>27</sup>

Ujang led the local branch of Indonesia’s largest Muslim organisation, Nahdlatul Ulama (NU). Because NU’s stronghold is in heavily populated East Java province (of which Madura is a part), this gave him an advantage in the district’s Javanese and Madurese migrant communities. A native of

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<sup>25</sup> The money comes mostly from timber, including from illegal logging and palm oil. Crisis Group interview, lawyer who deals with land issues in West Kotawaringin, Pangkalan Bun, 23 April 2012. For statistics, see “Statistik Daerah Provinsi Kalimantan Tengah 2011”, Badan Pusat Statistik Provinsi Kalimantan Tengah, September 2011.

<sup>26</sup> The two largest indigenous groups are those who call themselves Malays and the Dayaks, the native people of Kalimantan (Borneo). Dayaks are not a single ethnic community but consist of more than 200 distinct tribes, many with their own language. They make up half of Central Kalimantan province’s 2.2 million population. According to the provincial statistics centre, West Kotawaringin had 240,000 people in 2010, of whom 65.33 per cent were Javanese, 12.42 per cent Dayak, 11.02 per cent Madurese, 3.76 per cent Banjar and 7.47 per cent other. There is no separate category in the Central Kalimantan statistics for Malays who are put under Dayaks or others. See “Statistik Daerah Provinsi Kalimantan Tengah 2011”, op. cit. In neighbouring West Kalimantan, Malays are overwhelmingly Muslim and Dayaks either Christian or followers of indigenous religions, to the point that a Dayak who becomes a Muslim is often automatically considered a Malay. In Central Kalimantan, however, most Dayaks are also Muslim, making the distinction more complicated. Many Dayaks in this province call themselves Malays as soon as they reside in an urbanised area to shed their backwater origin.

<sup>27</sup> In 2001, West Kotawaringin had been hit by the spillover from an eruption of ethnic conflict in Sampit, capital of neighbouring East Kotawaringin, in which Dayaks massacred hundreds of Madurese. A fight between Dayaks and fleeing Madurese broke out in the West Kotawaringin port town of Kumai in April 2001 before the government stepped in to prevent more killing. Many in West Kotawaringin believe that Dayaks were held back by an age-old agreement that they would not spill blood in the centre of the Kutawaringin sultanate without the approval of the sultan or his descendants. The latter played a key role in calming the Dayaks in the April 2001 clash, citing that agreement. Crisis Group interviews, Pangkalan Bun and Kumai residents, April 2012. For a detailed report on the 2001 massacres, see Crisis Group Asia Report N°18, *Communal Violence in Indonesia: Lessons from Kalimantan*, 27 June 2001.

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<sup>23</sup> “Gamawan Fauzi: Paradigma Kewenangan Daerah yang Efektif dan Efisien”, *Prisma*, vol. 29 (July 2010).

<sup>24</sup> For previous studies on local elections in Indonesia, see Crisis Group Asia Briefings N°57, *Aceh’s Local Elections: The Role of the Free Aceh Movement (GAM)*, 29 November 2006; N°86, *Local Election Disputes in Indonesia: The Case of North Maluku*, 22 January 2009; N°135, *Indonesia: Averting Election Violence in Aceh*, 29 February 2012; and Asia Report N°157, *Indonesia: Preventing Violence in Local Elections*, 8 December 2010.

a town in the coastal south, he was also close to ethnic groups concentrated there, like the Banjar. Ethnic considerations were thus present in the election, but it was overwhelmingly a contest for economic control.

Ujang, who had won West Kotawaringin's first direct elections in 2005 with a 37.5 per cent plurality over two other candidates, became known for his efforts to beautify Pangkalan Bun, the district capital, earning it the coveted "Adipura Award" in four of his five years in power.<sup>28</sup> He acknowledged this achievement by building an Adipura monument near the sultan's palace. He was popular for his effort to attend as many wedding ceremonies, funerals and other social functions as possible, but had made enemies in the local political elite who believed he was giving too many lucrative positions to his own family rather than sharing the wealth. Local councillors also blamed him for a number of failed projects.<sup>29</sup>

Before the election, Ujang was confident of a landslide victory, especially after he recruited Indonesia's two leading survey organisations, Indo Barometer and Citra Publik Indonesia, to conduct polls. Both told him that he was likely to be re-elected with more than 75 per cent of the vote – double his 2005 win.<sup>30</sup> He thought his popularity high enough to withstand any challengers no matter how deep their pockets; the only thing he feared was that his opponent would use intimidation tactics and scare voters away.

His 39-year-old rival was Sugianto Sabran from the richest family in West Kotawaringin, well-known for its frequent donations to the needy and its habit of opening its mansions during Islamic holidays to feed neighbours and offer envelopes of cash. His clan hails from the district's hinterland, giving him more proximity to indigenous groups. The family's timber, agriculture and mining businesses

employ tens of thousands of people, including men who provide security for its many assets located outside the district capital.

Sugianto was elected as a PDIP representative to the national parliament in Jakarta in 2009. His brother heads the party's local branch in West Kotawaringin. Central Kalimantan Governor Teras Narang is also a PDIP politician who sat in the national legislature for six years before being elected governor of his home province in 2005. Sugianto's views are shaped by the national-level rivalry between the ruling Democrat Party and opposition PDIP.

In the 2010 campaign, Sugianto actively sought support from traditional (*adat*) leaders in the district who came to regular meetings and left with cash, ostensibly to cover transport expenses. He was popular at the grassroots since people knew him through his family's charity. His camp embraced disgruntled former supporters of Ujang, descendants of the old sultanate, and others who had thought they would get benefits from Ujang's election and did not.<sup>31</sup> Sugianto's supporters' motto was ABU, which means "grey" in Indonesian but is also an abbreviation of *Asal Bukan Ujang* (Anyone But Ujang). Their strategy was to send men linked to the family business and the sultanate's circles from house to house and village to village to look for voters. These canvassers were called "volunteers" and each received a certificate saying so – with money glued to the back. They managed to list more than 60 per cent of eligible voters from all six sub-districts, including 167 civil servants, some of Ujang's supporters and even his own running mate, sometimes forcing people to take the certificates or just shoving them under the door.<sup>32</sup>

## B. THE VOTE

On 5 June 2010, the voting went smoothly without any violence or serious protests, even though there were allegations of money politics and intimidation in several places.

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<sup>28</sup> This award is granted annually by the environment ministry to the cleanest cities in Indonesia. There are four categories of winners, based on population, and Pangkalan Bun won in the category of smallest towns.

<sup>29</sup> The West Kotawaringin council highlighted seven unsuccessful projects in a December 2010 report, including the construction of Pangkalan Bun Park, a large plot of land in the city earmarked for public recreation that is currently abandoned, and the establishment of a district-owned company that instead of producing a quadrupling of acreage of corn fields resulted in annual losses. Crisis Group interview, Muasjidinsyah, member of the sultanate who supported Ujang Iskandar in 2005 but campaigned against him in 2010, Pangkalan Bun, 23 April 2012. Also see "Pansus Sampaikan 7 Agenda Hasil Kerja", *Harian Umum Tabengan*, 22 December 2010 and "Program Jagung Pemkab Kobar Gagal", December 2010, available at borneo-news.co.id.

<sup>30</sup> Laporan Survei Kabupaten Kotawaringin Barat, Citra Publik Indonesia, February 2010; and Survei Kotawaringin Barat, Indo Barometer, November 2009.

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<sup>31</sup> Pangkalan Bun was the centre of the Kutawaringin sultanate that once covered the southern part of what is now Central Kalimantan. The traditional wooden palace is one of the town's main attractions, and many of the sultan's descendants retain their royal titles, traditional tattoos and political clout. One of the most important is Muasjidinsyah, who played a critical role in the disputed election.

<sup>32</sup> Putusan Nomor 45/PHPU.D-VIII/2010, Mahkamah Konstitusi Republik Indonesia, 7 July 2010. This is the Constitutional Court ruling on West Kotawaringin. The witness testimony on Sugianto's campaign tactics can be found on pp. 18-37. Interviews that Crisis Group conducted in West Kotawaringin also support these statements. Crisis Group interviews, Bambang Purwanto, West Kotawaringin deputy district chief, Pangkalan Bun, 24 April 2012; and Awaludin, West Kotawaringin election commissioner, Pangkalan Bun, 25 April 2012.

Ujang's camp complained to the election oversight committee, but they did not make an issue of it when the committee failed to act. The *bupati*'s accusation that there had been "a tsunami of vote-buying" only emerged after unofficial quick counts showed that Sugianto was winning.<sup>33</sup>

A week later, when it was clear that Sugianto had pulled off an upset and won with a 10 per cent margin (12,000 votes), Ujang's camp refused to sign off on the recapitulation of the poll results at the district election commission office. He could not believe that his tally was just half of what his pollsters had forecast three months earlier or that in such a short time, Sugianto could boost his vote tenfold over what they had predicted. One of the survey companies hired by Ujang said only massive vote-buying or dramatic momentum generated by media coverage could create this result, and the latter did not happen.<sup>34</sup>

Unfazed, the election commission sent the results to the district council, which approved it according to the law and forwarded it to the home affairs ministry via the Central Kalimantan governor. The Sugianto camp was euphoric and celebrated publicly, thinking they had ushered in change. Sugianto's lawyer was almost alone in striking a sobering note by reminding his client that Ujang could still challenge the results in the Constitutional Court. Everyone else was too busy thinking about the benefits of victory.<sup>35</sup>

### C. THE CONSTITUTIONAL COURT INTERVENTION

Losing candidates in local elections have three days from the announcement of the results by the local election commission to file a challenge to the Constitutional Court in Jakarta. They have to bring evidence of electoral violations, including witnesses, at their own expense. Ujang filed his complaint against the election commission without fanfare, hired Bambang Widjojanto, one of the best anti-corruption lawyers in the country, and sent 68 witnesses to support his case. The legal move caught Sugianto off guard, because he thought Ujang had not filed the complaint in time. The latter benefited from his opponent's lack of preparation.

Immediately after his defeat was announced, Ujang gathered his supporters and told them to locate people who were willing to step forward and speak out against Sugianto's campaign practices. He also ordered them to find evi-

dence of vote-buying and intimidation. Before Widjojanto took the case, he sent associates to West Kotawaringin to do a quick survey of conditions on the ground. According to Ujang, Widjojanto's firm only took the case after getting information on the widespread practice of cash transfers from the Sugianto family to prospective supporters.<sup>36</sup> Before the court hearings, the lawyers coached the 68 witnesses for two weeks on how to speak and behave in court. Ujang admitted there were simulations but insisted that neither he nor the lawyers told witnesses to read out scripted answers.<sup>37</sup>

The most important evidence consisted of strategy books allegedly coming from Sugianto's camp that described how volunteers should counter any messages, money or merchandise from their opponents.<sup>38</sup> Ujang also had a document signed by Sugianto approving those books. He also shipped to Jakarta the bundles of lists of Sugianto's so-called volunteers comprising more than 60 per cent of the 150,000-strong electorate, and collected evidence on 400 cases of vote-buying.<sup>39</sup>

For his part, Sugianto did nothing because he was not the defendant. His campaign team only learned of the challenge days after it was filed and did not believe it would have a serious impact. In most disputes thus far, the court usually would order a recount or re-vote in specific areas where vote-buying or other irregularities were found; in rare cases, it ordered a new election. Sugianto's team thought they could win again easily even if the entire process had to start from scratch.

The actual target of Ujang's complaint, the district election commission, was very poorly prepared. The summons to attend the court hearing came very late, a day before it opened on 23 June 2010. Commission members had to fly directly to Jakarta to find a lawyer familiar with Constitutional Court procedures. Upon recommendation of the Central Kalimantan election commission, they managed to put together a defence team, whose members, however, had never been to West Kotawaringin. They were able to produce eleven witnesses but only five were called up by the court to testify. Sugianto's lawyer demanded to be on the defence team, not only because he was a native of the district but also because he had once been a member of the election commission. The West Kotawaringin commissioners hastily refused his offer and bumbled their way

<sup>33</sup> Crisis Group interview, Ujang Iskandar, West Kotawaringin district chief, Pangkalan Bun, 24 April 2012. The description of the poll process came from the election commission. Crisis Group interview, Awaludin, Pangkalan Bun, 25 April 2012.

<sup>34</sup> Crisis Group interview, head of one of the Jakarta-based pollsters hired by Ujang Iskandar, Jakarta, 29 May 2012.

<sup>35</sup> Crisis Group interviews, Ardiyansyah, Sugianto Sabran's lawyer, and Muasjidinsyah, Pangkalan Bun, 23 April 2012.

<sup>36</sup> Crisis Group interview, Ujang Iskandar, Pangkalan Bun, 24 April 2012.

<sup>37</sup> Ibid.

<sup>38</sup> Putusan Nomor 45/PHPU.D-VIII/2010, op. cit. Sugianto's camp denied they made such a book and his lawyer claimed they were fabricated.

<sup>39</sup> Ibid.

into court without witnesses who could effectively rebut Ujang's accusations.

The trial lasted less than two weeks with the witnesses from Ujang's side giving damning testimony one after another about vote-buying and intimidation. One witness, Kusniyadi, testified that he received death threats from two of Sugianto's supporters after he took 200,000 rupiah (\$20) from them.<sup>40</sup> Another witness, Ratna Mutiara, told the court she was pressured to join the campaign team several times, including when Sugianto supporters confronted her in a rubber plantation accusing her to be on the incumbent's payroll.<sup>41</sup> A third witness, Suwandi, who worked for one of Sugianto's companies, elaborated how employees had to vote for him or face dismissal.<sup>42</sup> Others had similar stories. The Constitutional Court concluded from the testimonies that Sugianto used money, alcohol and women to hire intimidating campaigners and secure votes.<sup>43</sup>

The defence had no witnesses to refute the testimony. Their core argument centred on why such incidents never came to light before the vote and were never reported either to the election oversight body, the commission or the police. They also argued that Ujang failed to show there was any fraud during those procedures that were the commission's direct responsibility, ie, voting and vote-counting, believing the court could only rule in Ujang's favour if he proved wrongdoing by the target of his complaint. Sugianto and his team could not challenge the validity of the testimony because they had no representation in court and believed that he was safe because he was not the defendant.

#### D. AN UNPRECEDENTED RULING

On 7 July 2010, the court made a landmark ruling that went beyond the case at hand.<sup>44</sup> Because of the sheer volume of testimony showing that Sugianto's camp had engaged in

widespread vote-buying, the justices ruled that the victor should be disqualified and that Ujang should become *bupati* by default because he was the only one left standing in a two-man race. Legal experts say the court was taking an activist role, sending a general message to candidates of local elections who try to use money to secure votes.<sup>45</sup>

The unprecedented ruling startled everyone. Ujang's supporters were ready for a repeat of the vote or at most a disqualification of Sugianto that would automatically lead to a new election with different candidates. The Sugianto camp could not believe the outcome and until now claims the court itself was biased, suggesting that the highly respected Chief Justice, Mohammad Mahfud, favoured Ujang because of his affiliations.<sup>46</sup> They made similar allegations against Justice Akil Mochtar, a former parliamentarian from the Golkar party, which also backed Ujang. One of Ujang's relatives claimed publicly that the incumbent had bribed both judges, who categorically denied receiving any payments and threatened to sue anyone who suggested they did.<sup>47</sup> If the Sugianto camp believes the entire case was a conspiracy from Jakarta with made-up evidence and testimony, Ujang says every institution in West Kotawaringin, including the election commission, was on the payroll of Sugianto's family.<sup>48</sup>

A Constitutional Court ruling on electoral matters is final; there is no appeal. Sugianto and his clan saw the July 2010 ruling as wholly unfair because he had no opportunity to defend himself. They saw it as a personal offence to the family and vowed to fight back.<sup>49</sup> In other regions, anger

<sup>40</sup> Risalah Sidang Perkara Nomor 45/PHPU.D-VIII/2010 Perihal Permohonan Perselisihan Hasil Pemilihan Umum Kepala Daerah/Wakil Kepala Daerah Kabupaten Kotawaringin Barat, 28 June 2010, pp. 45-50. This is the transcript of the Constitutional Court hearing.

<sup>41</sup> Ibid, pp. 25-27.

<sup>42</sup> Ibid, pp. 125-130.

<sup>43</sup> The Constitutional Court recapped the testimony in the "considerations" part of its July 2010 ruling, including on statements from witness Ismail who testified Sugianto campaigners held drinking parties after the victory and were offered prostitutes at a red-light district. Putusan Nomor 45/PHPU.D-VIII/2010, op. cit., p. 187. The candidate vehemently denied these allegations. Crisis Group interview, Sugianto Sabran, candidate in the 2010 West Kotawaringin elections, Pangkalan Bun, 23 April 2012.

<sup>44</sup> The legal term is *ultra petita*, and because of the court's tendency to do this, the Indonesian parliament in July 2011 passed an amendment to the law establishing the Constitutional Court that restricted its ability to make such broad rulings.

<sup>45</sup> "Mahkamah Konstitusi Buat Tafsir Sepihak", 19 July 2010, available at borneonews.co.id. Also see dissertations on the court's efforts to seek substantive justice beyond the letter of law: Rahmat Muhajir Nugroho, "Penerapan Keadilan Substantif Dalam Putusan Mahkamah Konstitusi Tentang Perselisihan Hasil Pemilihan Umum Kepala Daerah", Gadjah Mada University, 2012; and Veri Junaidi, "Kewenangan Mahkamah Konstitusi Dalam Menegakkan Kedaulatan Pemilih Melalui Penyelesaian Perselisihan Hasil Pemilukada", University of Indonesia, 2012.

<sup>46</sup> Mahfud is a former national legislator from the NU-linked Partai Kebangkitan Bangsa and an NU activist of Madurese descent. Allegations of bias came from Sugianto's lawyer and supporters but they admitted having no concrete evidence of bribery and any other wrongdoing by the justices. Crisis Group interviews, Ardiyansyah and Muasjidinsyah, Pangkalan Bun, 23 April 2012.

<sup>47</sup> Kusniyadi, a relative of Ujang Iskandar, called a press conference and said the *bupati* paid 4 billion rupiah (\$400,000) to Muhammad Mahfud and 1.7 billion rupiah (\$170,000) to Akil Mochtar. "Soal Tuduhan Suap, Akil Mochtar: Itu Fitnah!", 12 August 2011, available at Tempo.co.

<sup>48</sup> Crisis Group interview, Ujang Iskandar, Pangkalan Bun, 24 April 2012.

<sup>49</sup> Crisis Group interviews, Sugianto Sabran, Pangkalan Bun, 23 April 2012; and Aminullah, a former councillor who led the 29

after a Constitutional Court ruling is common but tends to die down in a few days or have little effect when the local election commission complies with the decision made in Jakarta. In the case of West Kotawaringin, the row has lingered for two years without solution, in part because Sugianto's family can bankroll the resistance. To take back the victory that they saw as rightfully theirs, he and his supporters were ready to defy the court ruling.

In hindsight, an expert observed, the judges might have avoided conflict and controversy by keeping to the case at hand and ruling only that serious fraud had taken place. The election could then have been held again rather than automatically giving the victory to the loser.<sup>50</sup> But once the court made a ruling that by law was binding, regardless of whether or not it was wise, it was the duty of the executive branch to enforce it.

## E. DEFYING THE COURT

Defiance started early in West Kotawaringin. On 14 July 2010, the election commission decided it would not accept the court ruling because it had done nothing wrong. The five commissioners argued Ujang did not get more than 50 per cent of the votes and therefore he could not be the winner. They sent a letter to the Provincial Governor, Teras Narang, saying Sugianto Sabran had won 55 per cent of the votes and therefore should be inaugurated as *bupati*.<sup>51</sup> On 17 July 2010, the governor, a mentor to Sugianto, forwarded the local commission decision to the home affairs minister, Gamawan Fauzi, a procedure that in normal cases should initiate steps toward inauguration.<sup>52</sup> On 24 July 2010, Gamawan sent the official court ruling to the national election commission (KPU) which has authority over the local bodies.<sup>53</sup>

It took the KPU two months just to summon the West Kotawaringin commissioners to a meeting in the provincial capital, Palangkaraya. On 22 September 2010, they were rebuked and told to follow the ruling. They demanded a formal document of guidance from the Jakarta body first.<sup>54</sup> While KPU members took their time to write the letter,

Gamawan appointed Governor Teras as caretaker *bupati* on 1 October 2010 because Ujang's term had expired.<sup>55</sup> On 22 November 2010, the KPU ordered the district commission to implement the ruling within a week. The order went unheeded. The district commission only held a meeting to discuss the order on 2 December 2010 in which three commissioners insisted on continuing to defy the national body.<sup>56</sup>

Awaludin, a dissenting member of the local commission, said he thought the hearing had been fairly conducted, especially as his colleagues had been poorly prepared, but he understood how people could not accept a loser turning into a winner.<sup>57</sup> He thought the court had gone too far but had no desire to challenge the KPU. The governor took no action in response to the local commission's obduracy, and instead forwarded the issue back to the KPU. National media coverage focused on how an obscure institution like a district election commission in such a remote district had dared to challenge the Constitutional Court.<sup>58</sup>

The KPU again failed to take decisive action. Only on 1 June 2011 did it fire the three defiant commissioners who later tried to file a counter-complaint. It also moved slowly to replace them, leaving Awaludin the sole member of the district commission as others chose to resign. He stayed silent as the provincial election commission recommended to the home affairs ministry that the inauguration of Ujang Iskandar as *bupati* proceed. On 8 August 2011, the home affairs minister officially declared Ujang Iskandar as *bupati* for the period 2011-2016 and told Governor Teras to ensure that the district council inaugurate him as soon as possible. Teras simply forwarded the message to the council.

Under Regional Government Law No. 32/2004, a local executive only can begin his or her term after being inaugurated in a special plenary session of the respective local legislature, acting on the recommendation from the local election commission. District councillors argued they never received anything recommending that Ujang be inaugurated because the provincial commission had made its rec-

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December 2011 rally that ended with the torching of the *bupati*'s official residence, Pangkalan Bun, 25 April 2012.

<sup>50</sup> Crisis Group interview, Jimly Asshiddiqie, former Constitutional Court chief justice, 1 August 2012.

<sup>51</sup> "Tunggu Putusan Mendagri", *Kalteng Pos*, 20 July 2010.

<sup>52</sup> Law No. 32/2004 on Regional Government, Article 109. The election commission acted as if there was nothing special about the West Kotawaringin case that should divert it from the normal procedure.

<sup>53</sup> "Inilah Rangkaian Babak Panas Pemilukada Kobar", *Jawa Pos News Network*, 30 December 2011.

<sup>54</sup> Crisis Group interview, Awaludin, Pangkalan Bun, 25 April 2012.

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<sup>55</sup> It is standard procedure for the ministry to appoint a governor, who should act as the national government representative in the regions, to temporarily lead a district that has no definitive leader.

<sup>56</sup> Berita Acara Nomor 491/BA/XII/2010 Tentang Penetapan Pasangan Calon Terpilih Dalam Pemilihan Umum Bupati Dan Wakil Bupati Kabupaten Kotawaringin Barat Tahun 2010, Komisi Pemilihan Umum Kabupaten Kotawaringin Barat, 2 December 2010. This is the official letter describing the vote inside the election commission on whether to follow or defy the court ruling on the basis of legal dilemma.

<sup>57</sup> Crisis Group interview, Awaludin, Pangkalan Bun, 25 April 2012.

<sup>58</sup> "KPU Kobar Batalkan Putusan MK", *Suara Karya*, 9 December 2010.



ommendation directly to Jakarta, bypassing the council. On 11 August 2011, the West Kotawaringin council rejected the order they received via the governor, sending back a letter to the ministry saying they had already recommended Sugianto Sabran to be declared *bupati* as soon as the district commission had reported in June 2010 that he had won the election. Jakarta did not reply to that letter.

Personal relations trumped party allegiance in the West Kotawaringin district council. Ten parties are represented in the 30-member council, the two largest of which are President Yudhoyono's Democrat Party and opposition PDIP, each with six seats. The head of the council, Subahagio, came from the Democrat Party and supported Ujang's reelection campaign but he had personally fallen out with the *bupati*. He led the group of seventeen councillors who defied the home affairs ministry and refused to proceed with Ujang's installation. Had Jakarta sent key officials to the district to meet the councillors, the situation might have been different. Mulyadin, a PDIP councillor who led Sugianto's campaign, said their defiance grew because there was no sign of leadership or genuine concern but only a series of orders via letters instead. He said:

We feel abandoned. We were bypassed. If they think they were right, why did they hang us out to dry for more than a year? Why couldn't some leader from Jakarta come down here and lay down the law? We wouldn't have been so stubborn in pushing a particular *bupati*. What we want is firmness along with appreciation for us in the regions. They have chosen to disregard their own laws.

He was referring to the provision in the 2004 law that it is the district council that recommends a *bupati*'s name to Jakarta after receiving the voting results from the election commission.<sup>59</sup>

On 6 November 2011, President Yudhoyono finally made a game-changing move. He summoned Governor Teras and Home Affairs Minister Gamawan to brief him on West Kotawaringin. Nobody from the district was invited. The meeting decided the Constitutional Court ruling should be enforced. The governor rejected options to inaugurate Ujang anywhere in Central Kalimantan for security reasons.<sup>60</sup> Over the next month, the home affairs ministry informally approached thirteen West Kotawaringin councillors who continued to support Ujang Iskandar; none, however, held leadership positions in the council. Twelve agreed to come to Jakarta for the emergency council session that

would start Ujang's second term. After eighteen months of leaving Kotawaringin leaderless and directionless, the Indonesian state finally moved to implement the ruling of the highest court in the country.

## F. VIOLENT REACTIONS

Jakarta officials said the delay in reacting was needed to avoid tension spilling into acts of violence.<sup>61</sup> During the wait, rumours spread that violence would be unleashed by the Sugianto camp, and that Madurese, seen as closer to Ujang due to their NU allegiance, would be a target, although some were in Sugianto's camp as well. The fact that Chief Justice Mahfud was a Madurese added tension. Ujang received jeers like "Jakarta lackey" and "Mahfud's boy" when he appeared in public.<sup>62</sup> Anonymous text messages circulated, warning of a repeat of the 2001 massacre or claiming the Dayaks and Malays, the two indigenous ethnic groups of the province, were starting pre-war ceremonies.

In fact the only violence, none of it deadly, followed every effort Jakarta made to install Ujang. The first occurred after the Jakarta-based KPU instructed the West Kotawaringin election commissioners to implement the court ruling. On 23 and 24 September 2010, Sugianto supporters marched around town, protesting what they perceived as Jakarta's intervention and smashing ornamental street lamps and flower pots which were associated with Ujang's beautification program. Around nightfall, they arrived at the Adipura monument and burned parts of the column that stood close to the sultanate's palace. Protesters also made bonfires out of tyres in at least five other locations in Pangkalan Bun. On 9 December 2010, after text messages circulated that the KPU had formed a team that would punish the local commission for its defiance, Sugianto supporters again committed almost exactly the same acts of violence.<sup>63</sup>

The president's November 2011 move triggered a buzz that Jakarta would inaugurate Ujang soon. On 20 November, vandalism recurred at the Adipura monument. The next day, the newly arrived West Kotawaringin Police Chief Novi Irawan requested reinforcements to help the 200 of-

<sup>59</sup> Crisis Group interview, Mulyadin, member of West Kotawaringin council from PDIP and head of Sugianto Sabran's campaign, Pangkalan Bun, 24 April 2012.

<sup>60</sup> "Teras: Saya Yang Putuskan Pelantikan Ujang di Jakarta", 4 January 2012, available at [Tribunnews.com](http://Tribunnews.com).

<sup>61</sup> Crisis Group interview, Djohermansyah Djohan, director general of regional autonomy at the home affairs ministry, Jakarta, 9 May 2012.

<sup>62</sup> Crisis Group interviews, Irwanuddin, branch head of the Indonesian Journalist Association (PWI) in West Kotawaringin; and Achmad Bachsin, community leader in the district's Mendawai area, which is a stronghold of Sugianto Sabran, Pangkalan Bun, 23 April 2012.

<sup>63</sup> Crisis Group interviews, Achmad Bachsin and Aminullah, both leading Sugianto supporters who marched in anti-Jakarta rallies from September 2010 to December 2011, Pangkalan Bun, 25 April 2012.

ficers in and around Pangkalan Bun after hearing Sugianto supporters were planning to intensify their protests. On 28 November, pro-Sugianto demonstrators marched toward the *bupati*'s office and vandalised the outside as police guarded the main entrance. Irawan told his men to put away their weapons and form a human barricade around the office to prevent occupation.<sup>64</sup> Protesters hurled rocks but the police stood their ground and just filmed the action. The police chief communicated with the ringleaders, including a former councillor, and the protest ended without a clash.

On 20 December 2011, news of twelve councillors heading for Jakarta to inaugurate Ujang as *bupati* swept the town and triggered another series of tyre burnings at the Adipura monument. More police reinforcements came in to guard key sites, including Ujang's private residence, a large European-style mansion, because the witnesses who had testified at the Constitutional Court hearings were taken there for safety. What police did not protect was the official residence of the *bupati*, an old wooden structure known as the "house of history" (*rumah sejarah*). In his five years in power, Ujang had never stayed there, using it only for ceremonial functions.

On 28 December 2011, Sugianto supporters marched with a coffin to represent the death of trust in Ujang and the Constitutional Court after hearing the inauguration would take place that day.<sup>65</sup> They threw rocks at the *bupati*'s office again and expanded the attack to other government buildings but unarmed police were able to disperse them. The next day, they massed on the streets and apparently became frustrated that their targets were heavily guarded. When they passed the official residence in the afternoon, young protesters with little knowledge of the *rumah sejarah*'s significance to the sultanate forced their way in and burned it from the inside, shocking many elders.<sup>66</sup> Fire engulfed the entire building in minutes and police could only prevent locals from getting too close.

Most of the protesters dispersed after the fire but about 50 of their leaders gathered at their headquarters, Sugianto's campaign office, near the Adipura monument. Police wanted to arrest them. The police chief gathered all his officers, some 400 in all including reinforcements, and made them take off their batons. He also ordered all weapons to

be locked away with the bullets removed. He then instructed police to surround the protesters' base but do nothing else; he said he did not want to see any violence between the public and police as frequently happened elsewhere in Indonesia.<sup>67</sup> The officers stood guard for hours in what Irawan called "a competition of patience" and at 10pm those in the building came out to surrender.<sup>68</sup> Police arrested 30 men and named two of them suspects before the day was over. They also picked up dozens of protesters from their houses.

Rumours of attacks toward the police detention centre spread the next day, prompting the national police to send in more reinforcements to the district. Irawan, who had no personal history with the feuding camps, having only been assigned to West Kotawaringin in November 2011, went to the residences of Sugianto and his family to assure them police would not mistreat the detainees, but he said he would see that they were prosecuted. No violence has erupted since but Irawan in mid-2012 said the district was not yet secure.

## G. THE JAKARTA INAUGURATION

After the arrests, the home affairs ministry went ahead with Ujang's inauguration ceremony in Jakarta. On 30 December 2011, twelve West Kotawaringin councillors led by Jamaludin, who himself initially intended to run in 2010, held a special meeting at the home affairs ministry, ignoring all procedures from the need for a quorum to the presence of council leadership. Jamaludin argued that since this was an emergency, an ordinary member like him could call such a gathering, especially when the leaders were all Sugianto supporters.<sup>69</sup>

Another series of text messages swept West Kotawaringin on New Year's Eve warning residents of imminent bloodshed related to the inauguration.<sup>70</sup> At that point, there were 1,800 police officers in the district, almost five times the usual number. Patrols were out to arrest and detain any loiterers. Shops closed for a week. When Ujang and the twelve councillors returned a few days later, police body-

<sup>64</sup> Crisis Group interview, Novi Irawan, West Kotawaringin police chief, Pangkalan Bun, 26 April 2012.

<sup>65</sup> Surat Dakwaan No. Reg. Perkara PDM-08/PKBUN/02/2012, Kejaksaan Negeri Pangkalan Bun, 8 March 2012. This is the prosecutorial indictment against Aminullah, a former councillor who led the anti-Jakarta protest on 28 and 29 December 2012.

<sup>66</sup> Testimony of defendant Ahmad Ghazali in the 29 December 2011 arson trial, Pangkalan Bun, 25 April 2012. For pictures of the burning house, go to [www.crisisgroupblogs.org/resolving-conflict](http://www.crisisgroupblogs.org/resolving-conflict).

<sup>67</sup> On 24 December 2011, for example, less than a week before the West Kotawaringin torching, police officers killed three people when they wanted to disperse protesters who had occupied a port near Bima, Sumbawa in West Nusa Tenggara. The incident triggered community attacks against police and government offices throughout the province and in other areas in Indonesia in the following days.

<sup>68</sup> Crisis Group interview, Novi Irawan, Pangkalan Bun, 26 April 2012.

<sup>69</sup> Crisis Group interview, Jamaludin, West Kotawaringin councillor from PKB, a Nahdlatul Ulama-based party that supported Ujang Iskandar's nomination, Pangkalan Bun, 24 April 2012.

<sup>70</sup> "Penggal Kepala di Kobar", *Kalteng Pos*, 2 January 2012.

guards followed them wherever they went.<sup>71</sup> Throughout the tension, no officer fired a shot, thanks to Irawan's leadership.<sup>72</sup> Reinforcements began to leave after ten days.

On 5 January 2012, seventeen members of the local council led by its head, Subahagio, held a meeting to condemn the actions of their colleagues and reject the validity of the inauguration.<sup>73</sup> Since then, Ujang can go to office and work on the routine tasks of a *bupati* but he cannot issue any new local regulation, draft a new budget, or do anything else that requires council approval.

Five days after refusing to accept the inauguration, the defiant Subahagio fell afoul of the law in an unrelated case. On 10 January 2012, the Supreme Court issued a ruling rejecting his appeal of a 2011 verdict that he had faked his diploma when running for the council.<sup>74</sup> He could no longer evade his one-year sentence and had to go to jail. On 2 February 2012, he surrendered himself after failing to answer several summons.<sup>75</sup> It is unclear whether Jakarta officials played a role behind this but the timing might not have been coincidental. His removal did not change the political situation in West Kotawaringin, as the pro-Sugianto rebels still hold a majority in the council. The only way to get them out would be for parties like Democrat and Golkar to withdraw their members from the council for insubordination and put in replacements who will follow the Jakarta line. There is no sign that the parties wish to take that step.

## H. THE LEGAL BATTLES

As the standoff drags on, Sugianto's camp has launched two legal battles to oust Ujang. In the first, they are attempting to prove that the evidence presented in the Constitutional Court was false. They have bombarded police with materials to show that Ujang and his lawyers coached witnesses and made up evidence. On 16 March 2011, the Central Jakarta court ruled that Ratna Mutiara, one of the witnesses, gave false testimony and sentenced her to five

months in jail.<sup>76</sup> In other courts, this might be sufficient ground to reopen a case, but because Constitutional Court rulings are final, there is no possibility of appeal. Sugianto lawyers are pushing police to investigate the other 67 witnesses and hope if enough are willing to recant, they at least could build a moral movement against the constitutional court and Ujang.<sup>77</sup> Investigations against 44 of them are ongoing.

One witness, Kusniyadi, held a series of press conferences from August to October 2011 saying he was coached to testify and claimed that the testimonies of all 68 witnesses who backed the *bupati*'s case were false.<sup>78</sup> Ujang's lawyer, Bambang Widjojanto, who is currently the deputy head of the Corruption Eradication Commission, said almost all witnesses stood by their testimony and claimed that Kusniyadi and Ratna Mutiara were paid by Sugianto's camp to come forward and try to ruin the court's reputation.<sup>79</sup>

Sugianto is also using the State Administrative Court (*Pengadilan Tata Usaha Negara*, PTUN) in Jakarta that has power to annul ministerial decrees. On 21 March 2012, it ruled that the home affairs minister's 8 August 2011 letter declaring Ujang Iskandar as *bupati* violated the 2004 Regional Government Law because it was made without recommendations from the local election commission council and ordered it to be withdrawn.<sup>80</sup> The home affairs ministry has appealed against the ruling. This case can go to the Supreme Court and if its final verdict confirms the initial one, Ujang will have to vacate his post. But as long as justices themselves do not change the Constitutional Court ruling, Sugianto will not be able to replace him. Instead, if it reaches this point, the central government will have to fill the vacuum with a caretaker without budgetary or regulatory powers until a new election can be held.

The big loser in this case, in addition to Sugianto, is the Yudhoyono government. Officials from the capital could have come to the district and tried to negotiate a way out or they could have moved far more rapidly to force compliance with the Constitutional Court ruling by pressing

<sup>71</sup> "Kepulauan Bupati Kobar Dijaga 1 Peleton Polisi", *Tribun Kalteng*, 5 January 2012.

<sup>72</sup> Crisis Group interview, Novi Irawan, Pangkalan Bun, 26 April 2012.

<sup>73</sup> "DPRD Tolak Pelantikan Ujang-Purwanto oleh Mendagri", *Tribun Kalteng*, 6 January 2012; and Rachmadin Ismail, "DPRD vs Bupati Kotawaringin Barat, Rakyat Yang Rugi", 8 January 2012, available at detik.com.

<sup>74</sup> The registry number of this Supreme Court ruling is 92PK/PID/2011, 10 January 2012. See the court's website at [http://kepaniteraan.mahkamahagung.go.id/perkara/perkara\\_detail.php?id=bf1a3b80-ee2f-1e2f-97c3-31303232](http://kepaniteraan.mahkamahagung.go.id/perkara/perkara_detail.php?id=bf1a3b80-ee2f-1e2f-97c3-31303232).

<sup>75</sup> "Subahagio Siap Menjalani Hukuman di Penjara", *Kalteng Pos*, 3 February 2012.

<sup>76</sup> Ari Saputra, "PN Jakpus Vonis Saksi Sidang Pilkada Bohong, MK Diminta Review Putusan", 9 May 2011, available at detik.com.

<sup>77</sup> Crisis Group interview, Ardiyansyah, Pangkalan Bun, 23 April 2012.

<sup>78</sup> "Mahfud Dituduh Terima Suap", 12 August 2011, available at Tempo.co, "Saksi Ujang Iskandar Balik Dukung Sugianto", *Tribun Kalteng*, 9 September 2011, and "Skandal Saksi Palsu Gegerkan TV One", 4 October 2011, available at sampitonline.com.

<sup>79</sup> "Tangkis Tudingan Rekayasa, Bambang Widjojanto Periksa Ulang Saksi", *Jurnal Nasional*, 5 October 2011.

<sup>80</sup> The registry number of the 21 March 2012 verdict from the Jakarta State Administrative Court is Putusan Nomor 153/G/2011/PTUN-JKT.

the national election commission to declare Ujang as the winner immediately. The strategy of stalling only galvanised resistance, with Sugianto supporters quickly realising they could get away with rejecting the ruling. Other regions are undoubtedly watching this case to see whether there is any cost to prolonged defiance. Until such defiance is defined as a criminal offence of obstruction of justice, police have no legal tools to act against the rebels. Without the prospect of serious punishment or severance of resources, local authorities and their associates in other institutions will continue to challenge the power of the central government.

#### IV. DEFYING RULINGS FOR CHURCHES

Two of the best-known cases of defiance in Indonesia involve the refusal by local officials in West Java to implement court rulings allowing church construction. A mayor in Bogor and a *bupati* in Bekasi, with backing from the Islamist Prosperous Justice Party (Partai Keadilan Sejahtera, PKS) and many Muslim civil society groups, maintain that they have a right to reject permits for churches if the local community objects – even if the courts rule otherwise and the extent of community objection is open to question. The central government has allowed the issues to fester, occasionally instructing senior officials to try and negotiate a compromise when the standoffs make media headlines but never actually moving to enforce the law. The result is heightened tensions between Christians and Muslims.

##### A. BOGOR CITY VS. GKI TAMAN YASMIN CHURCH

For half a decade, Mayor Diani Budiarto has opposed the building of a church in the booming Curug Mekar area of Bogor, a city south of Jakarta.<sup>81</sup> On 13 July 2006, the congregation of the Indonesian Christian Church (Gereja Kristen Indonesia, GKI) in the upscale Taman Yasmin residential complex secured a permit and written endorsement from the mayor for the construction of a church on

Haji Abdullah Nuh street.<sup>82</sup> Church leaders had met all the requirements for a permit as set out in a 2006 joint ministerial decree between the religion and home affairs ministries, requiring among other things that anyone wishing to build a house of worship secure the signatures of 60 local residents of a different religious persuasion.<sup>83</sup> They secured 212. On 19 August, city officials attended the ground breaking ceremony.

In 2007, neighbourhood and Islamist groups from Curug Mekar staged protests against the construction. They harassed worshippers and lobbied city politicians, especially the mayor, who needed Muslim votes for his 2008 re-election, to halt the construction.<sup>84</sup>

On 14 February 2008, the head of Bogor's city planning unit, who reports to the mayor, suspended the permit to build on the 1,700 square metre plot. GKI Taman Yasmin went to the Bandung State Administrative Court, a tribunal that can adjudicate disputes over decisions by state agencies and officials, to fight the suspension. Church leaders won both the case on 4 September 2008 and then appeals against the administrative court's ruling, filed by the Bogor municipal government on 2 February 2009. Three weeks later, the Supreme Court refused to hear a final appeal, which meant that building should go forward.

Anti-church groups, however, obstructed access to the site, disrupted construction and harassed workers. On 25 April 2009, demonstrators pushed back workers who planned to cement the foundation of the church in front of GKI lawyers and police. The church's Muslim lawyer Ujang Sujai took protest leader Hari Junaedi to court for physical harassment but judges dismissed the case.<sup>85</sup> Ever since, po-

<sup>81</sup> The land is located on a main access road outside the Taman Yasmin residential area in Curug Mekar ward, where traditional residents are lower-income Sundanese Muslims. Migration of Jakarta workers seeking cheaper areas reachable by rail changed the make-up of semi-rural Bogor neighbourhoods into commercialised urban areas. The land is close to a big supermarket and a major private hospital. Curug Mekar's long-time residents also protested the construction of these buildings; the protests subsided after the businesses agreed to recruit workers from within the ward.

<sup>82</sup> The chronology of the entire Bogor saga from issuance of permit to recent protests in this report considers versions from both sides, the GKI Christians and the Forkami Muslims. The mayor once argued a church should not be built on a street bearing an Islamic name. "Churches can't be built in streets with Islamic names", *Jakarta Globe*, 19 August 2011.

<sup>83</sup> According to the decree, construction of any place of worship in Indonesia requires the signatures of 90 potential members, 60 community members of different religions and written recommendations from the heads of the district religious affairs office and religious harmony forum. Once these conditions are met, mayors and district chiefs are compelled to issue construction permits. See "Peraturan Bersama Menteri Agama Dan Menteri Dalam Negeri Nomor 8 Tahun 2006 Dan Nomor 8 Tahun 2006 Tentang Pedoman Pelaksanaan Tugas Kepala Daerah/Wakil Kepala Daerah Dalam Pemeliharaan Kerukunan Umat Beragama, Pemberdayaan Forum Kerukunan Umat Beragama Dan Pendirian Rumah Ibadat", Articles 6 and 14, 21 March 2006.

<sup>84</sup> In late 2008, Mayor Diani Budiarto won a second term that ends in 2014, shortly before the presidential election.

<sup>85</sup> "Bangor Pisan, Gereja Yasmin Bogor Tak Pernah Puas Melanggar Aturan", 21 January 2011, available at [www.voa-islam.com](http://www.voa-islam.com).

lice have condoned aggression from protesters, including when they smashed the site's outer wall in January 2010.<sup>86</sup>

In mid-2009, opponents of the church tried a new tack: suggesting that GKI Taman Yasmin had forged some of the signatures showing community consent, thereby rendering the permit invalid.<sup>87</sup> On 20 January 2010, Islamic prayer groups in the Curug Mekar ward and other areas in western Bogor established Forum Komunikasi Masyarakat Muslim Indonesia (Forkami) to spearhead the legal and public battle against the church. While Forkami started from local aspirations, it later forged an alliance with Forum Umat Islam (FUI), a coalition of Islamist groups that has become one of Indonesia's most effective civil society organisations.<sup>88</sup> A Forkami spokesman said the basic argument was: "this is the land of Muslims", implying that, therefore, Christians were not allowed to worship there.<sup>89</sup>

Throughout 2010, GKI tried to finish the church while Forkami lobbied city officials to cordon off the site and revoke the permit. As construction ceased, the congregation held services outside the building, leading to more clashes with the protesters. On 29 April and 1 June respectively, the local religious affairs office and religious harmony forum (Forum Kerukunan Umat Beragama, FKUB), which had initially signed off on the church's construction, rescinded their earlier consent.

On 24 June, the city of Bogor formally requested a judicial review of the earlier appellate court ruling, citing the alleged forgeries as new evidence for reopening the case. Forkami also filed a criminal complaint of forgery against a neighbourhood head, Munir Karta, who was subsequently charged and prosecuted; his trial began in August. For much of this time, the city continued to cordon off the church, blocking access.

On 9 December 2010, after considering the new evidence, the Supreme Court reinforced the original ruling against suspension of the building permit but the central government made no move to force Mayor Diani to comply.<sup>90</sup> Ten days later, two members of parliament from the opposition PDIP helped churchgoers remove the cordon. City officials

restored it the next day on orders from the mayor. On 25 December 2010, churchgoers tried to celebrate Christmas on the sidewalk in front of the site while Muslim groups tried to disperse them. City officials and police did not stop either the harassment or the service but did prevent a full-scale brawl. The next day, in the name of security, police cancelled a service as it was about to begin.

On 20 January 2011, Bogor district court found Munir Karta guilty of faking signatures for the permit process although the church insisted that the signatures in question were never included in the final petition.<sup>91</sup> The conviction fuelled Diani's defiance. On 8 March 2011, he obeyed the letter of the law and revoked the 2008 letter suspending the church's building permit. He then turned around three days later and revoked the permit altogether. Immediately after, the Bogor city police chief issued a letter forbidding services at the site on security grounds.<sup>92</sup> When churchgoers tried to hold a service on 13 March, the paramilitary police Brimob were called in to remove them. In April, Diani held a press conference denying his actions had any connection to religious concerns:

This is about a building permit, not a church. Anything related to permits is my domain. I can cancel a permit before or after it is issued. This is about a permit that is legally flawed because a community leader faked signatures of residents to procure it.<sup>93</sup>

On 1 June, the Supreme Court advised the church to restart the legal process and file another complaint, this time against the revocation. GKI took a different turn; they approached several state institutions for support, including the National Human Rights Commission and the Indonesian Ombudsman. The latter sent a letter in July 2011 to the Bogor mayor, urging him to restore the building permit. Without strong clout, the intervention had no effect.<sup>94</sup> Danang Girindrawardana, the head of the nine-person ombudsman's office, admitted the institution's influence "is unknown" although it can urge anyone providing public service to follow certain actions or even recommend dismissals of civil servants or appointed public office holders for improper services.<sup>95</sup> He said the Bogor mayor was

<sup>86</sup> The protesters were Muslim residents from Taman Yasmin, Curug Mekar ward and other parts of Bogor.

<sup>87</sup> "Terbukti Memalsu Surat dan Tandatangan, Akhirnya IMB Gereja Yasmin di Bogor Dicabut", 22 March 2011, available at forkami.com.

<sup>88</sup> For a report on how the topic of Christianisation is impacting Indonesia, see Crisis Group Asia Briefing N°114, *Indonesia: "Christianisation" and Intolerance*, 24 November 2010.

<sup>89</sup> Ida Indawati Khouw, "3 years on, GKI Yasmin church remains victim of absence of the state", *Jakarta Post*, 24 December 2011.

<sup>90</sup> See "Putusan Mahkamah Agung Nomor 127 PK/TUN/2009". The Supreme Court ruling can be found online at putusan.mahkamahagung.go.id.

<sup>91</sup> See "Putusan Pengadilan Negeri Bogor Nomor 265/Pid.B/2010/PN.Bogor". Also see "Inilah Alasan Walikota Bogor Tolak GKI Yasmin", *Republika*, 27 January 2012.

<sup>92</sup> "Politik Diskriminasi Rezim Susilo Bambang Yudhoyono", Masyarakat Setara, January 2012. The letter's registry number is B/1226/3/2011/Polres Bogor Kota.

<sup>93</sup> "Walikota Bogor: Ini Masalah IMB, Bukan Agama", Jawa Pos National Network, jppn.com, 2 April 2011.

<sup>94</sup> The recommendation's registry number is 001/REK/0259/2010/BS-15/VII/2011; it was addressed to the mayor.

<sup>95</sup> The Ombudsman is regulated in Law No. 37/2008 on Ombudsman of the Republic of Indonesia. Its tasks include receiving and investigating reports of administrative abuses in provid-

the only official since the office was established in late 2008 to reject its counsel.<sup>96</sup> The ombudsman advised President Yudhoyono to take notice of the mayor's defiance.

The central government, however, did not contest the mayor's reading of the law; indeed, he was actively supported by Religious Affairs Minister Suryadharma Ali, whose Islamist United Development Party (Partai Persatuan Pembangunan, PPP) is also a Yudhoyono ally.<sup>97</sup> From late 2011, the home affairs ministry tried to negotiate with the municipality, which offered to buy the land and lend buildings across the city to the churchgoers.<sup>98</sup> On 26 January 2012, Home Affairs Minister Gamawan Fauzi met with Forkami and FUI leaders who demanded the relocation of the church; and top clerics from Indonesia's two largest Muslim groups, Nahdlatul Ulama and Muhammadiyah, also attended the meeting.<sup>99</sup> On 8 February, Gamawan told GKI to move into a hotel and not to hold services in nearby parks or on sidewalks where they had gathered every Sunday since access was blocked.<sup>100</sup> The congregation opted to pray in a house of a member who lives outside Taman Yasmin.<sup>101</sup>

Local and international human rights groups have demanded that President Yudhoyono intervene more actively to force Mayor Diani to respect the spirit of the court rulings and uphold freedom of religion. Instead, he has encouraged mediation, but in a situation where one side – the mayor's – holds all the cards.<sup>102</sup> In front of ambassadors, he said:

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ing public service and finding ways to prevent such violations (Article 7). It has the power to summon, mediate and recommend steps against the disputed parties (Article 8). If a recommendation is ignored or rejected, the Ombudsman can request a superior official to take action or report to the parliament and the president (Article 38). Anyone who obstructs an Ombudsman's investigation faces a maximum penalty of two years in jail (Article 44).

<sup>96</sup> "Danang Girindrawardana: Pelayanan Publik Masih Buruk", 25 July 2012, available at [www.ombudsman.go.id](http://www.ombudsman.go.id).

<sup>97</sup> "Kasus GKI Yasmin Tak Terkait Agama, Hanya Soal IMB", *Republika*, 10 October 2011. Suryadharma Ali is known for his supportive comments for conservative Muslims, which sometimes do not represent the Yudhoyono government's policy.

<sup>98</sup> The two places offered are the Harmony hotel building and the former office of the city's election commission, both located far from Taman Yasmin.

<sup>99</sup> "Soal GKI Yasmin, Ormas Islam Dan Mendagri Sepakat Relokasi", 26 January 2012, available at [www.suara-islam.com](http://www.suara-islam.com).

<sup>100</sup> "Mendagri: GKI Yasmin Bisa Pakai Hotel Yang Disediakan Pemerintah", *Media Indonesia*, 8 February 2012.

<sup>101</sup> "Ibadah Paskah GKI Yasmin Diselenggarakan di Rumah Jemaat", 8 April 2012, available at [terang-dunia.com](http://terang-dunia.com).

<sup>102</sup> Mediators come from the Presidential Advisory Council (Dewan Pertimbangan Presiden, Wantimpres) and the National Resilience Council (Dewan Ketahanan Nasional, Wantannas). Both are filled by retired high-ranking officials and sidelined security officers who have diminishing clout and little actiona-

"I leave it to the mayor" to solve this problem, despite the fact that under Indonesia's decentralisation laws, religious matters are one area, like foreign affairs and defence, in which the central government retains authority.<sup>103</sup> He added that government must ensure that the Muslim majority feel at ease "because the state's duty is to prevent clashes from happening".<sup>104</sup>

On 2 May 2012, presidential advisers announced a way out, which Diani suggested a year before, to build a mosque beside the church as a gesture of harmony.<sup>105</sup> Five days later, however, the mayor rejected the proposal and underlined that the disputed land should not be used for any house of worship, increasing long-held speculation that business interests might be behind the years of insistence and not just support of his conservative Muslim constituency. Forkami's head, Achmad Iman, said he would lead a movement to stop the mosque construction if the plan went through because that "could divide the Muslim community".<sup>106</sup>

## B. BEKASI DISTRICT VS. HKBP FILADELFIA CHRISTIAN CONGREGATION

Allegiance to political constituents was also behind the refusal of the local government in Bekasi to allow construction of a church for more than 500 ethnic Bataks, collectively known as the Filadelfia congregation, who are part of the Batak Christian Protestant Church (Huria Kristen Batak Protestan, HKBP), Indonesia's largest ethnic-based Protestant community.<sup>107</sup>

Sa'duddin, head of religious propagation (*dakwah*) for the West Java branch of the Islamist Prosperous Justice Party (PKS), became  *BUPATI* in 2007 after narrowly winning a

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ble powers. The main Wantimpres mediator is a former National Human Rights commissioner, Albert Hasibuan, while Major General Tahan Toruan represented Wantannas. Both of them are Christian and Batak, the ethnicity of many GKI Yasmin members, and their background did not sit well with the Muslim side that is predominantly local Sundanese. Crisis Group telephone interview, Ahmad Iman, Forkami leader, 4 August 2012.

<sup>103</sup> "SBY: Pemerintah Sedang Mediasi Kasus GKI Yasmin", *Suara Pembaruan*, 15 February 2012.

<sup>104</sup> "SBY: Masalah GKI Yasmin, Pemerintah Pusat Telah Turun Tangan", 15 February 2012, available at [terang-dunia.com](http://terang-dunia.com).

<sup>105</sup> "Konsep Penyelesaian Kasus GKI Yasmin Disepakati", *Koran Jakarta*, 3 May 2012.

<sup>106</sup> Crisis Group telephone interview, Achmad Iman, 4 August 2012.

<sup>107</sup> Many members of the Batak ethnic group from North Sumatra have migrated to suburban areas around Jakarta and major West Java cities where the populations were predominantly Muslim. They are a tightly-knit migrant community that tends to preserve its distinct culture in a diaspora. Most Bataks are Christian.

tight race.<sup>108</sup> He owed his victory to the conservative Muslim electorate, including in the North Tambun subdistrict where he won most of the votes.<sup>109</sup> When the Filadelfia congregation began the process to get a building permit for a church in North Tambun, Sa'duddin emerged as a key opponent together with a coalition of local groups calling themselves Forum Komunikasi Umat Islam (FKUI).<sup>110</sup> It has no direct link to other organisations but receives support from FUI and the Islamic Defenders' Front (Front Pembela Islam, FPI) that spearheaded movements against other churches in Bekasi.<sup>111</sup>

By April 2008, the congregation had collected more than enough signatures from local Muslims to build the church on a plot of land it had purchased in Jejalen Jaya village.<sup>112</sup> It also secured the village head's endorsement.<sup>113</sup> It then submitted all the materials required by law to the relevant local government offices, with a request from each for a recommendation, the next step toward getting a building permit. There was no response. In the meantime, FKUI stepped up its activities, lobbying the *bupati*, the religious affairs office, the police, and the military against the proposed construction.<sup>114</sup> On 18 August 2009, the Bekasi religious affairs office, which is under the *bupati*, refused to issue a recommendation on the grounds that construction

might aggravate communal tensions. It urged church leaders to do more to reach out to their opponents.<sup>115</sup>

On 14 December 2009, FKUI appealed to the subdistrict head (*camat*) to stop Filadelfia from digging a foundation for the church. The *camat* wrote to the congregation, urging it to better explain its actions to the community. On 25 December, when the members celebrated Christmas under a makeshift plywood structure at the site, demonstrators from Jejalen Jaya and other parts of North Tambun organised by local cleric Kyai Naimun, who advises FKUI, hurled rocks at them and drowned out the sermon with offensive shouts.<sup>116</sup> No action was taken by police against the protesters, who dispersed when it was time for Friday prayers.<sup>117</sup>

On 29 December, in a letter to Sa'duddin, FKUI demanded that all construction and worship activities cease. On 31 December, the *bupati* issued a decree effectively giving FKUI what it wanted: a ban on further construction and the conduct of services at the site.<sup>118</sup> From that point on, the demonstrators against the church included members of FPI and FUI who came from other West Java cities and Jakarta.<sup>119</sup> On 3 January 2010, protesters harassed the congregation with anti-Christian songs played through loudspeakers as Sunday services went on under a temporary shelter. Harassment increased the next Sunday. On 12 January, Sa'duddin officially sealed off the site, banning access by parishioners. Filadelfia sued him in the State Administrative Court in Bandung, the administrative court of first instance for all of West Java, and on 30 September 2010, it ruled in its favour, ordering the *bupati* to expedite the church permit process that by this time had dragged on for almost two years.<sup>120</sup> Sa'duddin balked, arguing the services had created social tensions. He appealed the verdict to the High State Administrative Court in Jakarta.

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<sup>108</sup> Sa'duddin won with a plurality of 25.5 per cent in a field of six candidates. In 2007, a leading candidate needed to win more than 25 per cent of the vote in a local election to avoid a run-off. That threshold was increased to 30 per cent in 2008 through Law No. 12/2008, Article 107.2.

<sup>109</sup> "Sa'duddin-Darip Menang, Sidang Pleno KPUD Diwarnai Protes", *Kompas*, 14 March 2007.

<sup>110</sup> FKUI Jejalen Jaya was formed on 22 February 2008 after local prayer groups claimed that some residents did not know their signatures would be used to support construction of a church. See the Islamist version of the chronology of the case, "Inilah Kronologi Lengkap Kasus HKBP Filadelfia Versi Warga Jejalen Jaya", 7 May 2012, available at [www.suara-islam.com](http://www.suara-islam.com). The chronology from the Christian side can be found at "Kronologi Permasalahan HKBP Filadelfia Tambun Bekasi", *Persekutuan Gereja-Gereja di Indonesia*, 29 March 2012, available at [pgi.or.id](http://pgi.or.id).

<sup>111</sup> "Kontroversi Gereja di Jakarta", Center for Religious and Cross-Cultural Studies, March 2011.

<sup>112</sup> The Filadelfia congregation collected 259 signatures of surrounding residents who approved the construction, four times more than the requirement of 60. *Ibid.*

<sup>113</sup> The Filadelfia congregation bought a plot of land in Jejalen Jaya village on 15 June 2007 and received backing for church construction from the community chief on 11 October 2007. For more background on this case, see Crisis Group Briefing, *Indonesia: "Christianisation" and Intolerance*, op. cit.

<sup>114</sup> "Inilah Kronologi Lengkap", op. cit.

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<sup>115</sup> Surat Keputusan nomor Kd.10.16.11/1473/2009, Kantor Departemen Agama Kabupaten Bekasi, 18 August 2009. The office cited the fact that the church plan was rejected by North Tambun residents.

<sup>116</sup> Crisis Group interview, Palti Panjaitan, head pastor of the HKBP Filadelfia congregation, Jakarta, 22 May 2012.

<sup>117</sup> "Ibadah Natal Diwarnai Lemparan Batu", 4 February 2010, available at [www.reformata.com](http://www.reformata.com).

<sup>118</sup> Surat Keputusan Bupati Bekasi Nomor 300/675/Kesbang polinmas/09, Pemerintahan Kabupaten Bekasi, 31 December 2009.

<sup>119</sup> "Jemaah Filadelfia Menunggu Gereja Mereka", Radio Nederland Wereldomroep Indonesia, 28 January 2010, available at [rwn.nl](http://rwn.nl). To watch a video made by news agency KBR68H on the December 2010 attacks on HKBP Filadelfia, go to <http://gsjabansel.blogspot.com/2012/03/mirisnya-kesatuan-negara-indonesia.html>.

<sup>120</sup> Putusan Nomor 42/G/2010/PTUN-BDG, Pengadilan Tata Usaha Negara Bandung, Bandung, 30 September 2010.

On 30 March 2011, Filadelfia won its second legal victory when the appellate court upheld the Bandung decision. Two months later, Sa'duddin filed another appeal, this time to the Supreme Court, which dismissed the case.<sup>121</sup> This left the High Court decision final and binding.<sup>122</sup> Nevertheless, protests from hardline Muslim groups continued, and the central government made no effort to step in to enforce the court's ruling. On 5 December, FKUI sent a letter to Sa'duddin that if he did not stop Filadelfia's activities within two weeks, there would be "mass action". Tensions rose further.

The legal defeats did not weaken Sa'duddin's resolve. He needed the conservative Muslim vote as he was running for a second term in an election scheduled for 11 March 2012 amid a series of corruption allegations, including over land deals in North Tambun.<sup>123</sup> Intimidation of the Christian congregation continued every Sunday while district public order officials and police made no effort to prevent the anti-church groups. As part of his campaign, Sa'duddin promised voters that if elected, "not a single church will be built on my watch".<sup>124</sup> Nevertheless, he lost to a candidate backed by the Golkar party, Neneng Yasmin, which made it impossible for him to be held accountable for defying the court, even though he had two months left to serve.

On 25 March, the protesters sent women and children to occupy the disputed land and later conducted Muslim prayers there.<sup>125</sup> On 22 April, they blocked parishioners, who were still determined to hold Sunday services, from reaching the site and confronted some, telling them to sign a declaration that they would not continue to go there.<sup>126</sup> Around 100 Filadelfia members managed to reach the site and hold prayers until a woman from the Muslim side threw frogs at them, triggering a commotion that led to a shoving match. The head of the district's public order unit

had to shoot into the air to prevent a physical clash between the two sides.<sup>127</sup>

Using the same tactics as their counterparts in Bogor, FKUI's legal adviser filed a criminal complaint with the Bekasi police, alleging forged signatures of some of the witnesses who had testified for Filadelfia in the administrative court case.<sup>128</sup> City administrators are also planning to return to the Supreme Court with new evidence to invalidate the 2007 land purchase.<sup>129</sup>

The new *bupati*, Neneng Yasmin, who began her term on 14 May 2012, asked for time to study the Filadelfia church request. Protests have increased and parishioners have been chased away from services. On 17 May, police officers guarding the congregation as members prepared to celebrate Ascension Day also became the target of a shower of rocks, urine in plastic bags, rotten eggs and frogs.<sup>130</sup> They stood their ground but made no effort to arrest those responsible. On 27 May, protesters besieged the house of church leader Reverend Palti Panjaitan and blocked the access to the site, with police trying to push them back. The demonstrators were able to break through, prompting the congregation to cancel Sunday Mass.<sup>131</sup>

In June 2012, Indonesia's National Human Rights Commission gathered HKBP Filadelfia and *bupati* Neneng, who told the congregation to use a building owned by the Indonesian Teachers Association for worship in the meantime.<sup>132</sup> The churchgoers responded they would accept this as a temporary solution if the *bupati* could pledge in writing that she would implement the court ruling.<sup>133</sup> Members of the president's advisory council (Dewan Pertimbangan Presiden) have also met with the congregation but no breakthrough has been reached.<sup>134</sup> A HKBP lawyer said the *bupati* had refused to set a timeline or put her support on

<sup>121</sup> Penetapan Perkara Nomor 42/G/2010/PTUN-BDG Jo No. 255/B/2010/PT.TUN.JKT, 28 June 2011. The Supreme Court ruled that as the dispute in question was restricted to the Bekasi district; it by law was not subject to further appeal (cassation) and did not meet the criteria of cases that the Supreme Court could hear.

<sup>122</sup> The only exception would have been if the *bupati* had come up with new evidence which he could argue would have made a difference. In such a case, he could file for a civil review (*peninjauan kembali*).

<sup>123</sup> "Usut Dugaan Korupsi Bupati Bekasi", *Indo Pos*, 17 February 2012.

<sup>124</sup> "Church pins hopes on new regent", *Jakarta Post*, 14 May 2012.

<sup>125</sup> Crisis Group interview, Junianto Simanjuntak, lawyer of HKBP Filadelfia, Jakarta, 22 May 2012.

<sup>126</sup> Crisis Group interview, Palti Panjaitan, Jakarta, 22 May 2012.

<sup>127</sup> "Warga Protes Kebaktian Jemaat HKBP, Satpol PP Keluarkan Tembakan Soft Gun", Radio Dakta, 23 April 2012, available at dakta.com.

<sup>128</sup> "Inilah Kronologi Lengkap", op. cit.

<sup>129</sup> "HKBP Filadelfia: Sertifikat Tanah Kami Asli", KBR68H, 17 June 2012.

<sup>130</sup> "Dan Polisi Pun Kena Lempar Air Comberan", *Rakyat Merdeka*, 18 May 2012.

<sup>131</sup> "Massa Intoleran Kepung Rumah Pendeta HKBP Filadelfia", KBR68H, 27 May 2012.

<sup>132</sup> "HKBP Filadelfia Turuti Permintaan Bupati Bekasi", *Cahaya Bagi Negeri*, 14 June 2012.

<sup>133</sup> Crisis Group interview, Saur Siagian, lawyer of HKBP Filadelfia, Jakarta, 3 August 2012. Also see "Bekasi district head tells HKBP Filadelfia to chill, move worship", *Jakarta Globe*, 13 June 2012.

<sup>134</sup> Bagus Saragih, "Filadelfia churchgoers express grievances to SBY's advisors", *Jakarta Post*, 14 May 2012.



paper while the presidential advisers were “very cautious and timid” in approaching the issue.<sup>135</sup>

On 22 July 2012, in Jakarta, the Bogor and Bekasi congregations joined force in a Sunday demonstration in front of the presidential palace, demanding that President Yudhoyono protect their right to worship.<sup>136</sup> Other than a promise to the Indonesian Church Communion (Persekutuan Gereja-Gereja di Indonesia, PGI) in December 2011 that he would handle the issue, the president has not taken action to enforce compliance with the law.

## V. DISCIPLINING DEFIANT LEADERS

All this raises the question: if an official or institution at the district level defies the state, what can the central government do? According to existing law, not much, but there is room for more creative policy-making.

### A. THE CURRENT LAW

Law No. 32/2004 states that the duties of the heads and deputy heads of provinces and districts, among other things, are to uphold the *Pancasila* national ideology and the constitution, all laws and regulation, as well as ensure public order and implement democracy.<sup>137</sup> If local executives violate these obligations – for example by refusing to implement a court order or engaging in actions which discriminate against minorities – they can in theory be dismissed but the process is complicated.

It starts with a recommendation from the local legislature (a district council in the case of a *kabupaten*) after a meeting with at least three-quarters of the members attending and two-thirds of those present agreeing to the dismissal. The recommendation is then sent to the Supreme Court, which has 30 days to investigate the case and decide if the individual in question has violated his or her oath of office or failed to meet other obligations. If the court rules in favour of dismissal, the case goes back to the local legislature where, in another meeting attended by three-quarters of the members, two-thirds must vote in favour of forwarding the case on to the president. The latter is then obligated to dismiss the official within 30 days of receiving the legislature’s decision.<sup>138</sup> The complex procedure, which

has rarely been used, is clearly designed to prevent capricious dismissal.<sup>139</sup>

The president can bypass the local legislature only if the official concerned is guilty of a crime with a maximum sentence of more than five years.<sup>140</sup> Dismissal can only occur after all appeals have been exhausted.<sup>141</sup> The president can also remove local executives if they are indicted in cases of corruption, terrorism, treason or crimes that threaten state security.<sup>142</sup>

Defying rulings from the country’s highest courts has never been defined as a crime. In fact, Indonesia does not have any specific legislation on contempt of court.<sup>143</sup> A few provisions of the criminal code define related crimes, such as attempts to influence judges or creating disruption in the courtroom, but refusal to accept a court ruling is not one of them.<sup>144</sup> Since 1985 when a law on the Supreme Court was enacted, many judges have called for a specific law that prohibits “acts, behaviour, gestures and statements that undermine and threaten the dignity, honor and reputation of judicial bodies”, but this has not materialised.<sup>145</sup> There have also been periodic efforts to include contempt of court in a revised criminal code, but revisions have been underway for more than a decade with no end in sight.<sup>146</sup>

In 2011, a range of problems with dysfunctional local government prompted the home affairs ministry to propose new legislation that would replace Law No. 32/2004. The

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<sup>139</sup> On 14 December 2008, the West Sulawesi local council dismissed Governor Anwar Adnan Saleh but the Supreme Court overturned the dismissal because the quorum was not met. See “Mendagri: Putusan DPRD Kurang Pas”, *Ujungpandang Ekspres*, 15 December 2008 and “Pemakzulan Wako Surabaya Harus Diuji MA”, *Jawa Pos*, 3 February 2011.

<sup>140</sup> Law No. 32/2004, Article 30.1.

<sup>141</sup> *Ibid*, Article 30.2. Legal finality is in the hands of the Supreme Court and Constitutional Court.

<sup>142</sup> *Ibid*, Article 31. The president must reinstate the dismissed in 30 days if the final court finds him not guilty.

<sup>143</sup> For a study on contempt of court in Indonesia, see Agus Daulay, “Kebijakan Hukum Pidana Dalam Menanggulangi Terjadinya Tindakan Pelecehan Terhadap Pengadilan (Contempt of Court)”, student thesis, Universitas Sumatera Utara, Medan, 2008. Also read “Supreme Court calls for a contempt of court law”, 28 February 2011, available at [hukumonline.com](http://hukumonline.com).

<sup>144</sup> Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*), Articles 210 and 217.

<sup>145</sup> In the appendix of Law No. 14/1985 on the Indonesian Supreme Court, there is a line saying: “it is necessary to make a law regulating actions against acts, behaviour, gestures and statements that undermine and threaten the dignity, honour and reputation of judicial bodies or better known as contempt of court”.

<sup>146</sup> The most sustained effort to revise the Dutch colonial era law was in 2005 but it collapsed as a result of competing political interests. See “Contempt of Court Dalam Rancangan KUHP 2005”, Lembaga Studi dan Advokasi Masyarakat (Elsam, 2005).

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<sup>135</sup> Crisis Group interview, Saur Siagian, Jakarta, 3 August 2012.

<sup>136</sup> “Di Depan Istana, Jemaat GKI Yasmin dan HKBP Filadelfia Minta SBY Tegas”, *Rakyat Merdeka*, 22 July 2012.

<sup>137</sup> Law No. 32/2004, Article 27.1.

<sup>138</sup> *Ibid*, Article 29.

bill reached parliament in 2012 but has little chance of being enacted in its current form. It tries to roll back several aspects of decentralisation, including by ending direct elections for provincial governor and giving these governors more control over districts and municipalities, including the power to revoke regulations.<sup>147</sup> It also includes administrative sanctions for local executives who fail to carry out “strategic national programs” (ie, key government decisions).<sup>148</sup>

One article of the bill details prohibitions on local executives, including taking decisions that benefit themselves, their families and friends; making policies inimical to the public interest, that discriminate against a particular group or are in violation of the law; and misusing their authority or violating their oath of office. Any of these actions would be grounds for dismissal, including by the central government.<sup>149</sup> The bill is indicative of Jakarta’s frustrations with local officials and its desire for more authority to deal with them but given the glacial pace of law-making in Indonesia, it is also a way of deferring the problem.<sup>150</sup>

## B. OTHER SOLUTIONS

Professor Jimly Asshiddiqie, former chief justice of the Constitutional Court, is one of many observers who believe the government has been too passive in confronting non-compliance and that the complexities of the decentralisation laws should not be seen as an obstacle:

This is about leadership, how a leader takes risks. The first thing to do is not to ask what the laws are. Set your mission first. If you start from the laws you have, you’ll go nowhere. What if the available laws are bad or imperfect, do you stop?<sup>151</sup>

<sup>147</sup> Ibid, Articles 76.2-5 and 78.

<sup>148</sup> They would receive a written rebuke, followed by a second if they failed to heed the first. If the second produced no action, they would face a three-month suspension and eventual dismissal if the programs still were not implemented. Rancangan Undang-Undang Tentang Pemerintahan Daerah, Kementerian Dalam Negeri, 2011, Article 49.1-3. This clause may have been inserted as debate over a proposed cut in fuel subsidies grew and several local officials, including Bali governor I Made Pataka, joined popular protests against it in March 2012.

<sup>149</sup> Ibid, Article 57.1. In the draft, an executive can be dismissed by the complicated procedures outlined in Law No. 32/2004 but the central government can also initiate proceedings by undertaking an investigation and presenting the case to the Supreme Court, which will decide whether the dismissal was justified.

<sup>150</sup> Resistance largely comes from opposition PDIP using the same “recentralisation” warning used in 2004 that suggests Jakarta wants to control the regions tightly, similar to the authoritarian era of Soeharto. See “Pemerintahan Terancam Balik ke Era Orde Baru”, *Rakyat Merdeka*, 18 May 2012.

<sup>151</sup> Crisis Group interview, Jimly Asshiddiqie, former chief justice of Indonesia’s Constitutional Court, Jakarta, 1 August 2012.

He noted that the president has several options:

- ❑ He can issue decrees (*keputusan presiden*), presidential regulations (*peraturan presiden*) or government regulations in lieu of legislation (*peraturan pemerintah pengganti undang-undang*, perppu). The latter must be submitted to parliament for approval in its next session but in the meantime, they have the force of law.
- ❑ He can allocate or withhold funds using the tools above or simply putting a halt on the government’s transfer of funds to a particular district until its leader complies with the court ruling in question.
- ❑ He can use the power of persuasion. In Bogor, he could talk directly to the affected residents or the clerics who are leading the resistance to the church.
- ❑ He can ensure that clear instructions are given to the police so that there is no hesitation in enforcing the law and no misunderstanding about the importance of complying with court rulings.
- ❑ He can use the media to educate the public, whether about religious freedom or the need to uphold judicial authority.

Another former official familiar with dynamics between Jakarta and the regions suggested deploying a team from the home affairs ministry in every provincial capital to assist regional executives to navigate the maze of laws and regulations. This would be a first step by Jakarta to recognise that many local leaders, left to their own devices, often in ignorance contradict basic practices of governance, including compliance to the judiciary. They then become easily irked when later reprimanded by officials from Jakarta.<sup>152</sup> Either way, the president has the ability to intervene politically and should not let these cases drag on unresolved as tensions build in the communities.<sup>153</sup>

## VI. CONCLUSION

The reluctance of the central government to force compliance of local officials and institutions with national court rulings can create conflict, as in West Kotawaringin, or exacerbate it, as in Bogor and Bekasi. It is not surprising that local governments try to push the boundaries of their authority in a country where the exact balance of power between centre and regions is still being worked out, more than ten years after the decentralisation process began. It is also not surprising that the legal system in general and the

<sup>152</sup> Crisis Group interview, former governor, Jakarta, August 2012.

<sup>153</sup> A lawyer and a former governor regarded the former chief justice’s suggestions as viable options. Crisis Group interviews, Jakarta, August 2012.

courts in particular are held in such low esteem, given the level of corruption that many Indonesians perceive is affecting the judiciary, although the Constitutional Court in particular has generally received high marks for integrity.<sup>154</sup>

In a unitary republic it should be the central government's – and especially the president's – responsibility to see that the authority of the courts is respected and the constitution upheld. Compliance with the highest courts in the country should not be a matter for negotiation and compromise if the goal is to strengthen the rule of law. To promote a more forceful role for Jakarta on these matters is not to advocate micro-management of the regions, let alone the return of Soeharto-style centralisation, but rather to reinforce democracy. People may not like particular decisions, as in the Kotawaringin case, but if separation of powers is to work, then the authority of the courts must be protected.

As new local government laws are being drafted, it would be useful to include a provision that explicitly makes obstruction of justice grounds for suspension from public office. Refusal to comply with court rulings could also be included in the revised criminal code. Just as importantly, the president should his power to sanction local officials for defiance of the courts in a way that can both assert the importance of the judicial branch of government and ensure that local conflicts are not allowed to fester.

**Jakarta/Brussels, 30 August 2012**

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<sup>154</sup> The latest case involves anti-corruption judges allegedly receiving bribes in the parking lot of a district court. See “Two Indonesian anti-corruption judges caught red-handed receiving bribes”, *Jakarta Globe*, 17 August 2012.

## APPENDIX A

### MAP OF INDONESIA



## APPENDIX B

### GLOSSARY

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|                       |  |
|-----------------------|--|
| <i>Bupati</i>         | District head  |
| <i>Camat</i>          | Subdistrict head   |
| Democrat Party        | The current ruling party, vehicle of President Susilo Bambang Yudhoyono  |
| FKUB                  | Forum Kerukunan Umat Beragama, Religious Harmony Forum, state-sponsored units that gather figures from different religions in a certain region             |
| FKUI                  | Forum Komunikasi Umat Islam, Islamic Community Communication Forum, a coalition of Muslim groups in Bekasi   |
| Forkami               | Forum Komunikasi Masyarakat Muslim Indonesia, Indonesian Muslim Society Communication Forum, an organisation against the construction of a church in Bogor |
| FPI                   | Front Pembela Islam, Islamic Defenders' Front, an Islamist vigilante organisation based in Jakarta with branches in other Indonesian regions like Bekasi   |
| FUI                   | Forum Umat Islam, Islamic Community Forum, coalition of Islamist groups mostly from West Java province.  |
| GKI                   | Gereja Kristen Indonesia, Indonesian Christian Church  |
| HKBP                  | Huria Kristen Batak Protestan, Batak Christian Protestant Church, the largest ethnic-based Protestant Christian organisation                               |
| <i>Kabupaten</i>      | District   |
| <i>Kota</i>           | City/municipality  |
| KPK                   | Komisi Pemberantasan Korupsi, Corruption Eradication Commission  |
| KPU                   | Komisi Pemilihan Umum, National Elections Commission   |
| <i>Mahkamah Agung</i> | Supreme Court  |
| NU                    | Nahdlatul Ulama, Indonesia's largest Muslim organisation   |
| PDIP                  | Partai Demokrasi Indonesia Perjuangan, Indonesian Democratic Party Struggle, the main opposition party at the national level                               |
| <i>Pemekaran</i>      | The process of dividing provinces, districts and subdistricts into smaller units   |
| PGI                   | Persekutuan Gereja-Gereja di Indonesia, Indonesia Church Communion   |
| PKS                   | Partai Keadilan Sejahtera, Prosperous Justice Party, part of Yudhoyono's coalition   |
| PPP                   | Partai Persatuan Pembangunan, United Development Party, part of Yudhoyono's coalition  |
| PTUN                  | Pengadilan Tata Usaha Negara, state administrative court   |
| <i>Walikota</i>       | Mayor  |
| Wantimpres            | Dewan Pertimbangan Presiden, Presidential Advisory Council   |

## APPENDIX C

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