



Indonesia

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The collapse of President Soeharto's authoritarian New Order regime in May 1998, and the ensuing transition towards democracy, has brought about many changes in Indonesia, including a tremendous growth in civil society organizations (CSOs). During the past five years the number of CSOs throughout Indonesia has increased substantially. It is no exaggeration to describe the recent developments as the rising era of civil society in Indonesia.

Several developments illustrate this phenomenon:

- The number of nongovernmental organizations (NGOs)¹—the most visible and vocal subset of CSOs— was in the thousands during New Order era, and has increased to the tens of thousands².
- Prior to 1998, there was only one labor organization which was acknowledged and controlled by the government; now there are no less than 40 national labor organizations, not less than 300 local labor unions and more than 10,000 labor associations at the corporate level.
- Social-religious groups, research institutions, study groups and think tanks have also developed significantly.

Although the change in political climate from an authoritarian government to a more democratic one is a dominant factor in the growth of civil society in Indonesia, the effect of the prolonged economic crisis and foreign donor policies are also important factors. There are at least five factors that have contributed to the rapid growth of NGOs in particular:

¹ In Indonesia, the term NGO means organizations that focus their activities toward social and economic empowerment through poverty alleviation programs and policy changes through advocacy programs. The terms CSO is conceptually wider than NGO; CSO also includes the academic community such as student organizations, universities and research agencies that function as think tanks, the media (independent newspapers, radio and television), community organization, social religious organizations and labor unions. This paper mostly refers to NGOs.

² There are no accurate data on the exact number of CSOs in Indonesia however the current number is estimated to be close to 100,000 organizations.

Some Indonesian NGOs are also taking an active part in global civil society discourse, protesting against what they call neo-liberalism and economic globalization sponsored by the International Monetary Fund, the World Bank and the World Trade Organization. They believe that the free trade and privatization promoted by these organizations will inflict losses on the people of the third world. Some NGOs are demanding a waiver of Indonesia's debt to the World Bank, claiming that the funds were misappropriated by the state apparatus; and they are asking that the Indonesian government stop applying for new loans.

CHANGE IN RELATIONS BETWEEN GOVERNMENT, PRIVATE SECTOR AND CIVIL SOCIETY

Government Perceptions

In line with the ongoing democratization process, perceptions of the government, private sector and donors about the existence and role of civil society in general and NGOs in particular have changed.⁵ In general, the government no longer sees NGOs as anti-government or as the opposition. Except for the very vocal and front-line NGOs working on human rights violations and environmental issues (including land-tenure issues), the government does intervene with NGO activities. Some circles of the government see the existence of NGOs as a reflection of the basic freedom of society, and view them as a form of community participation in solving the issues facing society, as well as in carrying out social control of the government. The government sees the need to create a new division of roles among stakeholders (government, private sector and NGOs) by giving opportunities to independent community initiatives, as well as encouraging them to actively participate in government programs. It is expected that a stronger, more democratic, and more dynamic community will emerge through improved community capacity in solving their own problems.⁶ In other words, some circles within the government consider NGOs as organizations with a commitment to serving the interests of the people, and see them as building self-reliance, playing an important function in government control, as well as providing alternatives to government policies.

⁵ The opinions were expressed for instance in a number of seminars on "Developing Strong, Healthy, Democratic, Transparent and Accountable NGOs: Multi Side Perspective" which were held in eight provincial capitals in Indonesia from May to July 2002. Speakers from the government, private sector and Donor Agencies were invited to present their views on NGO roles. The seminars were organized by LP3ES, a national NGO based in Jakarta.

⁶ Freddy H. Tulung (Director Politics, Communications and Information, BAPPENAS): "Developing a Strong, Democratic and Transparent NGO: Government Notes", a paper presented in a one day seminar "Developing Strong, Healthy, Democratic, Transparent and Accountable NGOs: Multisided Perspectives: Government Record", Jakarta, 17 July 2002

NGOs are also viewed as a partner to the government in the implementation of programs and as one of the stakeholders in development. Although they function as government partners, NGOs do not necessarily have to agree with government policies or programs and may submit critical opinions, propose alternative programs and more rational public policies with better targets. Though this view is still somewhat rhetorical and has not become a real commitment formulated in any government policy, it has nevertheless indicated that there is change in government perception towards NGO existence and roles.

However, the government still has difficulty developing effective partnerships with NGOs. This is particularly due to the fact that the rapid growth of NGOs has not been accompanied by the creation of an umbrella organization to represent NGO interests in dealing with the government. For the government, therefore, it is difficult to obtain inputs or to develop accords widely supported by NGO community.

The government believes that in the present transition to democracy, the NGO community should consolidate internally to strengthen its own capacity, because both the government and NGOs have equal potential to be corrupt and lose focus in the absence of a code of ethics, accountability mechanisms and transparent control. That is why the government appreciates NGO efforts in promoting good nonprofit governance, and in improving professionalism, transparency and accountability. The government also sees the need for a forum of NGOs to create NGO accountability in carrying out their functions.⁷

Private Sector Perceptions

The private sector on the other hand views NGOs as institutions with a capacity to influence corporate missions and motivate corporations to develop and improve their performance in corporate social responsibility (CSR). NGOs can motivate changes in corporations’ approach towards its social function from a charity-based to a community-empowerment approach. NGOs are also viewed as being closer to the grass-roots community, and therefore, have the potential to collaborate with corporations in developing better community development programs.

In the past, relations between the private sector and civil society were full of conflict, but due to the change in political climate and NGO pressures, the private sector’s perception towards NGOs has changed. Companies are more willing to collaborate with civil society based on the community development concept. A number of multinational corporations, directly or indirectly through their community relations department or corporate foundations have begun to provide assistance for surrounding

⁷ Ibid

communities through programs in community health, clean water and sanitation, agriculture, and the development of small scale enterprises, all in collaboration with NGOs. These kinds of relationships were almost unheard of in the past.

Meanwhile, donor agencies consider that in general NGOs are committed to economic, social and political change. NGOs are viewed as alternative institutions with the ability to provide public services and at the same time control government power. There are at least four important reasons why donor agencies are willing to collaborate with NGOs. First, donor agencies very much support effective and efficient services and NGOs are sometimes considered to be more effective and efficient than the government in terms of funds utilization. Secondly, in addition to community development programs, NGOs also help to develop social and political infrastructure by advocating for people's benefits. Thirdly, NGOs support civil society development by striving for democracy and human rights. Finally, NGOs support efforts towards policy change.⁸

NGO Perceptions

Unfortunately, there has been little change in the perception of NGOs themselves toward the government and private sector. Some NGOs still think that there has been no significant change in the government. NGOs still feel that the government is corrupt, inefficient, non-transparent and non-participatory. Changes in government policies in legal, economic and political fields are not supported by concrete evidence. Nevertheless NGOs admit that there is a change in government attitude towards NGOs in the form of recognition of their existence and activities.

Also, some NGOs still view the private sector as being ignorant of society's needs. They feel that corporate social responsibility efforts are conducted more in the interests of the company itself than for the community. NGOs still consider corporations as not transparent, abusive of human rights, and damaging to the environment. NGO collaborations with the corporate sector still produce pro and contra divisions among NGOs. NGOs initiate actions such as market boycotts, class action lawsuits against corporations that inflict losses to communities, and try to act as a check on the power of the stock market.⁹ In terms of donors, NGOs consider ODAs to be project oriented and uninterested in NGO capacity building, and think that they often provide assistance only to big and well known NGOs without any clear criteria.

⁸ See paper presented by Greg Rooney, Civil Society Program Advisor with ACCESS AusAid who represented Donor Agencies' perspectives in a seminar entitled "Developing Healthy and Strong, Democratic, Transparent and Accountable NGOs: Multisided Perspective, Banjarmasin, 14 May 2002.

⁹ Recommendation of Workshop for Health Index of Civil Society in Indonesia organized by YAPPIKA, a civil society alliance for democracy.

CRITICISMS OF NGOS

Mercy Corps Assessment

Although there are many positive aspects of collaboration with NGOs, donors also see a number of weaknesses, especially in relation to NGO transparency, accountability and legitimacy. Mercy Corps,¹⁰ a nongovernmental institution based in Edinburgh (UK) and Portland, Oregon (USA) who has been assisting a number of Indonesian NGOs in microfinance programs, made an assessment on the principles of participation, transparency and accountability among its local NGO partners, the results of which are discussed below. Mercy Corps also discovered that several attributes of their local NGO partners represent the general conditions of NGOs in Indonesia.

Organizational Structure and Leadership

There is no division between the board and executives in several NGOs. In several of the organizations, one person, usually the founder of the NGO, dominates its leadership. He usually simultaneously holds the positions of chairman and executive director. If there are any other board members, they are usually also involved in program implementation. In addition, a majority of NGOs indicate that the staff are not sufficiently involved in decisionmaking process.

Community Participation

Several NGOs never ask for input from their intended beneficiaries. Others do not involve the community in the selection and planning of activities or only informally consult community leaders when planning a project. Often NGOs plan their programs and activities only on the basis of what they feel is best for the community—an indication of a top-down interventionist approach.

Accountability and Transparency

Most NGOs still do not have the mechanisms, procedures and capacity in place to be accountable to the public for their programs and activities, as well as for the funds they receive. Some NGOs do not have clear documentation and information systems for their programs; some do not have transparent financial and accounting procedures. Some NGOs never issue a program or financial report for public information.

¹⁰ Rolly Aruna Damayanti, Program Officer with Mercy Corps in Indonesia, in a paper presented to represent donor perspectives in the seminar for "Developing Strong and Healthy, Democratic, Transparent and Accountable NGOs: Multisided Perspectives", Palembang, 9 July 2002

RESPONSES FROM GOVERNMENT – STATE REGULATIONS FOR NGOS

In Indonesia, two kinds of legal entities are recognized as nonprofit entities: foundations (*yayasan*) and associations (*perkumpulan*).

Yayasan

Yayasan began to be recognized as legal entities during the Dutch colonial era (1870) as non-membership organizations. Most follow the European legal system, while some adhere to other legal systems such as *wakaf* (donations or grants under Islamic law). Prior to the ratification of Law No. 16/2001 on Foundations, all forms of *yayasan* in Indonesia were based solely on societal norms and Supreme Court jurisprudence. The legal status of a *yayasan* is actually based only on the agreements and aspirations of the founders and then developed into legal practice. The purpose and agreement for establishing a *yayasan* is then authenticated by a public notary act, registered in the district court and announced in the State Gazette. Normally the objective of a *yayasan* is social, religious, educational or humanitarian in nature. Unfortunately however, there was no limitation to the activities that a *yayasan* could implement, so many *yayasans* were used as profit making entities for the founders.

The Yayasan Law

In line with the demand for good governance in Indonesia after the fall of President Soeharto, and in response to pressure from the International Monetary Fund (IMF)¹³, the government of Indonesia submitted a draft *Yayasan* Law to the parliament in 2000. The basic aim of the law is to promote transparency and accountability in *yayasan* governance.

The notes on the draft law stated that:

“Facts indicate the tendency of some members of society to establish *yayasan* to take shelter behind the legal status of *yayasan* which are used not only to develop social, religious, humanitarian activities but also to accumulate wealth for the founders, board members and supervisors. Along with this tendency, a number of problems have emerged in relation to *yayasan* activities that are not in line with the purpose and objectives stipulated in its Articles of Association and the suspicion that *yayasans* have been used to accommodate illegally gotten wealth of founders or other parties.”

¹³ Immediately after the beginning of the monetary and economic crisis in Indonesia at the end of 1997, Indonesia again invited IMF to come and provide help to stabilize its monetary system and economy.

- Eliminate the “rubber-article” that gives the government authority to dissolve a *yayasan* when it is considered “violating public order or decency.” In the past, the unclear and subjective terms were used by the New Order regime to eliminate/dissolve vocal pro-democratic organizations.
- Restrict the *yayasans*’ scope of work purely to serve social and humanitarian purposes

The coalition was not successful in pushing through all of its eight demands, but it did succeed in including the first four demands.

The *Yayasan* Bill was then ratified as Law No. 16/2001. This law could be considered as an important breakthrough for good governance of the nonprofit sector in Indonesia, as it provided assurance and legal certainty, as well as restored the *yayasan*’s function as a nonprofit institution with social, religious and humanitarian goals. Although Law No. 16/2001 has not been fully implemented, this law will have a wide impact on the nonprofit sector in Indonesia, including NGOs, as 95% of them use *yayasan* (foundation) as their legal entities.

The law provides that a *yayasan* is defined as a legal entity with separated assets aimed at achieving certain goals in social, religious and humanitarian fields and does not have members (Article 1). The law also stipulates that a *yayasan* must have three organs (Article 2), much like that of a limited liability company. The organs are *pembina* (Board of Developers or Patrons), *pengawas* (Board of Supervisors) and *pengurus* (Board of Management). It appears that the role of the Board of Developers is equivalent to that of shareholders in a limited liability company, the Board of Supervisors is equivalent to the Board of Commissioners and the Board of Management is equivalent to the Board of Directors. Patrons are not allowed to hold double positions in the Board of Management and/or Supervisors (Article 29) and the authority of the patrons is specified in Article 28 as follows: (a) decision on revision of the organization’s Articles of Association; (b) appointment and dismissal of members of the Board of Management and Board of Supervisors; (c) general policy based on the Articles of Association; (d) approval of annual plan and budget; (e) merger or dissolution of the organization.

The second organ of a *yayasan* is the Board of Management (*pengurus*). According to law, the Board of Management is responsible for the governing and management of the *yayasan*, is fully responsible for the management of the *yayasan*’s objectives and interests and has the authority to represent the *yayasan* in or out of court (Article 35 Clause 1). The Board of Management must at least consist of a chairperson, a secretary and a treasurer.

The third organ is the Board of Supervisors (*pengawas*), which has the function of supervising and providing advice to the Board of Management in undertaking activities of the organization. A *yayasan* should have at least one supervisor.



- A *yayasan* receiving funding equal to or more than Rp. 500 million or having assets amounting to Rp. 20 billion must be audited by a public accountant (Article 52 Clause 3).
- Annual financial reports of a *yayasan* must be prepared based on the Indonesian Standard of Accountancy (Article 52 Clause 5).

The *Yayasan* Law will unquestionably have a wide impact on the NGO existence in Indonesia. In the past, it was relatively easy to establish a *yayasan*. Two or three people could easily establish a *yayasan* through a public notary act and become a legal entity. For NGOs, the *yayasan* legal entity has allowed NGOs to avoid dealing with governmental institutions in order to become a legal entity, whereas establishing a legal entity as an association required a recommendation from the government. However, with the promulgation of the *Yayasan* Law, many NGOs appear to have not yet adhered to the provisions of the law. Nevertheless, the new law has brought the issues of NGO transparency and accountability to the forefront.¹⁴

Perkumpulan (Association)

As mentioned above, the other form of legal entity is the *perkumpulan* (association), which is established by a number of people to serve the interests of its members or the public. Different from *yayasan*, which is a non-membership organization, *perkumpulan* is established on the basis of memberships or a group of people with a common social service objective and not for profit making purposes. The legal entity of association is obtained through approval from the Minister of Justice and is published in the appendix of the State Gazette.

With the promulgation of Law No. 16/2001, a number of NGOs—particularly organizations active in social movements and dependent on a broad member base—have begun to reconsider their legal status, i.e., to remain a *yayasan* or become a *perkumpulan*. This has been the case with NGOs involved in the women’s movement, consumer protection, the environment, and human rights.

RESPONSES FROM CIVIL SOCIETY

The rapid growth of CSOs and the increasing discourse on good governance have actually caused anxiety among the NGO community in Indonesia. Although it has had positive impacts on the democratization process, the explosive growth of new

¹⁴ Sociology Lab., Faculty of Social and Political Science, University of Indonesia in collaboration with the National Democratic Institute (NDI), *Dinamika Koalisi Ornop*, Research Report, Jakarta, August 2002 page 15-16

LP3ES in collaboration with local NGOs in 8 provincial capitals (Jakarta, Pekanbaru, Palembang, Solo, Surabaya, Banjarmasin, Makassar and Mataram). These seminars were held between May and August 2002 and each one was attended by 50 to 75 participants, mostly from NGOs.

- National workshop on “Advocacy, Community Empowering and Accountability: Between NGOs’ Rights and Obligations”, organized by LP3ES, PIRAC and SAWARUNG with financial help from the Ford Foundation and Partnership for Governance Reform on February 9-11, 2003 with 50 participants.

National Workshop Outcomes

The national workshop, which also included foreign participants, covered issues of NGO legitimacy and accountability in the most comprehensive way. The workshop covered mapping of all sources of NGO legitimacy and existence, NGO constituents and stakeholders, various accountability mechanisms, applications of principles of NGO internal governance; and developed an action plan to improve NGO integrity and credibility. Some of the important conclusions gathered from the national workshop were as follows: ¹⁸

Indicators for and Sources of NGO Legitimacy

There are three indicators to measure whether an NGO has legitimacy. First is *recognition*, i.e., the NGO is recognized by the government or other parties involved in the policy making process. The second is *justification* in that the NGO activities are accepted and appreciated by society through moral support and acknowledgement. Third, *support* whereby the NGO receives assistance in the form of funds and in-kind donations from society.

There are three bases of NGO legitimacy, i.e. moral, legal and social. Moral legitimacy relates to what an NGO does and the moral values it promotes such as justice, equality, solidarity, and participation. In addition, the basic NGO principles of altruism and volunteerism are recognized by society as moral strength and selflessness.

Legal legitimacy or legal-formal legitimacy is the recognition of the NGO’s existence by the state, as well as state support in the form of regulations that create a favorable environment for the NGO to carry out its mission. The *Yayasan* Law, for instance, serves as a guideline for NGOs and provides it with the legal recognition that it deserves.

¹⁸ The conclusions are taken from the Report on Advocacy Workshop for Community Empowerment and Accountability: Between Rights and Responsibility of NGOs, Jakarta, 9-11 January 2003

Improving internal governance: Every Indonesian NGO needs to reflect upon its own existence, values, vision, mission and program; clarify its constituents; and strengthen organizational capacity to achieve accountability.

Increasing public access: Indonesian NGOs need to be more transparent and inform the public regarding their activities and funding sources.

Continuing initiatives for certification and development of common code of ethics: A number of NGOs have taken steps to develop a common code of ethics, as well as to establish an umbrella organization to implement and supervise the code of ethics. Other NGOs plan to develop a program and institution for NGO certification. These initiatives need to be followed up by preparing a code of ethics at the national level through a national-level umbrella organization.

Two perspectives on NGO Good Governance

The First Perspective

As indicated above, it is clear that there are two perspectives used by NGOs in viewing NGO principles of good governance. The first perspective emphasizes that NGOs should be established with ideal objectives, namely the manifestation of the spirits of philanthropy and altruism and caring for other people or humanity. NGO programs or activities should be based on ideal values that are described in the organization’s vision, mission and strategic objectives. These moral values should also be formalized as a code of ethics to guide the NGO in determining what is right or wrong, good or bad. Establishing a code of ethics is necessary for the NGO to regulate itself. Aside from embracing and practicing the chosen moral values and principles, the NGO should also be able to promote those values and principles to its constituents and stakeholders, such as the government, donors, the private sector, community groups and society at-large. By conducting regular promotion of its mission and values, it is expected that the NGO will become well-known and respected, and therefore, have easier access to resources.

The other element of this perspective concerns NGO accreditation and certification. In this view, certification is intended as a tool to help improve NGO quality by using parameters to evaluate the health of an NGO. In a certification program, there are at least five elements: a) vision, mission and goals of the NGO; b) internal governance; c) administrative and financial management; d) operational programs; and e) legitimacy, by developing indicators and means of verification. With the initiatives toward a certification program, it is hoped that support from the international donor communities as well as government, private sector and society will further increase. The government, for instance, may draft a tax law that provides incentives for individual and public contribution to NGOs or a law that will motivate growth of the nonprofit sector.



CHALLENGES FOR THE CIVIL SOCIETY SECTOR

There are three main challenges to be confronted by NGOs in Indonesia. First, reformulation of NGO positions vis a vis the state (government) and various other sectors in the society. With the emergence of democracy, power is no longer centralized but distributed among new power centers such as parliament, political parties, and judicial institutions. Therefore, NGOs have expanded their strong criticism and opposition to include all institutions in power. The stance taken by some NGOs who consider themselves watchdog organizations towards all state institutions has turned them into common enemies. Accusations against NGOs remain, but now are made by political parties instead of the government. NGOs are still branded as agents of foreign interests and traders of poverty, especially due to the fact that there have been corrupt practices among NGOs themselves. Politicians have started to ask questions regarding NGO legitimacy and how much they really represent their constituents.

The situation seems to be unfavorable for the future development of NGOs without a breakthrough on relations and interactions with government and other sectors in the society. There is a need for a genuine two-way dialogue with the government and private sector to develop trust, as well as a common cause. This means bringing changes towards a better Indonesia through the process of lobbying and negotiations, and not only through strong advocacy or street rallies.

The second challenge is to minimize NGO reliance on foreign donors and the third is how to develop public trust towards NGOs by developing legitimacy, accountability and transparency. The second and third challenges are probably best illustrated through recent cases related to the Indonesia Legal Aid Foundation (YLBHI). YLBHI has been one of the outstanding NGO in the fields of law, democracy and human rights for the past thirty years. This organization is in the middle of a severe financial crisis. Two major donors plan to stop their assistance to YLBHI. The decision has had a huge impact on YLBHI and they have decided to reduce their activities and to rationalize their staff. The reasons for the cessation of aid to YLBHI are related to internal governance issues, particularly the internal conflicts between the board of trustees and executives during the last couple of years.

The above illustration provides an example of the financial reality of Indonesian NGOs. Most NGOs in Indonesia depend highly on foreign donor agencies so that when the support is suddenly stopped it affects programs and even the NGO's own existence. This suggests the need for Indonesian NGOs to raise their own funding from domestic sources such as from the public, government and private sector.

In order to gain public trust, however, Indonesian NGOs need to improve their governance, especially in relation to the issues of legitimacy and accountability. It is important for the NGOs to prove their capacity to deliver intended services to the community so that their existence can be socially recognized and supported.



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