

Report of the
Fourth Joint Meeting of the
Working Group on Legal Cooperation
Between Australia and Indonesia
Canberra, Australia

10-11 November 2008

Australia-Indonesia
Working Group on Legal Cooperation

Canberra, 10-11 November 2008

Working Group Report

The fourth meeting of the Australia-Indonesia Working Group on Legal Cooperation was held in Canberra at the Attorney-General's Department offices at Robert Garran Offices and 2 Constitution Avenue.

The co-chairs for the meeting were Mr Abdul Wahid Masru SH MH, Director-General of Legislation, Ministry of Law and Human Rights and Mr Iain Anderson, First Assistant Secretary, Attorney-General's Department.

Bi-lateral meetings and focus groups between Government officials with their respective counterparts were arranged and were held on Monday, 10 November 2008. A plenary meeting was held on the afternoon of Tuesday, 11 November 2008 following the Australia-Indonesia Senior Officials Meeting in the morning and followed by a meeting between the Indonesian Minister of Law and Human Rights with the Attorney-General. The Indonesian Minister of Law and Human Rights and the Minister for Home Affairs will meet following the forum on Thursday, 13 November 2008.

The National Law Development Agency, the Indonesian Supreme Court, the Indonesian International Arbitration Agency were invited but unable to attend. Apologies were received from PERADI. [Annexe D](#).

Information about the establishment of the Working Group, its previous meetings and current legal cooperation activities is at [Annexe A](#).

Pre-meeting: Monday, 10 November 10am-noon

Members of the Working Group Secretariat and the Australian Co-Chair met to discuss the meeting arrangements and consider the input on legal cooperation into the Joint Ministerial Statement.

It was agreed that bi-lateral meetings with counterpart officials would occur throughout the period when the Indonesian delegation was in Canberra from 10 to 12 November 2008. It was also agreed that the plenary meeting on Tuesday afternoon would conclude in time to allow Indonesian delegates time to brief their Minister before his meeting with the Australian Attorney-General.

Concern was expressed by Indonesian delegates that some legal cooperation had lessened in recent times and continued and intensified engagement was sought. Both Indonesian and

Australian delegates also expressed the importance of including a specific paragraph reiterating legal and human rights cooperation in the Joint Ministerial Statement. Hence, the working group agreed to propose an additional paragraph in the Joint Ministerial Statement underlining the importance of such cooperation.

Bi-Lateral Meetings, Monday, 3pm-4:30pm

International Crime

Ms Maggie Jackson, First Assistant Secretary, International Crime Cooperation Division met with Chairijah, Abeh Intano, Mirza and Ahmad Bawazir from Ministry of Foreign Affairs at 2 Constitution Avenue. Others attending were Anna Harmer, Shannon Cuthbertson, Emily Roper and Susan Williamson.

Outcomes of the International Crime Cooperation Focus Group are as follows:

- Participants acknowledged the increasingly strong cooperation between Australian and Indonesian law and justice agencies in international crime cooperation. This included the year-long joint training programs on mutual legal assistance and extradition (for Ministry of Law and Human Rights officials) and on prosecuting transnational crime (for the Attorney General's Office) currently underway, and networking between mutual legal assistance and extradition casework officers to progress cases of key importance to both countries. It was agreed that agencies would continue to discuss opportunities for further and increased cooperation in these and related areas.
- Representatives from both sides acknowledged the complexity and importance of activity aimed at countering people smuggling. Participants recommended that Indonesian and Australian officials meet to develop a plan to cooperate on legal issues relating to people smuggling, in particular, preparing a strong legal framework.
- Officials also acknowledged plans for Indonesia and Australia to exchange information and knowledge on legal issues on the implementation of international counter terrorism instruments.
- Participants welcome the workshop on TSP held in May 2008 organized by Indonesia and Australia to share experience on legal instruments and practical implementation of international TSP. Further joint work with regard to this issue is strongly recommended.
- The focus group noted that sea transportation could not merely be used for business activities but also by criminals, including people smugglers. In line with this issue, the improvement of maritime security is really necessary. Therefore, sharing information and experience between Indonesia and Australia is important.

General Legal Cooperation and Capacity Building Activities

- The focus group expressed a desire to enhance and improve the quality of human resource capacity of government institutions, especially for employees of the Directorate General of Administrative & Legal Affairs, through formal and informal education, workshops, and exchanges of officials.
- The working group representatives acknowledged that economic development must be supported by effective economic legal frameworks. Therefore, strengthening of legal frameworks is important.

Legislation and Drafting

Director-General of Legislation Abdul Wahid Masru and Mr Raudin (Indonesia Embassy – Canberra) met with James Graham, First Assistant Secretary, Office of Legislative Drafting and Publishing. Others attending were Marjorie Todd and Megan Burrowes.

Outcomes of the meeting were

- Proposed forum to explore Legislative Interpretation issues in Indonesia - the Australian proposal was welcomed, further discussions to follow
- Drafter training - OLDP is able to offer high level 'train the trainer' for trainer drafters after the forum is held.
- Electronic publishing - this project commenced about 2 years ago, OLDP will liaise with them to explore the possibility of further exercises; and
- The focus group noted the rising legal cultural/public awareness and public support for legal reform and the corresponding need to build the capacity to provide reliable electronic publication of legislation and other legal material.
- Compilation Legislation - assistance was offered with this, it was considered to be an interesting proposal, consultations will continue.

Human Rights

Professor Dr Harkristuti Harkrisnowo, Director-General Human Rights met with Peter Arnaudo, Assistant Secretary, and Principal Legal Officers, Stephen Fox and Peter Thomson, Human Rights Branch.

The Focus Group undertook a review of human rights developments in both countries including a discussion of the practical policy issues for implementing international human rights treaties in Australia and Indonesia

The Group noted the progress made in implementing the Indonesian National Action Plan for Human Rights (RANHAM) including the:

- continued effort to establish and empower provincial committees and district and municipal committees for implementation of the RANHAM. Today 440 such committees have been established. Recently 12 new districts have been created and they also need to establish RANHAM committees.
- conduct of awareness raising activities about RANHAM in most provinces
- continued engagement of provincial and local governments in RANHAM implementation activities, and the commitment of local politicians to implement and support the RANHAM, and
- commitment of the Directorate-General of Human Rights to continue and expand its work with provincial governments in implementing the RANHAM.

The Group discussed comparative experiences relating to the relationship between Government Departments and national institutions including experiences concerning the administration of Komnas HAM and the Australian Human Rights Commission including:

- independence from Government
- the appropriate number of commissioners
- relationships with other more specialised human rights institutions such as Komnas Perempuan and Australian Equal Opportunity in the Workplace Agency

The Focus Group noted the range of development cooperation activities which have been supported by the Australian and Indonesian Governments to promote good governance and human rights in Indonesia, in particular, capacity building activities with Komnas HAM and human rights awareness raising activities at the community level in Indonesia.

The Group agreed to develop and examine the scope for using the Public Sector Linkages Program and *Indonesia-Australian Legal Development Facility (IALDF)* to support cooperative proposals for undertaking information sharing and capacity building activities between the Australian Attorney-General's Department and the Indonesian Directorate-General of Human Rights. These proposals would aim to enhance the relationship between the Attorney-General's Department and the Directorate-General of Human Rights, strengthen the human rights policy framework in Indonesia, and support the Directorate-General in the implementation of the RANHAM.

The Group agreed that the proposals for cooperation between the Attorney-General's Department and the Directorate-General of Human Rights should include sustainable capacity building activities, both in Indonesia and Australia, to strengthen the human rights policy skills of the Directorate-General of Human Rights, to better enable Directorate-General officers to plan, advise and assist in the implementation of the RANHAM, develop legislation on human rights, to increase understanding of the implications of ratifying international human rights treaties and their implementation, to harmonise local legislation based on human rights perspectives, and to deliver human rights education within Indonesia, particularly by educating Government officials.

The following priority areas for cooperation were identified:

- reviewing the RANHAM – the effectiveness and continued appropriateness of the 6 pillars and the role of the *regional* committees in promoting human rights;
- sharing expertise on ways and means of removing discrimination including auditing laws for consistency with human rights especially local laws and the role of guidelines, and consultations with stakeholders. In 2006 the Group agreed to explore the inclusion of capacity building to address human rights impacts on policy and legislation development as part of a broader cooperation program on development of laws.
- sharing expertise on domestic implementation of human rights treaties – eg the United Nations Optional Protocol to the Convention Against Torture requires each state party to establish a national preventive mechanisms (NPM). Indonesia is planning to ratify the above Optional Protocol as stipulated in the current RANHAM, while Australia is currently examining how to establish a NPM. In addition, Indonesia is considering ratification of several human rights treaties to which Australia is already a party and on which Australia may be able to assist in developing implementation plans.

The Group agreed that the proposals might also include technical assistance in report writing under the international human rights treaties and in providing access to information relating to best practice in human rights policy and research.

Tuesday, 11 November 2008 2pm-3:30pm

The meeting opened with the Australian Co-chair, Mr Anderson, welcoming the Indonesian delegation from the Ministry of Law and Human Rights and the Indonesian Embassy. Mr Anderson introduced the Indonesian officials, welcomed AusAID guests and Attorney-General's Department officials.

It was noted that the meeting would need to be curtailed to allow Indonesian officials to attend the meeting between the Minister of Law and Human Rights, Mr Andi Mattalata and the Attorney-General, the Hon Robert McClelland at 4:30pm. It was agreed to finish the meeting by 3.30pm.

A revised Agenda was adopted.

The Attorney-General's Department tabled a summary of legal cooperation activities Annex A. Members of the Group noted the extent and depth of the activities.

Information was exchanged on the functions and structures of the Ministry of Law and Human Rights and Attorney-General's Department.

Proposals on cooperation programs submitted by Indonesia Annex B in advance of the meeting were discussed. These proposals were also discussed at the bi-lateral meetings with Australian counterparts. These discussions were useful in clarifying the specific requirements that are focussed on enhancing the capability of human resources in the separate Directorates-General in the Ministry. Short-term training courses focussed on sharing information that would assist Ministry of Law and Human Rights (MoLHR) officials identify and be exposed to 'best practice' was considered by the Indonesian delegation to be a useful avenue to improve MoLHR expertise.

Importantly, the Indonesian delegation clarified that the Ministry of Law and Human Rights (MoLHR) had now become the 'law centre' for Indonesia as a result of full responsibility for the legislative process being transferred from the State and Cabinet Secretariats. This new role as the 'law centre' has resulted in MoLHR needing assistance in the following three key areas:

1. the need for more legal drafters,
2. requirement of good infrastructure in legal information facilities to provide comprehensive legal databases/library, and
3. capacity building in human resources.

Mr Daniel Rowland, Senior Law and Justice Adviser of AusAID made a very useful presentation focussing on AusAID's programs related to the legal and justice area. He noted that the current 'flagship' program in this area was the Australia-Indonesia Legal Development Facility that is expected to conclude in 2009. Other relevant funding programs are the Government Partnerships Fund and the Public Sector Linkages Program.

Under AusAID's new Australia-Indonesia Partnership Strategy 2008-2013, there will emerge further opportunities over the next five years. Both Indonesian and Australian stakeholders are being consulted in developing the specific parameters for funding to continue under the new strategy. It was also noted that there will be greater emphasis on input from the Government of Indonesia in determining the distribution of development assistance under the new strategy.

Sub-Groups

Sub-Group on Intellectual Property

The Sub-Group on Intellectual Property noted the commitment by the Indonesian and Australian Governments to continue to work together to develop cooperative mechanisms to enhance IP laws and enforcement. In particular, the Sub-Group discussed proposals put forward by Indonesia to improve knowledge on IP legal frameworks as well as information sharing and training on IP examination procedures and law enforcement. The Sub-Group recognised the importance of encouraging IP cooperation both bilaterally and multilaterally, such as through the APEC Intellectual Property Experts Group. In particular, the Sub-Group identified issues of enforcement of IP rights and capacity building in technical expertise as important to maintaining a respect for IP in domestic and regional trade.

Sub-Group on Alternative Dispute Resolution and Arbitration

A Sub-Group on Alternative Dispute Resolution and Arbitration was recommended at the first meeting of the Working Group on Legal Cooperation and subsequently endorsed by Ministers at the Forum in 2003. The Working Group is hopeful that this sub-group will meet in the lead up to the next Indonesia-Australia Ministerial Forum.

Next meeting

The Working Group resolved to hold its next meeting in Indonesia in the lead up to the next Indonesia-Australia Ministerial Forum.

Report Adoption

Working Group on Legal Cooperation officials reconvened briefly on Wednesday am to adopt this report.

Signature

SIGNED at Canberra on 12 November 2008

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