



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## Indonesia

Indonesia – IDN39690 – Offences relating to Helsinki MOU – Indonesian Summonses (legislation & consequences of ignoring) – 2006 Acehese elections – Police checks for passports  
10 January 2012

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**1. Is it an offence to engage in political activities to oppose the Helsinki MoU and if yes, what is the formal name of the offence?**

No sources were located stating that a specific offence for engaging in political activities to oppose the Helsinki Memorandum of Understanding (MoU) exists or has existed.<sup>1</sup> It is noted that pro-independence activism is punishable under Article 106 of the Indonesian Penal Code:

The attempt undertaken with intent to bring the territory of the state wholly or partially under foreign domination or to separate part thereof, shall be punishable by life imprisonment or a maximum imprisonment of twenty years<sup>2</sup>

In terms of its application in Acehese law, the outcomes of the MoU are not derived from the MoU itself, but from the Law of Governing Aceh (LOGA).<sup>3</sup> The LOGA enacted many of the agreements established between the Indonesian Government and GAM<sup>4</sup> in the MoU; however, the MoU was not considered a legally binding document in the drafting of the LOGA.<sup>5</sup> The LOGA makes no reference to opposition of the Helsinki MoU being a criminal offence.<sup>6</sup>

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<sup>1</sup> Searches conducted on ISYS, CISNET, International/regional NGOs (including Amnesty, Human Rights Watch etc.), RefWorld, Indonesian/Aceh NGOs including Aceh-eye.org (which contains a list of selected legislation enacted by the Acehese and Indonesian governments concerning Aceh) and general internet searches (e.g. Google).

<sup>2</sup> *Penal Code of Indonesia 1952* (Last amended in 1999), UNHCR website, p.32  
<http://www.unhcr.org/refworld/pdfid/3ffc09ae2.pdf> - Accessed 11 January 2012

<sup>3</sup> Formally Law no. 11/2006.

<sup>4</sup> Gerakan Aceh Merdeka (Free Aceh Movement)

<sup>5</sup> Clarke, R., Wandita, G., & Samsidar, 2008, „The Aceh Peace Process from a Transitional Justice Perspective’, *International Center for Transitional Justice*, January, p.13, [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/34BA43C8858F7CD8C12574F700393309/\\$file/considering+victims.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/34BA43C8858F7CD8C12574F700393309/$file/considering+victims.pdf) - Accessed 11 January 2012

<sup>6</sup> Law of the Republic of Indonesia Number 11 of the year 2006 regarding Governing of Aceh (2006), Aceh-eye website, [http://www.aceh-eye.org/data\\_files/english\\_format/indonesia\\_government/indogovt\\_decrees/indogovt\\_decrees\\_2006\\_08\\_01\\_11.pdf](http://www.aceh-eye.org/data_files/english_format/indonesia_government/indogovt_decrees/indogovt_decrees_2006_08_01_11.pdf) - Accessed 11 January 2012

**2. Please provide English translations of the following laws/articles/sections of Indonesian law:**

**a. Article 7, Clause (1), Letter (g) Indonesian Criminal Code**

**b. Article 112, Clause (1) and Clause (2) Indonesian Criminal Code**

**c. Article 113 Indonesian Criminal Code**

**d. Law Number 2, 2002 regarding the National Police of the Republic of Indonesia**

It is believed that the legislation referred to (for parts a, b, and c listed above) is derived from the Indonesian Law of Criminal Procedure. Although a separate penal code (the Indonesian Penal Code) exists, the articles, clauses, and letters referred to on the document correspond to the Criminal Procedure legislation rather than the Penal Code (e.g. there is no Clause (1) Letter (g) in the penal code).<sup>7</sup> Two translations of the Indonesian Law of Criminal Procedure were located with variable standards of translation. The sources for these documents were the Defense Wiki<sup>8</sup> site on the International Bridges to Justice website (IBJ) and a scanned copy of a book donated to the University of Sydney by the Indonesian Consulate. Copies of the original document in Indonesian were also located.<sup>9</sup>

The articles/laws listed are consistent with those used in other summonses found on the internet.<sup>10</sup>

Article 7, Clause (1), Letter (g) Indonesian Law of Criminal Procedure

The IBJ website provides the following translation of Article 7, Clause (1) Letter (g):

(1) An investigator as intended by Article 6 Paragraph (1) point a by virtue of his authority shall be competent:

g. to summon a person to be heard or examined as a suspect or a witness<sup>11</sup>

Article 112, Clause (1) and Clause (2) Indonesian Law of Criminal Procedure

Sources refer to Article 112 as being used as a justification for compelling individuals who have received summons to appear for examination or court. In particular, failing to respond to two written summonses is given as a just cause for issuing a third summons allowing authorities to detain individuals. In these instances, Article 112 (in particular the second

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<sup>7</sup> *Penal Code of Indonesia 1952* (Last amended in 1999), UNHCR website, <http://www.unhcr.org/refworld/pdfid/3ffc09ae2.pdf> - Accessed 11 January 2012

<sup>8</sup> The IBJ's Defence Wiki page is "based on the same software" as Wikipedia but differs from „standard' Wikipedia pages in that its contents are provided by the IBJ and the information is not editable by members of the public. See <http://www.ibj.org/DefenseWiki.html>

<sup>9</sup> See <http://www.sjdih.depkeu.go.id/fullText/1981/8Tahun~1981UU.htm>

<sup>10</sup> „West Papuan activist Hans Gebze summoned to report to Indonesian Police' 2005, *WP News Europe*, 19 October <http://www.infopapua.org/artman/exec/view.cgi?archive=36&num=138&printer=1> - Accessed 11 January 2012; Austin, M. 2009, Copy of summons, 11 April [http://3.bp.blogspot.com/\\_oxeILrk54F4/SVYM6ZZJtkI/AAAAAAAAABk/s30L2hccEsA/s1600-h/summons2.jpg](http://3.bp.blogspot.com/_oxeILrk54F4/SVYM6ZZJtkI/AAAAAAAAABk/s30L2hccEsA/s1600-h/summons2.jpg) - Accessed 11 January 2012

<sup>11</sup> *Law of the Republic of Indonesia Number 8 Year 1981* (1981), The Law of Criminal Procedure, International Bridges to Justice website, [http://defensewiki.ibj.org/images/6/62/Indonesia\\_Law\\_of\\_Criminal\\_Procedure.pdf](http://defensewiki.ibj.org/images/6/62/Indonesia_Law_of_Criminal_Procedure.pdf) - Accessed 11 January 2012

clause) is often cited as allowing this to occur (see response to Question 4 for more information on this). The IBJ website gives this translation for Article 112 (1) and (2):

#### Article 112

(1) An investigator conducting an examination shall have the authority to summon a suspect and a witness deemed necessary to be examined by the issuance of a valid summons, stating clearly the reasons for the summons, being careful to allow for a reasonable time limit between receipt of the summons and the day the person is required to comply with said summons.

(2) The person summoned shall be obliged to appear before the investigator if he fails to appear, the investigator shall once again issue a summons, with an order to the officer to bring the person to him.<sup>12</sup>

#### Article 113 Indonesian Law of Criminal Procedure

A suspect or witness who has been summoned provides a fitting and proper reason why he is unable to appear before the investigator conducting an examination, the investigator shall go to his place of residence.<sup>13</sup>

#### Law Number 2, 2002 regarding the National Police of the Republic of Indonesia

No English translation was located for Law Number 2 of 2002 regarding the National Police of the Republic of Indonesia. The legislation (in Indonesian) is located on the Indonesian Police website.<sup>14</sup> Sources indicate the law is a redrafting of earlier legislation concerning the police to take into account the splitting of the police force from the military in 1999.<sup>15</sup>

### **3. Are there reports that the Acehnese community misunderstood that the MoU and subsequent 2006 elections would provide independence as opposed to autonomy for Aceh?**

No reports were found indicating that the Acehnese community, in general, held a mistaken belief that the Helsinki MoU and the 2006 elections held in Aceh would result in independence (rather than autonomy or self-government<sup>16</sup>) for Aceh. Although some sources noted a lack of detailed knowledge of the MOU by the Acehnese public, sources indicated that, generally, the public were aware of the broad outcomes of the agreement. In relation to the 2006 elections in Aceh, no sources reported a widespread misunderstanding as to the

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<sup>12</sup> *Law of the Republic of Indonesia Number 8 Year 1981* (1981), The Law of Criminal Procedure, International Bridges to Justice website, [http://defensewiki.ibj.org/images/6/62/Indonesia\\_Law\\_of\\_Criminal\\_Procedure.pdf](http://defensewiki.ibj.org/images/6/62/Indonesia_Law_of_Criminal_Procedure.pdf) - Accessed 11 January 2012

<sup>13</sup> *Law of the Republic of Indonesia Number 8 Year 1981* (1981), The Law of Criminal Procedure, International Bridges to Justice website, [http://defensewiki.ibj.org/images/6/62/Indonesia\\_Law\\_of\\_Criminal\\_Procedure.pdf](http://defensewiki.ibj.org/images/6/62/Indonesia_Law_of_Criminal_Procedure.pdf) - Accessed 11 January 2012

<sup>14</sup> Law 2 of 2002 of the Republic of Indonesia (2002), Indonesian Police Website <http://www.polri.go.id/perpu/uu/pages/2> - Accessed 11 January 2012

<sup>15</sup> Ate, J.P. 2010, 'The Reform of the Indonesian Armed Forces in the Context of Indonesia's Democratisation', Centre for Defence and Strategic Studies Australian Defence College, [http://www.defence.gov.au/adc/docs/publications2010/Publictns\\_100924\\_ReformoftheIndonesianArmedForces.pdf](http://www.defence.gov.au/adc/docs/publications2010/Publictns_100924_ReformoftheIndonesianArmedForces.pdf) - Accessed 11 January 2012; Mustofa, M. (undated), 'Labour Rights and Law Enforcement: The Role of The Indonesian National Police in Maintaining Order During Industrial Dispute', *Labour and Management in Development Journal*, Vol. 9 on nla.gov.au website <http://www.nla.gov.au/openpublish/index.php/lmd/article/viewFile/1364/1647> - Accessed 11 January 2012

<sup>16</sup> The term 'autonomy' is not used in the MoU or the LOGA. [http://www.aceh-eye.org/data\\_files/english\\_format/analisis/analysis\\_icg/analysis\\_icg\\_report\\_2005\\_12\\_13.pdf](http://www.aceh-eye.org/data_files/english_format/analisis/analysis_icg/analysis_icg_report_2005_12_13.pdf) p.9

purpose of the elections. Sources noted a large scale voter education programme was implemented prior to the election.

Assessing the attitude of the Acehnese community on the intention of the MoU and election is complicated by the deliberately vague choice of wording in the MoU and subsequent legislation. The International Crisis Group (ICG) in a December 2005 report noted the importance of nomenclature in the MoU, in particular the deliberate avoidance of the word „autonomy’ and the name „Aceh’. According the ICG report, this was done to avoid unfavourable comparison to previous autonomy arrangement in Aceh and to show that Aceh was a “distinct entity from, although formally part of, Indonesia.”<sup>17</sup> Despite these strategies, no sources were found indicating a widespread belief that Aceh would become fully independent as a result of the MoU or that the 2006 elections would provide independence rather than greater self-rule.

### Acehnese understanding of the Helsinki MoU

Sources are varied on the level of knowledge the Acehnese public had of the Helsinki MoU. Although some sources noted a lack of public awareness of the precise nature of the MoU, no sources were located indicating there was a widespread misunderstanding of the outcomes of the MoU. Writing in late 2005 shortly after the signing of the MoU, the United Nations Development Programme noted that, at that time:

[A]wareness amongst the people of Aceh about the terms of the MoU, how it will be implemented, and what the agreement could mean for the future of Aceh, remains low. Limited communications infrastructure, as well as the distance at which negotiations took place, has kept the details of the MoU beyond the reach of most Acehnese.<sup>18</sup>

In contrast, two reports from Tapol<sup>19</sup> indicate, in general, a high level of public knowledge of the MoU’s general points and participation in the post agreement political process. In October 2005 Tapol noted that, although public knowledge of the specific details of the MoU needed to be improved, the Acehnese public were aware of the “general points” of the agreement.<sup>20</sup> In April 2006 Tapol reported a high level of public participation in the drafting of legislation for Aceh between the MoU’s signing and the election. This included large scale marches involving “many thousands” protesting the decision by the Indonesian Government to remove reference to self-government in the LOGA.<sup>21</sup>

The ICG further noted the campaigns of both GAM and the Indonesian Government to disseminate information (referred to in Indonesia as „socialising’) about the MoU to the public. A March 2007 report from the ICG commented that although Indonesian Government

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<sup>17</sup> International Crisis Group 2005, *Aceh: So Far, So Good*, 13 December, Asia Briefing N°44 [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b044\\_aceh\\_so\\_far\\_so\\_good.pdf](http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b044_aceh_so_far_so_good.pdf) - Accessed 11 January 2012

<sup>18</sup> Strengthening Sustainable Peace and Development in Aceh: Programme of Support to the Government of Indonesia’s Implementation of the Aceh Peace Agreement (undated), Government of Indonesia United Nations Development Programme, <http://www.undp.or.id/archives/prodoc/ProDoc-SSPA.pdf> - Accessed 11 January 2012

<sup>19</sup> According to its website Tapol (meaning political prisoner in Indonesian) is a small UK-based NGO promoting human rights, peace and democracy in Indonesia. See <http://tapol.gn.apc.org/about.html>

<sup>20</sup> „Peace in Aceh one month on’ 2005, *Tapol*, Bulletin - n.180, October, <http://tapol.gn.apc.org/bulletin/2005-180.html> - Accessed 11 January 2012

<sup>21</sup> „Peace Process Still on Track’ 2006, *Tapol*, Bulletin - n.182, April, <http://tapol.gn.apc.org/bulletin/2006-182.html> - Accessed 11 January 2012

socialising was largely restricted to large population centres, GAM was able to provide its interpretation of events into rural communities.<sup>22</sup>

#### Acehnese knowledge of the purpose of the 2006 elections

Although no sources commented directly on whether Acehnese citizens believed the election related to independence rather than autonomy/self-government, several observers noted a high degree of voter education in the lead-up to the election. The Asia Network, though noting some voter confusion over the electoral process itself, observed that the local electoral commission (KIP<sup>23</sup>) had implemented an education campaign for voters that incorporated posters, manuals, guidebooks, movie screenings, and radio quizzes.<sup>24</sup> Nonetheless, the same report noted that despite an almost universal knowledge that an election was imminent, less than half were aware of the election date, although the eventual voter turnout was 78%.<sup>25</sup>

No reports were found indicating that opponents of the Helsinki MoU or the election process were prevented from speaking out during the election campaign. No reports were located indicating that opponents of the MoU spoke out against the agreement during the elections. The 2006 Acehnese elections were monitored by a number of domestic and international observers<sup>26</sup> who reported that elections were conducted in an open and transparent manner. The European Union Election Observation Mission to Aceh noted the elections were:

[C]onducted in an open environment, in which freedoms of expression, association and assembly were respected. Candidates were able to campaign freely throughout Aceh without restriction or interference.<sup>27</sup>

#### **4. What are the consequences of not appearing when summoned to attend an Indonesian police station?**

Sources indicate that suspects and witnesses are generally issued with two summonses to attend an Indonesian police station; if the individual does not respond to two summonses, a third (and final) summons is issued allowing authorities to detain the person for questioning.<sup>28</sup>

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<sup>22</sup> International Crisis Group 2007, *Indonesia: How GAM Won in Aceh*, Asia Briefing N°6, 22 March [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b61\\_indonesia\\_how\\_gam\\_won\\_in\\_aceh.pdf](http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b61_indonesia_how_gam_won_in_aceh.pdf) - Accessed 11 January 2012

<sup>23</sup> *Komisi Independen Pemilu Aceh* or Aceh's Provincial Election Commission

<sup>24</sup> Asian Network for Free Elections 2006, *ANFREL first week observation mission report*, 11 December, p.6 <http://aceproject.org/ero-en/regions/asia/ID/ANFREL%20ACEH%20Election%20Frist%20Week%20Report.pdf> - Accessed 11 January 2012

<sup>25</sup> International Crisis Group 2007, *Indonesia: How GAM Won in Aceh*, Asia Briefing N°6, 22 March [http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b61\\_indonesia\\_how\\_gam\\_won\\_in\\_aceh.pdf](http://www.crisisgroup.org/~media/Files/asia/south-east-asia/indonesia/b61_indonesia_how_gam_won_in_aceh.pdf) - Accessed 11 January 2012

<sup>26</sup> European Union Election Observation Mission 2007, *Aceh, Indonesia Governor and Regent/Mayor Election Final Report*, 4 March, p.26 [http://eeas.europa.eu/human\\_rights/election\\_observation/aceh/final\\_report\\_en.pdf](http://eeas.europa.eu/human_rights/election_observation/aceh/final_report_en.pdf) - Accessed 11 January 2012

<sup>27</sup> European Union Election Observation Mission 2007, *Aceh, Indonesia Governor and Regent/Mayor Election Final Report*, 4 March, p.19 [http://eeas.europa.eu/human\\_rights/election\\_observation/aceh/final\\_report\\_en.pdf](http://eeas.europa.eu/human_rights/election_observation/aceh/final_report_en.pdf) - Accessed 11 January 2012

<sup>28</sup> Collins, E. 2007, *Betrayed – How Development Fails*, University of Hawaii Press, Honolulu, p.40 [http://books.google.com.au/books?id=ojOtXYruFTwC&lpg=PA40&ots=Tdn6\\_vEk7r&dq=%2BIndonesia%20failure%20to%20respond%20to%20police%20summons&pg=PA40#v=onepage&q=%2BIndonesia%20failure%20to%20respond%20to%20police%20summons&f=false](http://books.google.com.au/books?id=ojOtXYruFTwC&lpg=PA40&ots=Tdn6_vEk7r&dq=%2BIndonesia%20failure%20to%20respond%20to%20police%20summons&pg=PA40#v=onepage&q=%2BIndonesia%20failure%20to%20respond%20to%20police%20summons&f=false) - Accessed 11 January 2012; „When Will Nazaruddin be Arrested Anyway?’ 2011, *Kompas*, 14 July <http://nasional.kompas.com/read/2011/07/14/00550671/When.Will.Nazaruddin.be.Arrested.Anyway.> - Accessed 11 January 2012. „Indonesia's former insurance chief arrested for graft’ 2005, *People Daily*, 11 July

The legal basis for this 'three summons system' could not be located. Article 112 (2) states that a person failing to respond to a summons may be issued with a summons "with an order to the officer to bring the person to him", however, does not specify how many summons are required before the final one is issued. Nonetheless, sources indicate that the three summons system is part of Indonesian law. A 2010 article on a West Papuan pro-independence website states:

Yoman Sokrates has twice been invited by the police to give clarifications about the events in Puncak Jaya ... After his failure to respond to two summonses, he will be summoned as a witness, on the basis of article 112 of the criminal code which states that anyone summoned as a witness or as the accused is under obligation to appear. If he still refuses to appear, he will be sent an official order to appear. 'This is what the law states and is not just what the police are saying,' said [Police spokesman] Wachyono.<sup>29</sup>

Similarly, an Indonesian police chief speaking in 2005 was quoted on the procedure for arresting a suspect for failing to respond to a summons:

Police had originally planned to question [the suspect] on Tuesday (July 5) but the suspect did not show up, chief of inter-departmental corruption eradication team (Tastipikor) Hendraman Supandji said.

Supandji said the team would soon serve the suspect a second summon. If he ignored this again, police would issue a third one, he said.

"Under the Penal Code he will be forced to appear after also ignoring the third summons," he said.<sup>30</sup>

The system of three summons followed by arrest is confirmed independently by Said Nizar, a law expert at Hasanuddin University in Makassar (the provincial capital of South Sulawesi). Commenting on the powers of the Corruption Eradication Commission (KPK) to arrest a suspect, Nizar commented that:

The third summons is a fixed and unbargainable price for Anggodo to be forcibly picked up from his house or other location for the sake of questioning. That's the existing procedure in the process of summoning a certain person by a legal institution like KPK.

Aside from allowing for the detaining of a suspect in the above circumstances, it is not clear what other punishment a person failing to respond to a summons (as a suspect) would face. Article 522 of the Indonesian Penal Code states that the failure of a legally summoned witness (as opposed to a suspect) to appear is a misdemeanour punishable by a maximum fine

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[http://english.peopledaily.com.cn/200507/11/eng20050711\\_195394.html](http://english.peopledaily.com.cn/200507/11/eng20050711_195394.html) - Accessed 11 January 2012; 'Suharto may be forced to court' 2000, *Associated Press*, 22 September [http://wc.arizona.edu/papers/94/24/01\\_93\\_m.html](http://wc.arizona.edu/papers/94/24/01_93_m.html) - Accessed 11 January 2012

<sup>29</sup> 'Police will continue to summon Sokrates' 2010, West Papua Media Info, 19 August, <http://westpapuamedia.info/2010/08/27/news-from-papua-police-will-persist-in-summoning-sokrates-police-urged-to-stop-summoning-sokrates-lawyers-speak-out-about-sokrates-case/> - Accessed 11 January 2012

<sup>30</sup> 'Indonesia's former insurance chief arrested for graft' 2005, *People Daily*, 11 July [http://english.peopledaily.com.cn/200507/11/eng20050711\\_195394.html](http://english.peopledaily.com.cn/200507/11/eng20050711_195394.html) - Accessed 11 January 2012

of sixty rupiahs.<sup>31</sup> Article 78 notes that the statute of limitations for all misdemeanours is one year.<sup>32</sup>

## **5. Can Indonesian police access immigration departure records to ascertain if an individual has departed Indonesia?**

No information could be located referring to the level of access Indonesian police have to the immigration records of individuals departing Indonesia.

## **6. In 2003 DFAT advised there is no formal requirement to provide a police clearance with a passport application. Are there reports of this having changed (i.e. were police clearances required in 2011?)**

No information was located indicating that a police clearance is a formal requirement of an Indonesian passport application. A Google translation of the process for obtaining a passport, located on the Indonesian Immigration Department website and dated April 2009, lists the following requirements:

### **A. REQUIREMENTS FOR PASSPORT APPLICATION RI**

1. Fill out the passport application form correctly and complete RI (*perdim 11*, which can be obtained at the immigration office);
2. Attach the original file and a copy of identity, among others;
  - Identity Card (KTP);
  - Birth Certificate (KK) and or Learning Graduate Certificate / Diploma;
  - Letter of Marriage / Marriage Certificate for those who have been married;
3. Passport RI who long for a replacement passport applicant RI;
4. Letter rename (*if it is planned to be a change or a change of name*)
5. Recommendations written from the leadership for those who work as civil servants, employees of state enterprises, military / police or private employees;
6. Applicant make payments according to applicable regulations (*Government Regulation No.. 38 Year 2009 regarding State Revenue in the Ministry of Justice and Human Rights Republic of Indonesia*)<sup>33</sup>.

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<sup>31</sup> Current exchange rate converts 60 Rupiah to AUD 0.006 (less than one cent). No information could be located on whether fines listed in the penal code have been adjusted for inflation.

<sup>32</sup> *Penal Code of Indonesia 1952* (Last amended in 1999), UNHCR website, <http://www.unhcr.org/refworld/pdfid/3ffc09ae2.pdf> - Accessed 11 January 2012

<sup>33</sup> Republic of Indonesia Immigration Department (undated), Passport Application Requirements [http://www.imigrasi.go.id/index.php?option=com\\_content&task=view&id=151&Itemid=61](http://www.imigrasi.go.id/index.php?option=com_content&task=view&id=151&Itemid=61) - Accessed 11 January 2012

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[http://wc.arizona.edu/papers/94/24/01\\_93\\_m.html](http://wc.arizona.edu/papers/94/24/01_93_m.html) - Accessed 11 January 2012
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[http://3.bp.blogspot.com/\\_oxelLrk54F4/SVYM6ZZJtKI/AAAAAAAAABk/s30L2hccEsA/s1600-h/summons2.jpg](http://3.bp.blogspot.com/_oxelLrk54F4/SVYM6ZZJtKI/AAAAAAAAABk/s30L2hccEsA/s1600-h/summons2.jpg) - Accessed 11 January 2012
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