UNIVERSAL PERIODIC REVIEW
4TH CYCLE
INDONESIA

STEP 1 : RECOMMEND



STEP 3 : FORGET

STEP 2 : ACCEPT

SUBMISSION FOR UNIVERSAL PERIODIC REVIEW OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL

(Fourth Cycle)

41st Session

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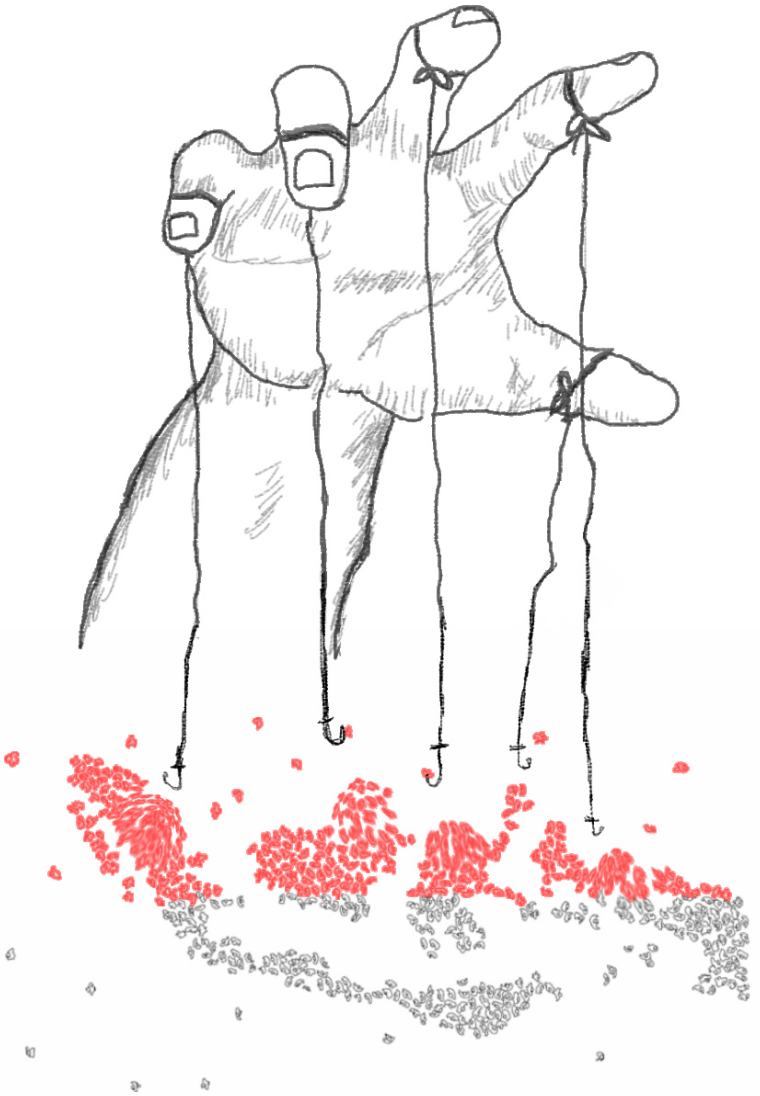
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BUSINESS AND HUMAN RIGHTS



BUSINESS AND HUMAN RIGHTS

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Human Rights Working Group (HRWG)

The Institute for Policy Research and Advocacy (ELSAM)

Indonesia Focal Point (IFP)

I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS), Human Rights Working Group (HRWG), The Institute for Policy Research and Advocacy (ELSAM), Indonesia for Global Justice (IGJ) submit this report for the review of Indonesia in the upcoming Universal Periodic Review (UPR) in October 2022.

2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

3. Institute for Policy Research and Advocacy (ELSAM), was established in August 1993 in Jakarta. Its objective is to actively participate in efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR).

4. Human Rights Working Group (HRWG) is a network of more than 48 non-governmental organizations working on promoting human rights in Indonesia. It was established in 2000 by NGOs sharing similar interests and seeking a platform to coordinate and lead international advocacy efforts. HRWG's main objective is to promote government accountability on constitutional obligations and international standards to respect, promote, protect, and fulfill human rights at home by maximizing available human rights mechanisms at different levels

5. IFP or Indonesia Focal Point (Indonesia Focal Point for Legally Binding Treaty Initiative) was founded in 2016 as coalition of movements, civil society organizations, community leaders, researchers, and academia in developing agenda and response to the process of LBI (legally binding instruments on Transnational Corporations and other business with respect to human rights) based on the resolution 26/9 as adopted by the UN Human Rights Council. The IFP works in advocacy on policy and on institution of norm and mechanism on human rights standard, protection, remedy on human rights violation arising from TNCs.

II. Overview

II.1. On the 3rd Cycle of UPR, Indonesia received and decided to support one specific recommendation on Business and Human Rights from Myanmar. The recommendation is:

a. 139.38 Further strengthen the commitment of Indonesia to strengthen the human rights dimension in business activities

and continue its leading role in this regard (Myanmar); Source of position: A/HRC/36/7 - Para. 139

II.2. Indonesia also received and decided to support other recommendations which are not specific but related to Business and Human Rights. The recommendations are about child labour, sustainable economic and development as well as protection of Indonesian migrants outside and inside the country, including through establishment of legally binding instrument:

a. 139.131 Prevent child labour, beginning with those who work in hazardous conditions (Kenya); Source of position: A/HRC/36/7 - Para. 139

b. 139.84 Continue placing poverty alleviation as one of its priority tasks and promote sustainable economic and social development (China); Source of position: A/HRC/36/7 - Para. 139

c. 139.145 Continue with efforts for the protection of Indonesian migrants outside the country and of migrants in their territory (Peru); Source of position: A/HRC/36/7 - Para. 139

d. 139.82 Expand public participation in pursuit of national development projects such as infrastructure and town planning in order to avoid forced evictions and violence (Kenya); Source of position: A/HRC/36/7 - Para. 139

e. 139.12 Continue to strengthen its leadership in enhancing regional inclusive mechanisms for the protection of migrant workers through the legally binding instrument (Ecuador); Source of position: A/HRC/36/7 - Para 139

III. State-Business Nexus: Actual and Potential Human Rights Violation under Government's Projects

III.1. Vide recommendation 139.38, A/HRC/35/7 (Myanmar). As a country that supports UN Human Rights Council (UN HRC) Resolution 17/4 on 16 June 2011, related to the endorsement of the United Nation Guiding Principles on Business and Human Rights (UNGPs), the Indonesia Government (through ministries/agencies) has attempted to take a number of steps in adapting and integrating the UNGPs into the national legal system. Despite significant achievements, efforts to implement the UNGPs in Indonesia still face emerging challenges. This is indicated by several factors, one of which is the weakness of the government's political will in the promotion and protection of human rights. In recent times, the government and the parliament have focused on discussing and ratifying a number of legislations that explain guarantees for the protection and remediation of human rights and the preservation of the environment and natural resources, such as the revision of the New Mining Law and Job Creation Law.[1]

[1] https://elsam.or.id/satu-dekade-implementasi-ungps-di-indonesia-catatan-dan-rekomendasi-masyarakat-sipil/

III.2. One of the initiatives taken by the government to adopt the UNGPs is to integrate them into the fourth and fifth generation[2] of the National Action Plan on Human Rights (RANHAM). Apart from RANHAM, the Government is currently developing a National Strategy on Business and Human Rights.[3] Unfortunately, although the government has prioritized the implementation of UNGPs in several sectors, such as plantations, mining and tourism, business practices in these three industries are still experiencing serious problems, such as social conflicts, exploitation of workers and resulting in environmental degradation. Even in the mining sector, the government has not explicitly seen any steps in adopting the UNGPs. In addition, the Government's priority which is only focused on three industrial sectors has resulted in human rights violations in other industrial sectors such as health, technology and other sectors getting less attention.

III.3. One sector that has become a priority industry in Indonesia is Tourism. Since 2015, the Government has established 10 "New Bali" destinations through Cabinet Secretariat Letter Number B 652/Seskab/Maritim/2015[4] as a manifestation of

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2 The Fourth Generation of RANHAM is legitimized by Presidential Regulation No.33 Year 2018 and Presidential Regulation No.53 Year-2021 is for the Fifth Generation

3 As observed by ELSAM. See further: ELSAM, *Rencana Aksi Nasional Bisnis dan Hak Asasi Manusia: Pembelajaran Praktik-praktik terbaik Negara-Negara dalam Melindungi warga Negara dari Dampak Bisnis* (Jakarta: ELSAM. 2020), pp.208-209

4 Kementerian Pariwisata dan Ekonomi Kreatif (Kemenparekraf) in ELSAM, *Memetakan Mozaik Pelanggaran Hak Asasi manusia dalam Konteks Pembangunan pariwisata*

the development of National Tourism Destinations. However, the development of this tourism project was hit with a series of human rights violations against the rights of the surrounding community. In a study conducted by ELSAM on the four New Bali destinations, namely, the Tanjung Kelayang Special Economic Zone (SEZ), Bromo Tengger Semeru, Lake Toba and Borobudur Temple, it was found that tourism businesses operating under the “state business relationship” scheme have affected the enjoyment of community rights. —most of them are communities and indigenous peoples.[5] In addition, the UN special rapporteur on Extreme Poverty and Human Rights, Olivier De Schutter also found indications of human rights violations in the form of land grabbing of local communities during the Mandalika project, West Nusa Tenggara as New Bali, causing farmers and fishermen to be evicted from the land they live in.

III.4. Apart from the tourism industry, the community is also faced with a number of incidents of human rights violations by the state as a result of the government's strategic projects in infrastructure development, one of which is the Bener Dam Project, Purworejo, Central Java. The construction of this project threatens the rights of local communities[6] and the

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berdasarkan Perspektif Bisnis dan HAM: Studi Empat Destinasi Bali Baru (Jakarta: ELSAM, 2020) pp.13

5 https://elsam.or.id/memetakan-mozaik-pelanggaran-hak-asasi-manusia-dalam-konteks-pembangunan-pariwisata-berdasarkan-perspektif-bisnis-dan-ham/

6 https://en.tempo.co/read/1564549/human-rights-group-dissects-issue-around-wadas-dam-project

preservation of andesite stone in Wadas Village, Bener District, Purworejo Regency, Central Java, which will be mined using a query system and used for the construction of the Bener Dam.

RECOMMENDATIONS

a. The government needs to make the UNGPs an integral part of the government's work plan (either at the central government or local government level);

b. The government must strengthen the authority of national human rights institutions (Komnas HAM, Komnas Perempuan, KPAI, LPSK and Ombudsman) in providing adequate remedies for victims of business-related human rights violations;

c. The government accelerates formulation of the National Strategy on Business and Human Rights as a specific legal framework for implementing business and human rights di Indonesia with meaningful participation of all stakeholders;

IV. Ecocide in Business (Case Study in Papua and Small Islands)

IV.1. There are several ecocide problems in business that occur in Indonesia. In this paper, we will discuss about the ecocides that occur in Papua and Small Islands in Indonesia. Four companies have been identified. First, PT Freeport Indonesia (mining business permit). While its main concessions are actually located in Mimika District, it has

long carried out gold exploration in Sugapa, Intan Jaya District. PTFI exploration in Wabu Block revealed a gold deposit of more than 116 million tonnes of gold ores. Each ore's mineral content is 2.16 gr of gold and 1.76 gr of silver in average. Since the beginning, TPNPB has stated its position to reject the plan of mining in Wabu Block. They also demanded Papua Governor to withdraw his letter of recommendation for the WIUPK No. 540/11625/SET issued in Jayapura on 24 July 2020.

IV.2. The second company is PT Madinah Qurrata 'Ain (Mining Business Concession). Holding a concession of 23,150 ha, this company is still at the phase of gold exploration. The company then stepped into an agreement with an Australian company, West Wits Mining that ended up holding 64% of shares in PT Madinah Qurrata 'Ain.49 In 2016, West Wits Mining also gave 30% of its shares to Tobacom Del Mandiri (PT Tambang Raya Sejahtera), a Toba Sejahtera Group subsidiary, as a token of a business alliance agreement.50 PTMQ concessions are near several military posts such as Sugapa Subdistrict Police Station, Intan Jaya District Police Station and Intan Jaya Preparatory KODIM Military Base.

IV.3. The third is PT Nusapati Satria (Mining Business Permit). The company's concession was issued in 2011, covering an area of 25,170 ha. It is still at the phase of gold exploration and located completely near local village

settlements in Sugapa. It is even located near Sugapa Subdistrict Police Station, Intan Jaya District Police Station and Intan Jaya Preparatory KODIM Military Base.

IV.4. Two other companies, namely PT Freeport Indonesia (PTFI) and PT Madinah Qurrata 'Ain (MQ) are alleged to have links to the military. there are at least three names of personnel who are in contact with it, namely Rudiard Tampubolon (RT; a retired policeman), Paulus Prananto (a retired TNI member), and another retired TNI member who now holds office of Coordinating Minister of Maritime and Investment Affairs, Luhut Binsar Panjaitan (LBP).

IV.5. The direct victims out of the armed conflict between TNI/POLRI military force and TPNPB are undoubtedly civilians. Shootings and abuse towards them are often committed by TNI/POLRI accusing them of KKB members, or by TPNPB believing they are spies. No wonder, fatalities of the armed conflicts in Intan Jaya come from the side of civilians. Even children are often mistargeted. Naturally, fear and trauma are haunting all communities of Intan Jaya, forcing them to seek refuge. According to Intan Jaya District Government, 1,237 civilians are listed as Internally Displaced Persons (IDP), 331 out of whom are women and children. They escaped to Nabire out of the fear of mistargeting during the armed conflict between TNI/POLRI and TPNPB-OPM.

IV.6. KontraS also conducted research on four small islands in Indonesia, Sunut Island (East Lombok), Bangka Island (North Sulawesi), Romang Island (South Maluku), and Sangihe Island (North Sulawesi). In the management of small islands, there are often many debates, both in terms of economy, geopolitics, and socio-culture. These differences in perspective lead to interventions that actually harm the island community. Some of the problems that occur in the management of small islands are conflicts of interest in the management of areas on small islands and environmental degradation due to extractive activities.

IV.7. There is some business going on on the small island which is slowly causing the destruction of nature. On Pulau Sunut, all residents on Sunut Island were moved to the mainland for the island's privatization project, allegedly by PT. Ocean Blue. The island is planned to be built with 46 luxury villas with the following details: 31 ocean-facing villas, 1 honeymoon villa, 7 bungalows, 6 separate villas from the island, and 2 luxury villas that will make visitors feel like they own an island.[7]

IV.8. In Bangka Island, the Minahasa Regent suddenly issued a permit to mine 2,000ha of iron ore to a Chinese company,

[7] KontraS, Pulau Kecil dan Hak Asasi Manusia: Catatan Situasi HAM di Tiga Pulau Kecil (P. Bangka, P. Sunut, P. Romang), Jakarta: KontraS, 2019, p. 36-37.

Mikgro Metal Perdana Limited Company. The mining area is equal to half of the area of Bangka Island. In addition to taking half the land area from Bangka Island, the mining operation also damaged the surrounding environment. The condition of the beach becomes dirty, the deforestation of green forests, causing water for the needs of the residents to become unfit for consumption. The latest situation on Bangka Island shows that there is no concrete mechanism for environmental restoration.[8]

IV.9. In Romang Island, the presence of Gemala Borneo Utama Limited Company for exploring gold, KontraS found a number of human rights violations, including, The right to clean and healthy water; Rights and guarantees for minority groups and indigenous peoples; The right to security The right to freedom of movement to travel and change places; and the right to proper health care.[9]

IV.10. In Sangihe Island, half of the area is used for mining activities, this has the potential to damage the nature on Sangihe Island. Mining in Sangihe Islands Regency continues even though normatively it has violated the rules

8 *Ibid.* p. 41-43

9 KontraS, Pulau Kecil dan Hak Asasi Manusia, p. 45-47.

in Law Number 1 of 2014 on Management of Coastal Areas and Small Islands for claiming half the island.[10]

IV.11. The nature of ecocides is to destroy the environment and destroy humans at the same time, especially in areas experiencing poverty. Of course, this has an impact on people who lose natural resources and are killed arbitrarily.

IV.12. In various reports reveal the forms of human rights violations committed by the company. The ELSAM report, for example, since 2018 presents consistent data on the existence of various attacks and threats to the environmental human rights defenders (EHRD), not only by state actors but also by non-state actors. These non-state actors, if re-categorized, give rise to the most dominant involvement from the company. In 2020, out of a total of 36 non-state actors that appeared, 28 were companies, and 1 other actor was directly related to companies. The same thing will happen in 2021. As many as 11 of the 20 non-state actors appearing this year are companies with the addition of 2 other actors directly related to companies.

IV.13. In a gender perspective, women not only face the additional risk of being affected by business activities, women also

[10] KontraS, Laporan Penelitian & Investigasi Kabupaten Kepulauan Sangihe 27 Juni - 1 Juli 2021, (Jakarta: KontraS, 2021), p. 14.

face greater barriers to recovering from the losses they have suffered. Often, women lack the cultural support as well as the personal experience of organizing themselves to seek healing. There are many direct and indirect barriers, stemming from patriarchal social norms, that hinder women's access to recovery. While the UNGPs have established the right to remedy, the gender perspective has not been constructed substantively on how to remedy specific violations of women's rights. In other words, women face a unique and disproportionately negative impact on the wrongdoings of corporations.

IV.14. Various forms of human rights violations against women that occur as a result of business activities include physical and psychological attacks experienced by Redubutowe Women, South Asesa District, Nagekeo Regency, East Nusa Tenggara (NTT), as a result of being at the forefront of the strike action in front of the police officers who came. oversee the process of measuring the construction of the Lambo Reservoir. In addition, the same thing was experienced by women in Sigapiton Village, North Sumatera, who struggled to protect their land from exploitation by the tourism industry in Lake Toba. Another case was experienced by the Sunario Jaya farmer group in the Transmigration area in Rio Pakava, Central Sulawesi. Land grabbing carried out by corporations has had an impact on people's lives. The impact is prolonged for women who have to fight against it. (ELSAM report)

RECOMMENDATIONS

a. Drafting an adequate legal framework protection for human rights defenders and abolishing articles that have the potential to threaten human rights defenders;

b. Carry out good control and accountability of law enforcement officers, government representatives and members of parliament, in relation with cases of human rights defenders, as well as to provide rehabilitation for human rights defenders who are victims of all forms of terror and intimidations;

c. The government must strengthen the authority of national human rights institutions (Komnas HAM, Komnas Perempuan, KPAI, LPSK and Ombudsman) in providing adequate remedies for victims of business-related human rights violations;

d. Evaluate the establishment of mechanisms that allow indigenous peoples to be guaranteed the right to their ancestral lands

V. International Treaties Governing Business and Human Rights

V.1. *vide recommendation 141.75.* The Indonesian NHI on human rights set a standard on human rights protection in respect of land and natural resources -the SNP no.7/year 2021. This standard is based on and converge further the non-

discrimination principles and implementation of the Indonesian constitution and international human rights principles towards persons, rural women, rural population, indigenous communities (“communities”). On matter of impact of free trade agreement, international agreement and transnational corporation towards communities, this standard should address matters, including but not limited to.

V.2. transnational corporation on seeds and planned ratification of UPOV 1991 are in effect causing further criminalization and discrimination against “communities” and their traditional seed system. The expansive, indiscriminate, and wholesale application of IP in seeds is discriminating communities, including breeder and host of traditional knowledge.

V.3. Expansive plantations and mining project, including transnational ones, are marginalising and discriminating communities by preventing and non-recognition of communities’ communal rights in their ancestral lands. The condition of FPIC is yet to be established. Constitutional rights yet to be recognised fairly and justly in respect of ancestral land.

V.4. Sea nomads of Indonesia, of Bajo/Bajau, Same/Sama, and “suku laut” as a whole”, further expelled from the tourism area and from big project areas. They are branded as non-citizens

as they live as semi-nomadic rural communities, and preventing them from realizing their rights as community.

V.5. *vide 139.145* The constitutional defense by migrant workers organizations in the court of the Indonesian Constitutional Court resulting in the reaffirmation of migrant workers rights both in “home and host” jurisdiction (the case of 83/PUU-XVII/2019). This ruling reaffirms and reinforces the BHR standard, LBI process, and the other international human rights standard on applying liabilities towards transnational corporations in their value chain in which migrant workers are in it.

RECOMMENDATIONS

a. Taking action on the matters arising from previous cycle’s recommendation 141.75 and 139.145 by implementing NHI of SNP no.7/year 2021 and the ruling of Indonesian Constitutional Court protecting communities and vulnerable groups where they are facing intrusion of TNCs and free trade agreement in their

b. Taking necessary steps in developing a framework on protection of nomadic, semi-nomadic, and migrants where they are facing an intrusion and abuses by TNCs’ and free trade agreement.

VI. Repressive Regulations

VI.1. There are several regulations that repress citizens related to Business and Human Rights. This regulation benefits certain groups such as the elite in running their business so that it has a negative impact on the affected residents. Some of these regulations include Law no. 11 of 2020 (Law on Job Creation) and Amendments to Law no. 4 of 2009 (Mineral and Coal Law)

VI.2. The process of discussing the Amendment of Law Mineral and Coal Law was also carried out in a closed manner and did not accommodate public participation. UU no. 12 of 2011 stipulates that the public has the right to provide input orally or in writing in the formation of laws and regulations. However, based on the mass media reports, the process of discussing the DIM Bill on the Amendment to Law no. 4 of 2009 was carried out intensively from 17 February to 6 May 2020 without ever involving civil society in public hearings. Formally, it is clear that there are defects in the preparation process.

VI.3. Amendment of Mineral and Coal Law weaken government supervision on the implementation of Mining Business Activities and eliminate the community supervision function on environmental impact. Amendment of Mineral and Coal Law in fact also helped to ratify a number of changes to

mining regulations that have the potential to weaken supervision over the implementation of mining business activities, both supervision by the Government as the authorized permit issuer, as well as supervision by the community on the condition of the environmental carrying capacity of mining areas. There is centralized supervision that is not in sync with the arrangements for the delegation of issuance of permits for changes to the law. The amendment eliminates supervision of public interests and the resolution of land issues and mining disputes. The amendment also eliminates the authority of the Mining Inspector to temporarily suspend mining business activities and the right for the community to apply for a temporary suspension of mining business activities.

VI.4. Then, this law also makes the condition of human rights defenders in the environmental sector more vulnerable. In Article 162, it is stated that any person who hinders or interferes with mining activities may be subject to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). This means that anyone who refuses to do mining activities has the potential to be criminalized. The existence of this law has further exacerbated the potential for criminalization, which had previously targeted human rights defenders who were actively criticizing mining.

VI.5. The Job Creation law in its formation did not meet the principles of openness and implementation. Unfortunately, the Job Creation Law does not meet these requirements. The principle of openness requires that the process of drafting laws needs to be open and transparent so that the public can provide input. Unfortunately, the draft can only be accessed after the president's letter is submitted to the House of Representatives, which means it has been completed. Communities do not have access to provide input. In the principle of implementation, this principle states that the design must take into account the effectiveness of laws and regulations in society. Unfortunately, the implementation of the Act was very hasty with the reason to provide flexibility for the Central Government in making policies following the dynamics of society and an increasingly globalized world.

VI.6. The Job Creation Law does not adopt the principles of sustainable development or those related to sustainable development as stated in the current sectoral laws related to natural resource management. At the end, various relaxations in environmental requirements for business actors in the Job Creation Law have the potential to create negative externalities that threaten justice for future generations. The Academic Paper of the 12 February 2020 version of the Job Creation Law raises indicators to show that the complicated licensing system and over-regulation are the causes of the difficulty of doing business in

Indonesia. However, the Academic Manuscript fails to highlight other indicators that are rated worse than the regulatory and licensing indicators, namely enforcing contracts in the Ease of Doing Business (EODB), and the incidence of corruption in the Global Competitiveness Index (GCI). In fact, various research results have shown that good governance of a country also influences the value of foreign direct investment (FDI) and economic growth, two things that the Job Creation Law aims to achieve.

VI.7. Job Creation Law has replaced various provisions previously included in Law no. 32 of 2009 on Environmental Protection and Management (UUPPLH). One aspect that is omitted in this law is related to strict liability which prevents companies from creating environmental damage. Article 88 of the Job Creation Law stipulates that any person whose actions, business, or activities use hazardous and toxic waste, generates and manages hazardous and toxic waste that poses a serious threat to the environment, is absolutely responsible for the losses that occur from his business or activities. This regulation abolishes the clause “without the need to prove the element of fault” as stated in Article 88 of UUPPLH. The removal of this clause has the potential to weaken law enforcement because companies can take advantage of this loophole to continue to pursue proof of fire or other environmental damage in the field.

VI.8. Furthermore, the Job Creation Law changed the provisions in Article 49 of Law no. 14 of 1999 concerning responsibility for forest fires. In Article 49 paragraph (2) of the Job Creation Law, the liability is added with a “business” clause, so that being the holder of the right or business license is obliged to make efforts to prevent forest fires in their work area. The addition of this clause changes the company’s obligation to be responsible for its actions from what was previously “obligated to be responsible” to “try to be responsible”. These provisions will further perpetuate corporate impunity, which means companies that commit violations have the potential to escape legal liability. These violations included environmental damage and even the deployment of vigilante groups which often resulted in civilian casualties.

VI.9. The Job Creation Law also further reduces the role of human rights defenders by limiting public participation in decision-making, such as related to Environmental Impact Analysis (AMDAL) and public consultation in spatial planning. Article 26 paragraph (2) of the Job Creation Law stipulates that those who can participate in the preparation of the AMDAL are only people who are directly affected and environmental observers/researchers/NGOs who accompany the directly affected communities. However, so far there is no clear definition of what is meant by directly affected. This provision reduces public participation in the preparation of the AMDAL as stated in Article 26 paragraph

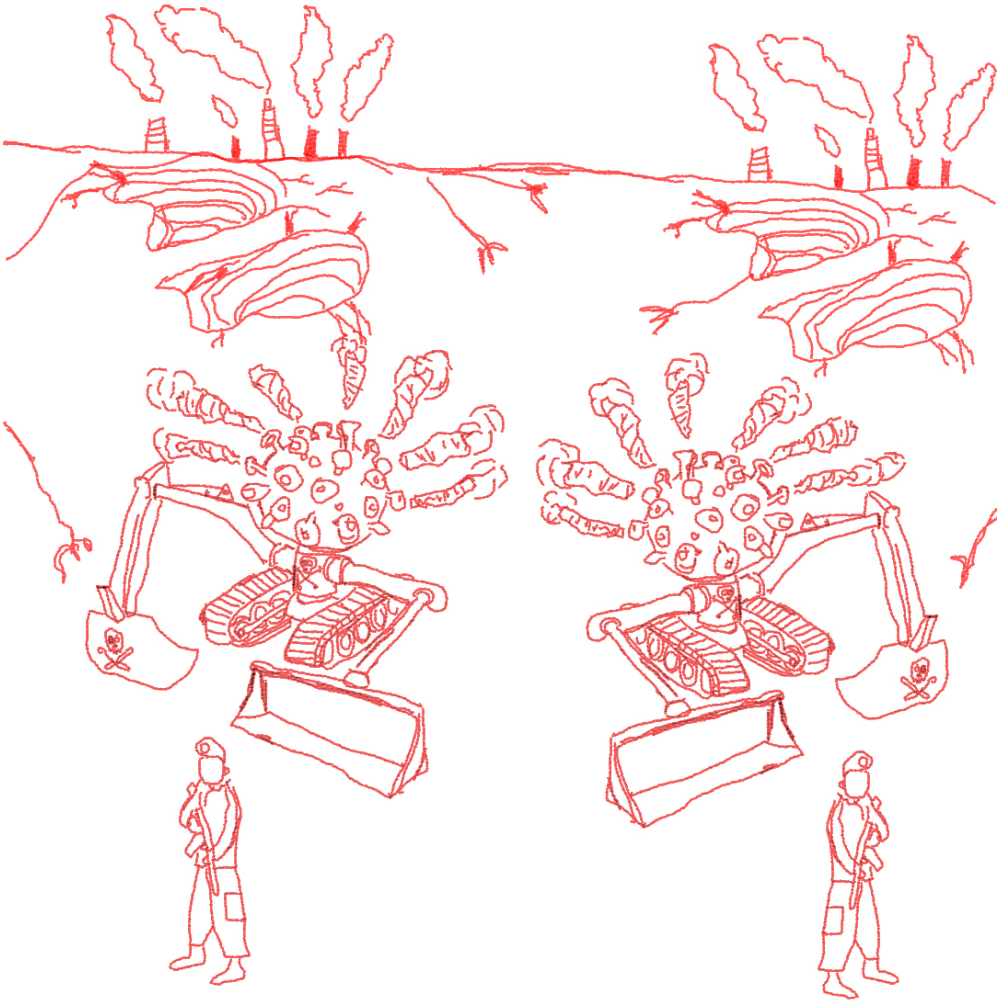
(3) of the PPLH Law. Furthermore, the Job Creation Law also limits public participation to the AMDAL preparation process only. In fact, previously in Article 26 paragraph (4) of the PPLH Law, it was regulated that the people involved could file an objection to the AMDAL document. The absence of the public in making these decisions can trigger conflicts that result in civilian casualties and also open gaps for corrupt practices. Not only that, the Job Creation Law also abolished Article 38 of the PPLH Law which allowed environmental permits to be canceled through a lawsuit in the Administrative Court.

RECOMMENDATIONS

a. Immediately Revise Laws that are problematic for the Environment and Human Rights

b. Make regulations based on the principles of the formation of good laws by paying attention to community participation.

DEVELOPMENT JUSTICE



DEVELOPMENT JUSTICE

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Mining Advocacy Network (JATAM)

I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS), and Mining Advocacy Network (JATAM) submit this report for the review of Indonesia in the upcoming Universal Periodic Review (UPR) in October 2022.

2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

3. Mining Advocacy Network (JATAM) is a network of non-governmental organizations and community organizations that was established in 1995. Its main concern is related to the issues of human rights, gender, living environment, indigenous people and social justice issues in the sector of mining, oil, and gas.

II. Overview and Recommendation Implementation

II.1. In its previous cycle, Indonesia supported one recommendation regarding development justice in Indonesia. The recommendation is:

a. Expand public participation in pursuit of national development projects such as infrastructure and town planning in order to avoid forced evictions and violence.[11]

b. Further strengthen the commitment of Indonesia to strengthen the human rights dimension in business activities and continue its leading role in this regard.[12]

III. Mining Activities in Many Areas in Indonesia

III.1. Indonesia's mining activities have caused many conflicts and violations for many years, even casualties. Due to some regulations, this condition occurs in many areas, giving mining corporations an easier way to operate. Many cases happen during the extractive process, from licensing, exploration, transportation, processing, and waste disposal to post-mining.

III.2. JATAM has found a new way in how corporations within the “corporate state-crime” model on post-consolidation oligarchic

11 A/HRC/36/7 - Para. 139

12 *Ibid.*

politics throughout the electoral process in the area from 2017 until the presidential election in 2019 in Indonesia.[13]. Through this model, it is evident that the state accommodates the interests of mining corporations after the rampant sales of mining licenses to operate both before and after all the political contest is over, as well as the birth of many policies to facilitate mining investment throughout the political years.

III.3. JATAM has also found another pattern through some policies and regulations that benefit mining corporations and politicians. On the 2018 Regional Head Election (Pilkada), JATAM has seen at least 14 regulations that are included within this category[14], including 1 Government Regulation (PP), 4 Ministerial Regulations (Permen) of the Indonesian Ministry of Energy and Mineral Resources (ESDM) and 9 Ministerial Decree (Kepmen) of the Indonesian Ministry of Energy and Mineral Resources (ESDM). The output of these regulations is evident from many efforts to loosen regulations on mining activities.

13 JATAM, "*Laporan Pilkada 2020*", hal. 2.

14 JATAM, *"Catahu Akhir Tahun 2019",* hal. 6.

III.4. In the following, some regulations were created to benefit mining activities since the last political season:[15]

a. Government Regulations (PP) no.24 the Year 2018 on Electronically Integrated Business Licensing Service or known as Online Single Submission;

b. The deletion of the obligation to Environmental Impact Analysis (AMDAL) though Ministerial Decree (Permen) of the Ministry of Environment and Forestry LHK) No.P.24/MenLHK/Setjen/Kum.1/7/2018 on the Exception of the Obligation in Creating Environmental Impact Analysis (AMDAL) for Business and/or Activities that Located Districts/Cities That Already Have Spatial Details;

c. Ministerial Decree (Permen) of the Ministry of Environment and Forestry (LHK) No.P.38/MenLHK/Setjen/Kum.1/7/2019 on the Types of Business and/or Activities that Required to Have Environmental Impact Analysis;

d. Revision of the Law concerning Mineral and Coal Mining;

e. Omnibus Law on Job Creation.

III.5. Extractive activities nowadays are supported through Indonesia's National Strategic Project (PSN), where 131 projects involve the construction of Coal Steam-Electric Power Station (PLTU) (56 Projects), smelters (16 projects), and many

15 *Ibid.*

other projects that are given a signal for another massive and extractive activities surrounding the mining sphere. There is also an obligation for land supply for these projects, and therefore the people need to let go of their land if it is included within the project plan.

III.6. Of 131 projects in Indonesia's National Strategic Project (PSN), there are 56 projects on the construction of a Coal Steam-Electric Power Station (PLTU) that is expected to be able to generate 13,615 MW. These massive projects depend on fossil fuels and are contrary to the global commitment to reduce emissions.

III.7. Most of the projects are connected to an ambitious plan on accelerating the development of electric cars in Indonesia, which is now is on the Indonesian Government's watchlist via the Presidential Decree (Perpres) No.55 the Year 2019 on the Acceleration of Battery-Based Electric Motor Vehicle Program, which implicates to a massive extraction activity on nickel mines – as one of the vital components for the electric vehicle – in the Eastern part of Indonesia, particularly Maluku and Sulawesi.

III.8. Nickel mining activities have created links to a problem upstream of mining, including land confiscation, conflicts, and

violence, but not limited to criminalisation. Many cases are seen in several places, such as in Konawe District, Wawonii Island, Southeast Sulawesi, also in Bahodopi, Banggai, North Morowali in Central Sulawesi, and Weda, Buli, Obi Island in North Maluku. These are predicted to escalate along with the extractive activities due to the acceleration of battery-based electric vehicles. In Obi Island alone, 14 nickel mining corporations dredge the land of the 254,2-hectare island. Meanwhile, in Morowali, it has been ransacked by 61 mining corporations who are very active on land and the coast.[16]

III.9. Nickel extraction activities are also felt by the people living along the river in Pongian, Banggai District, Central Sulawesi, where PT Koninis Fajar Mineral and PT Aneka Nusantara Internasional are operating. The people suffer and lack clean water for daily use, including those working as fishermen in the coastal area. They are in danger of not being able to fish anymore due to the dirty seawater from the Pongian River.

III.10. Nickel mining activities also create massive destruction to the ecosystem, both on land and water. For example, Gebe Island, Gee Island, Pakal Island, and the Halmahera lands in North Maluku have been destroyed due to the mining activities of PT

[16] See more: JATAM.2020. *Proyek Pembuangan Tailing Bawah Laut: Membunuh Masyarakat Pesisir dan Pulau Kecil.* Can be accessed at: https://www.jatam.org/proyek-pembuangan-tailing-bawah-laut-membunuh-masyarakat-pesisir-dan-pulau-kecil/

Aneka Tambang, while in Moronopo, Maba Pura Village, Eastern Halmahera District, the effect on this extractive activity can be seen from the destroyed sea and mangrove ecosystem, this implicates to the life of the people living the area, they are forced to buy clean water because the natural clean water sources can't be accessed anymore due to the mining activities, including in the sea where the water is not clean anymore due to the mud from mining activities. Not only that, but also people are having health problems because of the clouds of dust from nickel mining activities.[17]

RECOMMENDATIONS

a. Facilitate access to recovery for the victims of rights violations from corporates activities, following the use of the state's authority to stop or revoke permissions for corporations that violates civil rights;

b. Encourage corporations to be transparent, including related institutions, regarding the enforcement of open information for the public. In this case, the government should strive for information transparency for its citizens fighting for their rights;

c. Putting pressure on corporations to respect Human Rights in each of their corporate activities, including implementing socialization of their activities to the affected community and following up response with good intention, not merely a formality to get access for a mining license;

17 JATAM Monitoring and Investigation Data. 2021.

d. The government of Indonesia should create a specific regulation regarding due-diligence and the obligation on the fulfilment of Human Rights and the environment that bind the corporations that are operating in Indonesia, which includes fines, sanctions, and responsibility for the corporations;

e. Revoke and/or revise the law and other regulations that potentially destroy the environment or the opposite of the needs of the people, which can injure civil rights, particularly indigenous people.

IV. Business Activities in Small Islands and Special Economic Zones

IV.1. In the management of small islands and special economic zones, there are often many debates, both in terms of economy, geopolitics, and socio-culture. These differences in perspective lead to interventions that actually harm the community. There are still many problems in development on small islands, such as the lack of government alignment with the management of small islands, disparities in social and economic development, limited basic facilities and infrastructure for community needs, conflicts of interest in the management of areas, and environmental degradation due to extractive activities.

IV.2. KontraS conducted research on four small islands in Indonesia, Sunut Island (East Lombok), Bangka Island (North Sulawesi), Romang Island (South Maluku), and Sangihe Island (North Sulawesi). The four islands have different background problems but the impact is the same, namely the investment that is present there does not improve the welfare of the community, on the contrary, the presence of investors even makes people's lives and environmental conditions worse.

SUNUT ISLAND

IV.3. In 2011, all residents on Sunut Island were moved to the mainland for the island's privatization project, allegedly by PT. Ocean Blue. The island is planned to be built with 46 luxury villas with the following details: 31 ocean-facing villas, 1 honeymoon villa, 7 bungalows, 6 separate villas from the island, and 2 luxury villas that will make visitors feel like they own an island. The move was driven by a number of promises made by the corporation through the East Lombok Regional Government which said it would help build facilities for basic needs, such as water, education, health. But, in reality, the community does not feel the change until now, in fact their lives tend to be difficult due to access to fish that is becoming more distant and has implications for increased spending.[18] On developing tourism on Sunut Island

[18] KontraS, Pulau Kecil dan Hak Asasi Manusia: Catatan Situasi HAM di Tiga Pulau Kecil (P. Bangka, P. Sunut, P. Romang), Jakarta: KontraS, 2019, p. 36-37.

are not balanced with meeting the basic needs of the community both before being relocated and after being relocated.

BANGKA ISLAND

IV.4. At the end of 2011, the Minahasa Regent suddenly issued a permit to mine 2,000ha of iron ore to a Chinese company, Mikgro Metal Perdana Limited Company. The mining area is equal to half of the area of Bangka Island. In addition to taking half the land area from Bangka Island, the mining operation also damaged the surrounding environment. The condition of the beach becomes dirty, the deforestation of green forests, causing water for the needs of the residents to become unfit for consumption. [19] The latest situation on Bangka Island shows that there is no concrete mechanism for environmental restoration.

ROMANG ISLAND

IV.5. The presence of Gemala Borneo Utama Limited Company to explore gold mines made the residents of Romang Island anxious. This is because the company entered without providing an open and comprehensive explanation to the public, and it has even had an impact on environmental damage on Romang Island. KontraS found a number of human rights violations, including, The right to clean and healthy water; Rights and

19 *Ibid.* p. 41-43

guarantees for minority groups and indigenous peoples; The right to security The right to freedom of movement to travel and change places; and the right to proper health care.[20] Due to the public's rejection of the existence of mining companies, these mining activities have not yet operated optimally. However, the company lobbied quietly to continue these activities. On the other hand, we find it difficult to obtain up-to-date information on the process because the Maluku local government tends to be non-transparent.

SANGIHE ISLAND

IV.6. In Sangihe Island, half of the area is used for mining activities, this has the potential to damage the nature on Sangihe Island. Mining in Sangihe Islands Regency continues even though normatively it has violated the rules in Law Number 1 of 2014 on Management of Coastal Areas and Small Islands for claiming half the island.[21]

IV.7. The existence of PT. Tambang Mas Sangihe (TMS) to clear its land in the Sangihe Islands Regency was rejected by the community. The people of the Sangihe Islands believe that the existence of mining can damage the environment, interfere with

20 KontraS, Pulau Kecil dan Hak Asasi Manusia, p. 45-47.

21 KontraS, Laporan Penelitian & Investigasi Kabupaten Kepulauan Sangihe 27 Juni - 1 Juli 2021, (Jakarta: KontraS, 2021), p. 14.

their work as farmers and fishermen, and can further threaten the traditions and culture in the community.[22]

IV.8. In addition, we suspect that PT. TMS committed maladministration acts on several matters, such as arbitrary land price offers, lack of public participation, not complying with laws and regulations, and mining concession areas located in disaster-prone areas. In addition, we conclude that when this mining activity takes place, it has the potential to violate human rights, such as the loss of the right to a place to live, the loss of the right to a clean and healthy environment, the loss of the right to decent work, and the threat of public participation in maintaining the integrity of the area.[23]

MANDALIKA SPECIAL ECONOMIC ZONE

IV.9. Mandalika Super Premium Tourism development project in the Mandalika Special Economic Zone (KEK Mandalika), Central Lombok, West Nusa Tenggara Province. This project has led to many evictions and deprivation of the rights of individuals belonging to affected communities. Farmers have been evicted from their land and endured the destruction of their houses, land, and cultural and religious sites. Evictions were often carried out

22 KontraS, Laporan Penelitian & Investigasi Kabupaten Kepulauan Sangihe, p. 27.

23 *Ibid.* p. 28.

following threats and other acts of intimidation and without adequate compensation.[24]

IV.10. UN human rights special rapporteurs have urged the Indonesian Government to respect human rights and the rule of law amid reports that a US$3 billion tourism project on Lombok island that is set to be turned into an integrated tourism complex, comprising a Grand Prix motorcycle race circuit, parks, luxury hotels and resorts, including Pullman, Paramount Resort, and Club Med.[25]

IV.11. The project is partly financed by the Asian Infrastructure Investment Bank (AIIB) and has attracted more than US$1 billion investment by private businesses. The French group VINCI Construction Grands Projets is its largest investor, in charge of the Mandalika Circuit, hotels, a hospital, a water park, and other facilities. The experts also criticized a lack of due diligence by the AIIB and private businesses to identify, prevent, mitigate and account for how they address adverse human rights impacts, as set forth in the UN Guiding Principles on business and human rights.[26]

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24 https://www.cnnindonesia.com/nasional/20210408144705-20-627508/penolakan-warga-dan-dugaan-proyek-mandalika-langgar-ham

25 https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26962&LangID=E

26 *Ibid.*

IV.12. The issue of development has closed systemic problems related to the fulfillment of basic rights and worsened the situation and conditions in the community. Concretely, there needs to be an evaluation of investment activities in small islands, both in the tourism sector and the extractive industry. It can be seen how far the community has benefited from the presence of investment. The central and local governments cannot get out of hand after issuing permits to investors to invest in small islands.[27]

IV.13. The cases that occurred on Bangka Island, Sunut Island, Romang Island, and the Special Economic Zone in Mandalika show that the implementation of laws and regulations that support the preservation of small islands is not optimal at the community level. We see that the management of small islands has not yet detailed the approach to development. In fact, each island has a unique biophysical environmental condition, so it needs to be considered in the study and determination of its management so that it is sustainable.

IV.14. Mining company operations that took place on Romang Island, Sunut Island, and Bangka Island have been proven to violate many human rights, such as the beliefs of minority groups and indigenous peoples. Environmental damage has clearly occurred

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27 *Ibid.*

in small islands whose areas were colonized by foreign investors which caused the loss of livelihoods of indigenous peoples who used to work as fishermen or seaweed farmers or in the tourism sector. In addition, people often receive threats and intimidation from the authorities or investors who force them to sell their land and promise many dreams that have not been realized until now.

IV.15. Based on the case encountered by KontraS, the people of Romang Island from the start had rejected mining because when they arrived, the community had never known about the company. The presence of the mine on Romang Island is believed by traditional elders to be the root of the conflict between the indigenous people in Romang. For example, the land dispute that occurred in Oirlely Hamlet occurred between two different guidances. In fact, according to tradition, there are rules regarding the division of land on Romang Island.

IV.16. The land conflict that arose started from the presence of a company that wanted to mine in a forest area. Meanwhile, existing forests have been discontinued, prohibiting the taking of certain natural resources as a conservation effort in order to maintain the quality and population of these natural biological resources (animal and vegetable). In many cases, the existence of indigenous peoples is often marginalized due to the activities of third parties, such as private and domestic companies. The impact of the existence of third parties is most evident from the

threat to the environmental conditions that form the basis of the livelihoods and lives of indigenous peoples.

IV.17. Manadilka Project also has involved aggressive land grabs, forced evictions of Sasak indigenous peoples, and intimidation and threats against human rights defenders. Farmers and fisherfolks have been expelled from their land and have endured the destruction of their houses, fields, water sources, cultural and religious sites, as the Government of Indonesia and the ITDC (Indonesia Tourism Development Corporation) groomed Mandalika to become a 'New Bali'. Credible sources have found that the local residents were subjected to threats and intimidations and forcibly evicted from their land without compensation. Despite these findings, the ITDC has not sought to pay compensation or settle the land disputes.

RECOMMENDATIONS

a. Stop extractive industries activities in small islands and areas which has a negative impact on the environment;

b. The government needs to take action against companies that violate the applicable laws and regulations;

c. Pay attention to the recommendations of the UN Special Rapporteur regarding respect for human rights in carrying out business activities;

d. It is necessary to evaluate investment activities in small islands, both in the tourism sector and the extractive industry;

e. Stop Extractive Business Activities in Small Islands and Areas which has a negative impact on the environment;

f. Ratify as soon as possible the ILO Indigenous and Tribal People Convention 1989;

g. Evaluate the establishment of mechanisms that allow indigenous people to be guaranteed the right to their ancestral lands;

h. Accelerate the ratification of the Draft Law on Indigenous People by paying attention to their voices.

V. Human Rights Violations in Business Activities

V.1. In general, the implementation of the mandate regarding the upholding of Human Rights in corporate activities, particularly mining, has yet been influential, seeing from the increasing trends of cases, the products of legislation are ignoring civil rights, the state's control on mining activities and the involvement of state apparatus, to the commitment of the corporations and its connection to respecting Human Rights and access to the recovery process is very minimal. Even in some cases, this targets the indigenous people.

V.2. According to Cacatan Awal JATAM, in 2020, across Indonesian Archipelago, there are at least 8.588 mining business permits

that capture 44% of the total land and islands in Indonesia.[28] From that, we can imagine the people's space to live is relatively narrow; also the land tenure to agriculture, plantation, even fishing locations for fishers are coinciding with mining concession areas which are prone to conflicts.

VI. State and Non-State Actors' Responsibilities and Accountabilities

VI.1. JATAM recorded, during Jokowi's administration until 2020, there were 116 mining conflicts, among them are land confiscation where it is. Prone to intimidation, criminalisation, and violence. And within the conflict, there is the involvement of the state, government, to law enforcement apparatus.

VI.2. Activities on State-Owned Enterprises are still ignoring Human Rights, which involves a gold mining corporation, PT. Bumi Suksesindo in Banyuwangi, where criminalisation of environmental activists is often occurring. In that case, Budi Pego, who fights for a better and healthy living space, is sentenced to four years in prison with Article 107(a) on Law No.27 the Year 1999 concerning the Spread of Communism/Marxism/Leninism Teachings.[29]

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28 JATAM, "Catahu Akhir Tahun 2019", hal. 23

29 *Ibid*., 17

VI.3. The government also contributes to decisions making, such as one that President Jokowi made in 2021 by deleting FABA from the category of B3 waste.[30] The government is also planning to allow some hydrometallurgy corporations to dump their tailing waste into deep seas through the *Deep Sea Tailing Placement*[31] project, which will worsen the lives of the people on the coast and small islands. Instead, this move disavows the mandate of UNGP on the commitment of the government to implement their obligation to protect the rights of citizens. Albeit the alert from the Center of Marine Research of the Ministry of Marine Affairs and Fisheries (KKP) that this particular decision is not the right one.[32]

VI.4. In connection to FABA, PT Indominco in East Kalimantan was found guilty in 2017 by Tenggarong District Court, East Kalimantan, with an Rp2 billion fine because they dumped waste without permission.[33] But in contrast to what's happening on the field, the recovery process hasn't yet happened, and the

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30 PP No. 22 Tahun 2021 tentang Penyelenggaraan Perlindungan danPengelolaan Lingkungan Hidup

31 See more: JATAM. 2020. *Proyek Pembuangan Tailing Bawah Laut Membunuh Masyarakat Pesisir dan Pulau Kecil*. Can be accessed at: https://www.jatam.org/proyek-pembuangan-tailing-bawah-laut-membunuh-masyarakat-pesisir-dan-pulau-kecil/

32 See more: KKP. 2021. *Terkait Pembuangan Limbah Ke Laut Versus Pembangunan Berkelanjutan*. Can be accessed at:https://kkp.go.id/brsdm/pusriskel/artikel/31494-alternatif-pembuangan-limbah-ke-laut-dalam-tak-sejalan-dengan-pembangunan-berkelanjutan

33 Putusan Pidana Lingkungan Hidup Nomor 526/Pidsus/LH/2017/PN.Tgr

corporation still usually operates. Meanwhile, according to the Supreme Court Rules No.13/2016 on the procedures for handling criminal acts on corporations, where the government can make a plea for discretion to revoke the mining license. So, the corporation that is found guilty isn't supposed to operate anymore. Even more, the fines that are considered very low are nothing for the corporations and won't be able to deter them enough.[34]

VI.5. Other findings are evidence of ignoring the acts of law violation regarding the corporate's operation with Mining Business Permission (IUP) that has been expired and suspected to support specific candidates. In the Regional Head Election season, we recorded expired 1.682 IUPs.[35]

VI.6. The increasing trend of criminalisation, intimidation, and violence toward environmental activists is influenced by revising the Mineral and Coal Law (UU Minerba) and Job Creation Law (UU Cipta Kerja). Besides allowing massive extraction activities, it also enables vast criminalisation of the people on site. The effect of centralised decision-making makes it hard for the people to complain if any law violations affect

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34 See more: JATAM. 2018.*PT Indominco Tak Cukup Hanya Didenda 2 Miliar.* Can be accessed at: https://www.jatam.org/pt-indominco-mandiri-tak-cukup-hanya-didenda-2-miliar/

35 JATAM, *"Catahu Akhir Tahun 2019"*, hal. 6

them directly and render them to continue further suing the corporations.

VII. The Accountability of State Apparatus

VII.1. The case of land confiscation affects the lives of the people; it creates intimidation, which is done by state law enforcement, security services, direct involvement of 6 high ranked police actors (Retired) and the military that are directly involved in this issue, to the criminalisation of the people through legal bondage. From 2014-2020 there were at least 269 victims of criminalisation and attacks through Articles 20 and 7 of the Law done by the state and corporations with the help of the security apparatus. [36]

VII.2. The responses to the victims' complaint on the violence also burden the civilian, where they have to show the proof of the violence.

[36] See more: JATAM. 2021. *2020 adalah Tahun Panen Ijon Politik Tambang, Kriminalisasi Hingga Berujung Bencana*. Can be accessed at: https://www.jatam.org/2020-adalah-tahun-panen-ijon-politik-tambang-kriminalisasi-hingga-berujung-bencana/

VII.3. In many cases, the pattern of apparatus involvement includes excessive force and the use of a weapon in civil societies that lead to casualties.

VII.4. As of November 2019, sending troops to Intan Jaya in large numbers has begun to be intensively carried out. A significant addition of troops has occurred in Intan Jaya since mid-December 2019. Based on a response letter received by KontraS, POLRI sent a total of 100 police security forces to serve in Sugapa from 18 February to 31 August 2021. The motive for the military deployment in Papua is suspected to be the presence of the Company's Concession in Intan Jaya and the involvement of the military in the Business.

VII.5. The government’s low mechanism control tends to lead to the ignorance of protecting environmental activists in the Law on Protection and Management of the Environment (UU PPLH) No.32 the Year 2009, contributes to giving protections towards corporations with the existence of the revision of Mineral and Coal Law (UU Minerba).

VII.6. The government’s composition that is linked to mining oligarch interest complicates the process of corporate responsibilities about violation of laws that often occur. In the context of the election in 2017-2018, the political situation was ridden by the

interest of businesspeople and politicians that ensure the protection of investment and ease policies to make them easier to do business.

VII.7. The government seems to act secretive regarding public demands for information transparency on mining activities. Until this report has been drafted, there are some lawsuits filed by civil people against the ministries regarding data and pieces of information about mining corporations. Amongst them is a lawsuit on information dispute; 025/REG PSI/XI/2020 on Monday, 9 November 2020, against the Ministry of Energy and Mineral Resources (ESDM) with the object of the dispute a copy of the PKP2B document, evaluation document, and related information.[37]

VIII. Corporate Accountability

VIII.1. A survey conducted by JATAM titled *Sudah Pandemi Tertimpa Tambang*[38] (After the Pandemic, There is Still Mining Activity) shows that within the situation of the COVID-19 pandemic, mining corporations are still operating and increasing the numbers of conflicts criminalisation and violence. Two of the

37 See more: JATAM. 2021. *Dokumen Evaluasi dan Kontrak Tertutup, JATAM gugat ESDM*. Can be accessed at: https://www.jatam.org/dokumen-evaluasi-dan-kontrak-tertutup-jatam-gugat-esdm/

38 JATAM, *"Sudah Pandemi Tertimpa Tambang"*, 2020.

biggest problems that affect the citizens who reside near mining areas are intimidation (15 community respondents), followed by land confiscation when the people are in quarantine (11), physical clash (10), and criminalisation (9).

VIII.2. New pattern of criminalisation towards environmental activists by corporations targets academicians. One of them was in 2018 when Basuki Wasis and Bambang Hero Saharjo from Bogor Agricultural Institute acted as expert witnesses on the PT JJP mining case.

VIII.3. Gander-based violence is also found and being overlooked. This has triggered women's movements to reject mining activities, followed by intimidation. For example, the case of rejecting mining activities done by Jaringan Masyarakat Peduli Pegunungan Kendeng (JPPK) in Kendeng against PT. Semen Indonesia, the women who live around the slope of Tumpang Pitu mountain against PT. Bumi Suksesindo, women in Dairi against PT. Dairi Prima Minerals, the women in Bowone, Sangihe Islands against PT. Tambang Mas Sangihe, also the women in Kodingareng Island against a sand mining company by Boskalis and reclamation plan in Makassar New Port.[39]

39 JATAM Monitoring and Investigation Data, 2021

VIII.4. Corporations are still ignoring their responsibility to ex-mining pits. recorded that there were 40 casualties due to the ex-mining holes in East Kalimantan that had not been reclamation exactly on the COP-26 then. Whereas the Government Regulations no.78 of the Year 2010 on Reclamation and Post-mining contains sanction to revoke IUP if the company do not backfill their ex-mining pits.

VIII.5. In 2014-2019, there were 71 conflicts between civil society rejecting mining activities versus the government and mining companies. These conflicts make up 925.748 hectares in total.[40]

VIII.6. In 2019, JATAM mapped four commodities with the most conflicts, respectively coals, gold, iron sand, and nickel. These happen because of three patterns of conflicts; shootings by state apparatus, physical clash, and road blockage. The company often uses 'thug services' to intimidate or even violence against civil society.

VIII.7. Particularly on the case which involves indigenous people, there are two cases in Bolaang Mongondow, a citizen of the Toruakat indigenous group conflicted with PT Bulawan Daya

40 JATAM, *"Catahu Awal Tahun 2020*", hal. 14.

Lestari was shot by thug services that the company paid. The other four of indigenous groups were injured when they were blocking the way of companies into their area.[41] At that time, the police were present, but they let it happen when the indigenous groups were attacked.

VIII.8. JATAM recorded there are at least 10 Articles that are often being used for criminalising civil societies who reject mining activities[42], as follows:

a. Article 162 Law No.4/2009 on Mineral and Coal Minings, used in Mupit Datusahlan case;

b. Berau, East Kalimantan, criminalized by PT Kaltim Jaya Bara, also the case of Wa Ana, Amin, and La Baa in a small island, Wawonii, Southeast Sulawesi, policed by PT Gema Kreasi Perdana;

c. Article 170 of the Criminal Code was used to file against Tubagus Budhi Firbany, who refused mining activity in Belitung in 2015 because he blocked the ship that carries tin. Also, six underage teenagers in Wisnu Village, Pemalang District, Central Java, refused PT Asa Sukses Amanah, and two people in Jenu Sub-district, Tuban

41 See more: JATAM. 2021. *Usut Tuntas Dalang dan Pelaku Penembak Warga serta Cabut Izin Tambang PT BDL*. Can be accessed at: https://www.jatam.org/usut-tuntas-dalang-dan-pelaku-penembak-warga-serta-cabut-izin-tambang-pt-bdl/

42 JATAM, *"Catahu Akhir Tahun 2019"*, hal. 16.

District, refused the construction of an oil refinery in cooperation between Pertamina – Rosneft Oil;

d. Article 263 (1) of the Criminal Code was used to criminalised Joko Prianto and five other activists of JMPPK from Gunem Sub-district, Rembang District, with the accusation of signature forgery of the people who refused the establishment of mine and factory owned by PT Semen Indonesia;

e. Article 333 (1) of the Criminal Code was filed against 21 citizens in Wawonii, Southeast Sulawesi, by PT GKP. The citizens were blocking heavy equipment to enter the island and agricultural lands owned by the people in 2019;

f. Article 335 (1) of the Criminal Code was also used to criminalise Tubagus Budhi Firbany due to blocking the way for a ship that carried tin. Also occurred in Sardin, Masa Udin, and Idris case in Sukarela Village, Southeast Wawonii Sub-district, in July 2019, which accused of threatening and act of violence, were in fact, they were protecting and fighting for their land and space to live;

g. Article 107a Law No.27/1999 on the changes of the Criminal Code and its connection to Crimes against National Security was used to criminalise Budi Pegi and other three people of Pesanggrahan due to their refusal of a gold mine owned by PT Bumi Suksesindo in Tumpang Pitu, Banyuwangi witch the accusation of spreading communism;

h. Article 19 (a) Law No.18/2013 on the Forest Destruction Prevention and Eradication was used as a snaring article against two farmers of Surokonto Wetan, Nur Azis and Sutrisno Rusmin, who defended their lands that are subject to swapping between Perhutani and PT Semen Indonesia in Rembang;

i. Article 24 (a) Law no.24/2009 concerning Flag, Language and National Symbol, and National Anthem was used to convict Sawin, Sukma, and Nanto in Mekarsari Village, Indramayu District, who were accused of offending the national flag on their actions in rejecting the Indramayu 2 Steam-Electric Power Station;

j. Article 28 (2) Law on Electronic Information and Transaction was used to convict HAM activists and the making of a documentary film by Dandhy Laksono about violence and human rights violations in Papua;

k. Article 45a (2) Law on Electronic Information and Transaction was also used to catch Dandhy Laksono;

l. Most recent ones, the mega-project for The New Capital City (IKN), uncovered a plethora of problems, including the area for IKN, which is surrounded by mine concessions, and there are at least 149 ex-mining pits in the surrounding area, 92 ex-mining pits are within the mining companies' concession and other. 57 are outside of the concession area. It means that the relocation of Capital City diminishes more land for the people to live in

a narrower area than they already are with the remaining lands and living space.

RECOMMENDATIONS

a. Indonesian government needs to put more concern on Human Rights issues within the scope of the business process in all areas of Indonesia, primarily through control over the organising of business activities that ensures the survival and lives of the people with thorough care and respect for Human Rights at the same time. This control mechanism needs to be done with strict regulations so companies will obey the existing laws;

b. Stop the deployment of military troops to specific areas such as Papua and other small islands;

c. Actively working on preventing Human Rights violations by corporations through strict supervision regulations on giving permission and license level. The government also needs to re-evaluate the implications of each policy. It needs to accommodate the interests of the people instead of corporations and capital holders and stop producing overlapping laws and regulations that ignore the safety of the people in exchange for easiness for corporations in doing their operations. The government also needs to uphold every regulation in favour of implementing Human Rights in the field;

d. There is an urgent need for systematic changes to ameliorate state law enforcement's capacity to respect Human Rights in

many cases intertwined with conflicts of interest with many actors, particularly in the mining sector;

e. Corporations need to be more proactive in fulfilling their responsibility to every implication and impact of their activities and recovery process required;

f. There is an urgent need for a quick response mechanism in handling complaints about Human Rights violations by corporations. Moreover, for non-legal complaints, even if the output in this context is only in the form of recommendations.

DEATH PENALTY



DEATH PENALTY

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

The Institute for Criminal Justice Reform (ICJR)

ECPM (Ensemble contre la peine de mort/Together Against the Death Penalty)

Capital Punishment Justice Project (CPJP)

The World Coalition Against the Death Penalty

Anti-Death Penalty Asia Network (ADPAN)

I. Introduction

1. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.

2. The Institute for Criminal Justice Reform (ICJR) is an independent research institute established in 2007. ICJR focuses on criminal law and justice reform, and general law reform in Indonesia. ICJR takes initiative by providing support in the context of establishing respect for the Rule of Law and at the same time establishing a fervent human rights culture in the criminal justice system.

3. ECPM (Ensemble contre la peine de mort/Together Against the Death Penalty) is a French non-governmental organisation that fights against the death penalty worldwide and in all circumstances by uniting and rallying abolitionist forces across the world. The organisation advocates with international bodies and encourages universal abolition through education, information, local partnerships and public awareness campaigns. ECPM is the organiser of the World Congresses against the death penalty and a founding member of the World Coalition Against the Death Penalty. In 2016, ECPM was granted consultative status with ECOSOC.

4. Capital Punishment Justice Project (CPJP) stands for a world without the death penalty. CPJP works with partner organisations, volunteers, interns, and our board to develop legal and policy solutions on the death penalty that will help save lives. CPJP was founded in Melbourne Australia in 2001 by criminal barristers Richard Bourke and Nick Harrington to provide legal representation and humanitarian assistance to those at risk of execution. CPJP's Australian base offers strategic advantages for the work, despite our regional outlook. Australia has identified abolition of the death penalty as one of its human rights priority areas, and there is much

that can be done to ensure that Australia is a leading voice on abolition.

5. The World Coalition Against the Death Penalty is composed of more than 150 NGOs, bar associations, local authorities and unions. It aims to strengthen the international dimension of the fight against the death penalty. The World Coalition provides a global dimension to the action taken by its members in the field, who are sometimes isolated. Its work.

6. Anti-Death Penalty Asia Network (ADPAN) is an independent inter-regional network committed to working to end the death penalty in the Asia-Pacific region. ADPAN is made up of NGOs, organisations, group from civil society, lawyers and individual members. It is not linked to any political party, religion or government.

II. Legal framework regarding the application of the death penalty in Indonesia

II.1. In the 3rd Cycle – 27th session in 2017, Indonesia supported several recommendations regarding death penalty in Indonesia. These recommendations were:

a. Consider establishing a moratorium on executions with a view to abolishing the death penalty (Austria); Consider establishing a de jure moratorium on capital punishment and commute

the existing death sentences (Italy); Consider reverting to the moratorium on executions and take steps towards the abolition of the death sentence (Namibia);

b. Ensure the respect of the right to a fair trial, as provided by article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right to appeal for persons sentenced to death (Republic of Moldova).

II.2. International Legal Framework

Indonesia has ratified international instruments aiming at the abolition ofthe death penalty. Indonesia ratified the ICCPR in 2006, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) in 1998 and the Convention on the Rights of the Childin 1990. However, Indonesia did ratify neither the Optional Protocol to the CAT providing for a National Prevention Mechanism of torture, nor the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. From 2007 to 2010 Indonesia voted against the United Nations General Assembly Resolution calling for a universal moratorium on the use of the death penalty. Indonesia shifted from a negative vote to an abstention in 2012 and has remained abstaining up to and including the most recent vote in December 2020.

II.3. National Legal Framework

There is no mention of the death penalty in the Indonesian Constitution but Article 28A of the Constitution states that “Everyone has the right to live and to defend his/her life and livelihood.” The constitutionality of the death

penalty has been unsuccessfully challenged before the Constitutional Court (MKRI). The Indonesian legal system imposes the death sentence for numerous offenses. The death penalty is applicable in several Indonesian legislation including the Criminal Code of 1946 (KUHP), the Law no.35/2009 on Narcotics and the Military Criminal Code (KUHPM).

The death penalty is also applicable in :

- the Emergency Law No. 12/1951 relating to firearms;
- the Presidential Decree No. 5/1959 on the Authority of the Attorney General in Terms of Aggravating the Threat of Punishment against Acts that Endanger the implementation of Food and Clothing Supplies;
- the Government Regulation in lieu of Law No. 21/1959 on increasing the Punishment for Crimes against the Economy;
- the Law No. 4/1976 on the Ratification and Addition of Several articles in the Criminal Code in relation to the extension of the implementa- tion of Law on Aviation Crimes and Crimes against the Facilities /Infra- structures of Aviation;
- the Law No. 5/1997 on Psychotropic Drugs
- the Law No. 26/2000 on Human Rights Courts
- the Law No. 20/2001 on Corruption
- the Law No. 23/2002 on Child Protection (as amended in 2016)
- the Law No. 15/2003 on Combating Criminals Acts of Terrorism (as amended in 2018)
- the Law No. 35/2009 on Narcotics.

Overall, Indonesian legislation has approximately 50 criminal offences that are punishable by death.

II.4. Periods of De Facto Moratoria on Executions

Between 2008 and 2013, under Susilo Bambang Yudhoyono's administration, the government had implemented a temporary and unofficial moratorium on executions, which was short-lived as executions resumed in 2013.

II.5. After a series of executions between 2013 and 2016, Indonesia has not carried out any executions since 2017. However, during that same year 47 individuals were sentenced to death, 37 in 2018.

II.6. Lack of Official Data

The exact number of people on death row is not clear as there are no published statistics. In 2019, authorities had provided a number of 268 death row prisoners, while NGOs had an estimate number fluctuating between 236 and 308 in 2018.

Considering the lack of official data on death row prisoners and based on the data that KontraS has collected between December 2020 - November 2021, at least 32 death sentences were recorded, though there may be more death penalty sentences. According to ICJR monitoring, from 2019 to 2021, 171 defendants were sentenced to death. Most of the sentences are handed down to convicts in drug cases, terrorism and murder.

RECOMMENDATIONS

a. Remove capital punishment from all Draft pieces of legislation, including the RKUHP and the Draft anti-terrorist law.

b. Bring national legislation into line with international standards by removing all offences that are not the “most serious crimes”, as defined by the United Nations Human Rights Committee in 2018, from the scope of the death penalty.

c. Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

d. Support the UN Resolution on the establishment of a universal moratorium on application of the death penalty.

e. Publish annual data on the number of people sentenced to death, the na- ture of the offences for which they have been sentenced, the number of people sentenced to death being detained on the correctional facilities and the number of cases that are on trials/police investigation that war-rant a death sentence.

III. The Death Penalty in Indonesia Draft Criminal Code (Rancangan Kitab Undang-Undang Hukum Pidana - RKUHP)

III.1. In 2015, legislative reform was initiated to revise Indonesian criminal legislation. The new legislation included the death penalty for at least 15 offences comprising treason, drug-related crimes, terrorism and corruption. However, the proposed Draft provided for a 10-year stay on executions, after which the death

penalty could be commuted to life imprisonment or 20 years' imprisonment under certain conditions: 1) there is no strong public reaction against the prisoner; 2) the prisoner demonstrates remorse and there is hope for his or her rehabilitation; 3) the role of the prisoner was not essential in the committing of the crime.

III.2. In 2019, a new version of the Draft of the Criminal Code (RKUHP) was initiated. The death penalty is confirmed as a form of criminal sanction. Namely, Article 98 of the 2019 Draft of the Criminal Code (RKUHP) states that the capital punishment is alternatively handed down as a last-ditch effort to prevent criminal acts and to protect the public and article 100(1) provides that judges can impose capital punishment with probation for 10 years that is subjected to the judgment.

III.3. The Government of Indonesia (GoI) through the National Legal Development Agency (BPHN) has decided for the Draft Criminal Code to enter into the medium-term National Legislation Program in 2020-2024. Although the content and formulation of this Draft still receives many criticisms, the provisions regarding the death penalty in this regulation were appreciated by the public because it is considered to have taken a middle ground to bring together the abolitionist and retentionist on the use of the death penalty in positive law in Indonesia. Various socialization activities[43] have

[43] Public Relations, Law, and Cooperation Bureau of the Ministry of Law and Human Rights, 'Sosialisasi RUU KUHP Dimulai Kembali, Pemerintah Pastikan Buka Ruang Diskusi dan Masukan Publik (Socialization of the draft Bill of Penal Code Restarts, The Government Ensures a Public Discussion and Input) (*Kemenkumham*, 23 February 2021)

been carried out by the Ministry of Law and Human Rights. The Draft Criminal Code distributed to the Public in 2021 was the same as the Draft Criminal Code in 2019.[44]

III.4. According to the 2019 Draft Criminal Code, the death penalty may be handed down to 10 years' probation and if during the probation the convict shows a commendable attitude then it can be commuted or reduced the criminal sanction into life imprisonment.

III.5. Article 100 (1) of the Draft Criminal Code "*(1) Judges can impose the death penalty with probation for 10 (ten) years if:*

- the accused shows remorse and there is hope for improvement;
- the role of the accused in the criminal act is not very important, or there is mitigating reason".

III.6. Article 100 (4) of the Draft Criminal Code *"If the convicted during probation as referred to in paragraph (1) shows commendable attitudes and deeds, the death penalty can be changed to life*

<https://kemenkumham.go.id/ publikasi/siaran-pers/sosialisasi-ruu-kuhp-dimulai-kembali-pemerintah-pastikan-buka-ruang-diskusi-dan-masukan- publik> accessed 26 November 2021

44 Aliansi Nasional Reformasi KUHP,' Materi RKUHP Tidak Berubah dari September 2019: Aliansi Ingatkan Dasar Substansial Penundaan Pengesahan RKUHP (draft Bill of Penal Code Unchanged from September 2019: Alliance Reminds the Substantial Basis for the Delay in draft Bill of Penal Code Enactment)' (*ICJR,* 8 June 2021) <https://icjr.or.id/rilis-media-aliansi-nasional-reformasi-kuhp-materi-rkuhp-tidak-berubah-dari-september-2019-aliansi-ingatkan-dasar-substansial-penundaan- pengesahan-rkuhp/> accessed 6 December 2021

imprisonment by Presidential Decree after the consideration of the Supreme Court."

III.7. Article 100 (2) of the Draft Criminal Code "*The death penalty with probation as referred to in paragraph (1) shall be included in the court's decision*."

III.8. According to Art 100, as Drafted in the 2019 Draft Criminal Code, two main conditions are now set out to qualify for the 10 years-probation period:

- the death penalty with 10 years of probation is not given automatically but when the judge decide that it fits the conditions as set under Article 100 (1), and
- the decision must be included in the court ruling.

Whereas in the 2015 Draft Criminal Code, the probation was given automatically to persons sentenced to death[45] without depending on the decision being included in the trial court ruling. This means that the 2019 Draft is stricter than the previous Draft, reducing the scope for people facing the death penalty to obtain the probation.

III.9. The 2019 Draft Criminal Code does not explain the rationale behind the retention of the death penalty as a criminal sanction. The National Commission on Human Rights of Indonesia,

[45] Draft Criminal Code version 2015, Article 91 (1)

Komnas HAM, argued that 5 (five) years of probation period should be sufficient, as in practice the incarcerated/death row prisoner has fulfilled all the correctional training.[46] Members of Parliament and GoI representatives support the preservation of the death penalty because of ideological and political interests. The retentionists' viewpoint is Indonesia as a religious country cannot abolish the death penalty because of religious values. During the Drafting Team Conference organized for the 2015 Draft Criminal Code, the Drafting Team Chairman, Muladi, argued that the death penalty with 10 (ten) years of probation could create a bridge between those in favor of the death penalty and those who are against it through the so-called 'Indonesian Way'.[47][48]

III.10. The provisions in Article 52, Article 67, Article 99, Article 100, and 101 of the Draft Criminal Code concerning the death penalty are contrary to the purpose of criminal justice. Article 52,[49] for instance, states that the "*prosecution is not intended to degrade human dignity"* while in its implementation there are many inhumane treatments towards death row prisoners. For example, as of 2020, 60 death row prisoners have been experiencing what is known as "Death row phenomenon",[50] as they have been on

46 Erasmus Abraham Napitupulu, *Kertas Kebijakan Fenomena Deret Tunggu dan Rekomendasi Komutasi Hukuman Mati (Policy Paper Death Row Phenomenon and Death Penalty Commutation Recommendation)* (Komnas HAM & KuPP, 2020)

47 Constitutional Court Decision No. 2-3/PUU-V/2007, 439

48 Aliansi Nasional Reformasi KUHP, 'Laporan Singkat Rapat Panja Komisi III DPR-Ri Dengan Pemerintah Dalam Rangka Pembahasan RUU Tentang Kitab Undang-Undang Hukum Pidana (Brief Report of Working Committee Meeting of Commission III of the House of Representatives with the Government in the Framework of Discussion of the Draft the Criminal Code' (Jakarta, 15 January 2018)

49 Draft Criminal Code version 2019, Article 52

50 Budiman and Rahmawati, *Fenomena Deret Tunggu (The Death Row Phenomenon in Indonesia* (ICJR, 2020)

death row for more than 10 years in conditions[51] that arguably meets the definition of inhumane and degrading treatment. Some countries have commuted death sentences based on the mental anguish of extended time on death row.[52]

RECOMMENDATIONS

a. Open and guarantee a transparent discussion of the latest Draft Criminal Code and expand the expert pool to improve the Draft Criminal Code.
b. Apply the probation mechanism to all people facing the death penalty, automatically and unconditionally.

IV. Commutation in Death Penalty and clemency procedure

VI.1. On the imposition of the death penalty in the "Indonesian way", upon adoption of the Draft, death row prisoners will be able to get a commutation/ reduction of the sentence if within the 10 (ten) year probation period, that the person sentenced to death behaves commendably[53] and that the death row prisoner has not

51 Carole Berrih, Arif Nur Fikri, *et.Al.*, *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (ECPM, 2019)

52 "The decision, announced on 3rd August, was explained to have been the result of careful consideration of the many prevailing factors relating to the death penalty, including the cruel and inhuman treatment caused by the mental anguish and suffering of those on death row for many years" https://deathpenaltyproject.org/kenya-commutes-the-death-sentences-of-more-than- 4000-prisoners/ Kenya, 2009

53 Draft Criminal Code version 2019, Article 100 (4)

been executed within the 10 years following the rejection of the clemency request.[54]

VI.2. Currently, Indonesia does not have a mechanism of commutation or change of punishment for death row prisoners per se, except for the clemency mechanism by the President.

According to article 14 of the Constitution, the President has the constitutional power to grant clemency. Nevertheless, there are different dispositions to limit the right to seek clemency. Some are legal like the amendment to Law No.22/2002 which provides that only one petition for clemency may be submitted to the President. Other restrictions emanate from the lack of transparency and consistent guidelines in practice. The Supreme Court does not mention the names of prisoners or their type of sentences in its annual report on clemency. Given the Government's anti-drug agenda in the context of "war on drugs", clemency petitions are systematically rejected for drug-related crimes. From the election of Widodo in October 2014 to February 2016, the five clemency petitions which have been accepted were concerning individuals convicted of murder. In 2017, the Supreme Court ruled that presidential decrees on clemency were confidential information.

VI.3. Indonesia has a commutation mechanism known as remission. Remission is a reduction of the criminal sanction given to

[54] Draft Criminal Code version 2019, Article 101

prisoners who have met the condition, one of which is "serving a temporary prison sentence and a prison sentence,"[55] strictly speaking cannot be enforced for death row prisoners. One form of remission is based on humanitarian interests[56] given to prisoners who have served for 1 (one) year, are over 70 (seventy) years old, and suffer from prolonged illness. Death row prisoners, on humanitarian account, should be able to be granted humanitarian remission (commutation) if they have been awaiting their executions for at least 10 years and has undergone the process of correctional training.

VI.4. Normatively Indonesia does not have a special place for death row prisoners to be detained before the execution, but in practice, death row prisoners are placed in correctional institutions scattered throughout Indonesia thus making death row prisoners the subject of a correctional training programs in the correctional institution. Based on the implementing rules of Law No. 12 of 1995 on Corrections, Government Regulation No. 31 of 1999 on the Training and Guidance of Correctional Inmates has stages of pieces of training to prepare and correct the sentenced persons to return to society.

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55 President Decree No. 174 of 1999 on Remission, Article 1

56 Regulation of Ministry of Law and Human Rights No. 3 of 2018 on Terms and Procedures for Granting Remission, Assimilation, Family Visiting Leave, Parole, Release, And Conditional Leave

RECOMMENDATIONS

a. Introduce a commutation for those who have been on death row for at least more than 10 years.

b. Under the Draft Criminal Code, apply remission mechanism to all death row prisoners who have been sentenced to death for more than 10 years have successfully completing correctional training program.

c. Amend the law to ensure that Indonesian and foreigners can challenge the constitutionality of national laws and regulations before the Indonesian Constitutional Court (MKRI) without discrimination.

d. Ensure transparency, consistency, and clear guidelines on clemency processes.

e. Ensure that all clemency petitions are meaningfully considered and that no one, including people convicted of drug-related crimes, is a priori ex- cluded from clemency procedures.

V. Protection of the Rights of Those Facing the Death Penalty

VI.1. Several capital cases in Indonesia have shown failures in the judicial process and the application of the law. For instance, Rodrigo Gularten who was arrested in 2004 and sentenced to death in 2005, was given legal assistance only 5 days after being arrested.[57] Gularte was later executed in 2015 for a drug-related offense despite having been diagnosed with a paranoid schizophrenia[58] mental disorder. Given his disabilities, the execution took place in contravention with the ICCPR standards[59] and safeguards guaranteeing protection of the rights of those facing the death penalty.[60]

VI.2. Humprey Ejike Jefferson was sentenced to death for possession of a 1.7kg heroin and executed in 2016. A year after the execution, the Indonesian Ombudsman stated that the execution was not in accordance with the provisions of the law as Jefferson, who at that time was applying for clemency, therefore should not have been executed. Referring to Law No. 22 of 2002 on Clemency,[61] clemency applications submitted by death row prisoners can delay the execution.[62]

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57 Ricki Gunawan, *Eligi Rodrigo Gularte* (*Rodrigo Gularte's Elegy)* in Al Araf, *et.Al., Unfair Trial: Analisis Kasus Terpidana Mati di Indonesia (Unfair Trial: Analysis of Death Penalty Cases in Indonesia)* (Imparsial and the Koalisi untuk Hapus Hukuman Mati, 2016) 48

58 Abidin *et.Al., Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia* (*Investigating Vulnerable Justice: The Death Penalty and the Application of Fair Trials in Indonesia)* (ICJR, 2019), 17

59 ICCPR, Article 7

60 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, p. 1(d)

61 Ombudsman of Indonesia, 'Kelalaian dan Perbedaan Perlakuan yang dilakukan oleh instansi Kejaksaan Agung dan Mahkamah Agung terhadap Humprey Ejike Jefferson tergolong tindakan maladministras (Negligence and Difference of Treatment carried out by the Attorney General's Office and the Supreme Court against Humprey Ejike Jefferson is classified as an act of maladministration)' (Ombudsman Press Release, 28 July 2017) <https://www.ombudsman.go.id/news/r/kelalaian-dan- perbedaan-perlakuan-yang-dilakukan-oleh-instansi-kejaksaan-agung-dan-mahkamah-agung-terhadap-humprey-ejike- jefferson-tergolong-tindakan-maladministrasi> accessed 26 November 2021

62 Law No. 22 of 2002 on Clemency, Article 3

VI.3. In the case above, both verdicts account the "War on Drugs" as one of the aggravating factors in the judges' consideration of the verdicts of Gularte and Jefferson. In Gularte's case, the judges consideration mentioned that "The actions committed by Defendant [Gularte] is at the time of the Government and the people of Indonesia are actively waging war on Narcotics"[63]. Identical consideration was used in Jefferson's case "The actions committed by the accused is at the time of the Government and all Indonesian people are declaring war on narcotics abuse so what is done can be categorized as a dissident against the determination of the government and all the people."[64]

VI.4. The case of Yusman Telaumbanua (Yusman) is one of the non-drug-related cases that have many violations of fair trial standards. Yusman was suspected of premeditated murder when he was 15-16 years old.[65] At the time of his arrest and detention, Yusman – aged 19 - was then allegedly subjected to physical violence while at the time of interrogation and claims he was forced to claim to have signed the Interrogation Report.[66] Even when he was assisted by his legal aid, KontraS Civil Society Organizations, Yusman did not speak

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63 Tangerang District Court Decision on Rodrigo Gularte No.1194/Pid.B/2004/PN.Tng, 52

64 Central Jakarta Court's decision on Humprey Ejike aka Doctor No. 2152/Pid/B/2003/PN. JKT. PST, 18

65 Robertus Belarminus, ' Kisah Yusman, Mantan Terpidana Mati di Bawah Umur yang Mengaku Kena Rekayasa (The Story of Yusman, a Former Minor Death Row Prisoner Who Claimed to Have Been Manipulated)' *Kompas* (Jakarta 23, August 2017) <https://nasional.kompas.com/read/2017/08/23/12060601/kisah-yusman-mantan-terpidana-mati-di-bawah-umur-yang- mengaku-kena-rekayasa?page=all> accessed 26 November 2021

66 Yati Andriyani, ' Belajar Dari Kasus Yusman Telaumbanua Pemerintah Harus Evaluasi Seluruh Penerapan Hukuman Mati di Indonesia (Learning From The Case of Yusman Telaumbanua The Government Must Evaluate the Entire Application of the Death Penalty in Indonesia)' (KontraS, 22 August 2017) <https://kontras.org/2017/08/22/belajar-dari-kasus-yusman-telaumbanua- pemerintah-harus-evaluasi-seluruh-penerapan-hukuman-mati-di-indonesia/> accessed 26 November 2021

fluent Bahasa. When Yusman managed to prove his age at the time of the event, it was acknowledged that he had been sentenced to death while he still was a juvenile[67] which is not in line with the ICCPR.[68] Yusman received remission on 17 August 2017 for the Independence Day and his death sentence was commuted to 5 years in prison.

VI.5. Normatively, the Supreme Court Circular Letter No. 7 of 2014, the submission of case review is only allowed once. While the sanction of the death penalty is a severe legal sanction, it should be regulated differently from other criminal sanctions, and therefore not be limited to one submission. Article 3 of the Supreme Court Circular Letter No. 7 of 2014 "Based on the aforestated, the Supreme Court believes that the application for judicial review in a criminal case is limited to 1 (one) time".[69]

RECOMMENDATIONS

a. Establish guidelines for the application of the rights to a fair trial for people facing the death penalty in accordance with international standards.

67 *Ibid*

68 ICCPR, Article (5)

69 Supreme Court Circular Letter No. 7 of 2014 on the Submission of Judicial Review, Article 3

b. Review and overturn death sentences for people sentenced under the age of 18 and people suffering from mental impairment to be in line with the international treaties that Indonesia has ratified.

c. Revising Supreme Court Circular Letter No. 7 of 2014 on Submission for Judicial Review, a person sentenced to death can apply for Judicial Review for more than once.

d. The Attorney General's Office performs supervising functions to the National Police in accordance with the laws and regulations, including moni- toring and obtaining information on the investigation process in the Police.

e. Define torture in the national legal framework and ensure that its definition complies with the Convention against Torture.

f. Train police forces about the absolute prohibition of torture and ill treatment;

g. Guarantee that interviews with accused individuals during the police investigation phase are conducted in official police offices.

h. Ensure that alleged victims of torture or ill treatment have access to a forensic examination as soon as possible.

i. Ensure that experienced, independent and competent lawyers represent those facing the death penalty as soon as they are arrested and through- out the judicial process.

j. Significantly increase the budget allocated to legal aid.

VI. War on Drugs

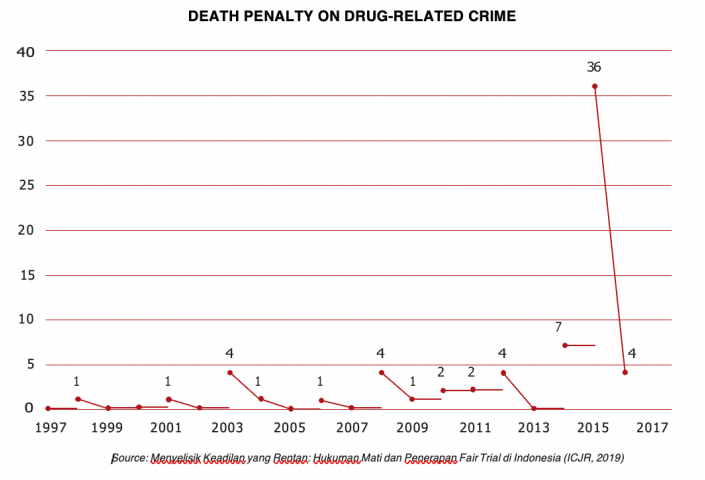
VI.1. The problem of enforcing fair trials in criminal justice is left behind and worsened for the narrative of the War on Drugs.[70] Since 2015, Indonesia's president, Joko Widodo, has declared a war against narcotics to be "more vociferous, crazier, and more comprehensive."[71] President Joko Widodo's call to eradicate narcotics crime resulted in law enforcement officials racing to provide very strict actions and ended in the rise of the use of the death penalty. The narrative of War on Drugs is also stated in the court decision of death penalty cases in its charges, indictments, and the judgments of death penalty cases.[72] The Attorney

70 Abidin *et.Al.*, *op.cit.*, 262 - 263

71 Lily Rusna Fajirah, 'Jokowi Nyatakan Perang terhadap Bandar Narkoba (Jokowi Declares War on Drug Dealers)' *Sindonews* (Jakarta, 24 February 2016) <https://nasional.sindonews.com/berita/1088003/13/jokowi-nyatakan-perang-terhadap-bandar-narkoba> accessed 04 November 2021

72 Budiman, *et. Al.*, *The Overlooked, She in the Vortex of Death Penalty* (ICJR, 2021)

General[73] and the National Narcotics Board[74] also consider that the death penalty provides a deterrent effect on drug offenders.

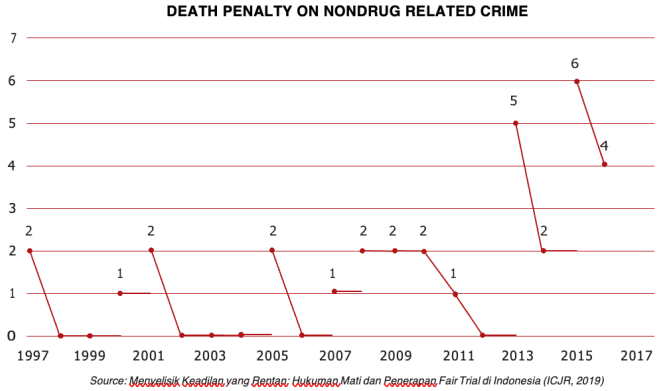


VI.2. In the context of the War on Drugs, the trend of death penalty crimes can rise as much as 404% as the call for War on Drugs was begun in 2015. With the average number of death penalty cases for drug-related cases per year being, from 1997 to 2013, between two or four cases, in 2014 it rose to seven and in 2015 to 36 cases. The tendency of the death penalty also affects other non-drug

73 Al Abrar, 'Jaksa Agung: Hukuman Mati Berdampak Efek Jera (Attorney General: Death Penalty Has Deterrent Effect)' *Metronews* (Jakarta, 20 March 2015) <https://www.medcom.id/nasional/hukum/zNAOr36k-jaksa-agung-hukuman-mati-berdampak- efek-jera> accessed 26 November 2021

74 Andrian Pratama Taher, 'BNN tetap Dukung Hukuman Mati (BNN Continues To Support The Death Penalty)' *Tirto* (19 January 2018) <https://tirto.id/bnn-tetap-dukung-hukuman-mati-untuk-kasus-narkoba-cDt8> accessed 26 November 2021.

relates cases, from the average case per year 2 cases sentenced to death, it rose in 2015 to 6 cases.[75]



Source: Menyelisik Keadilan yang Rentan: Hukuman Mati dan Penerapan Fair Trial di Indonesia (ICJR, 2019)

VI.3. In the research of drug-related cases for female offenders facing the death penalty since 2016, of the 21 drug crimes with female perpetrators, only 1 court decision does not use the narrative of War on Drugs.[76] The narrative of the War on Drugs should not merely be the basis of a person to be sentenced to death, and it should be with more profound consideration.

RECOMMENDATIONS

a. Amend the Narcotics Law to be in line with international standards by re- moving the death penalty for drug-related crimes that are not considered as the “most serious crimes”.

75 Abidin *et.Al.*, *op.cit.,* 118

76 Budiman, *et. Al.*, *The Overlooked, She in the Vortex of Death Penalty* (ICJR, 2021), 36

b. Most people convicted with drugs related crimes and sentenced to death are vulnerable individuals targeted by those higher up in drug syndicates to be exposed to the high-risk roles of having physical contact with illicit drugs. Sentences must reflect the nature and crimes committed and the mitigating circumstances, with individuals being afforded a minimum term of imprisonment with a maximum of life imprisonment being imposed in only the most serious of cases.

VII. Conditions of Detention of Death Row Prisoners

VII.1. Another problem that accompanies the application of the death penalty is the inadequate living conditions of the accused as reflected in the condition of prison conditions and the phenomenon of death row. Not to mention, inadequate psychological and physical assistance to the accused who had gone through years of tension and despair while awaiting execution. Then, this condition is also exacerbated by prison conditions which often exceed capacity, causing limited food and lack of nutrition in the food.

VII.2. The judicial process against death row prisoners which tends to be unfair in the judicial process also occurs when the convicts undergo a waiting period (death row) process in the Correctional Institution (LAPAS). After a fact finding mission carried out[77] in 2019 on the

[77] Carole Berrih, Arif Nur Fikri, *et.Al*., *Dehumanized: The Prison Conditions of People Sentenced to Death in Indonesia* (ECPM, 2019)

conditions of detention of death row prisoners in Indonesia, a number of important issues regarding the detention conditions were highlighted, such as poor medical conditions (physical and mental), lack of communication with the outside world, as well as related to the appropriateness of the conditions of the place of detention. Although the Ministry of Law and Human Rights through the Directorate General of Corrections have claimed to have implemented the Mandela Rules, in fact, there are still a number of violations of the rights of convicts, especially those sentenced to death.

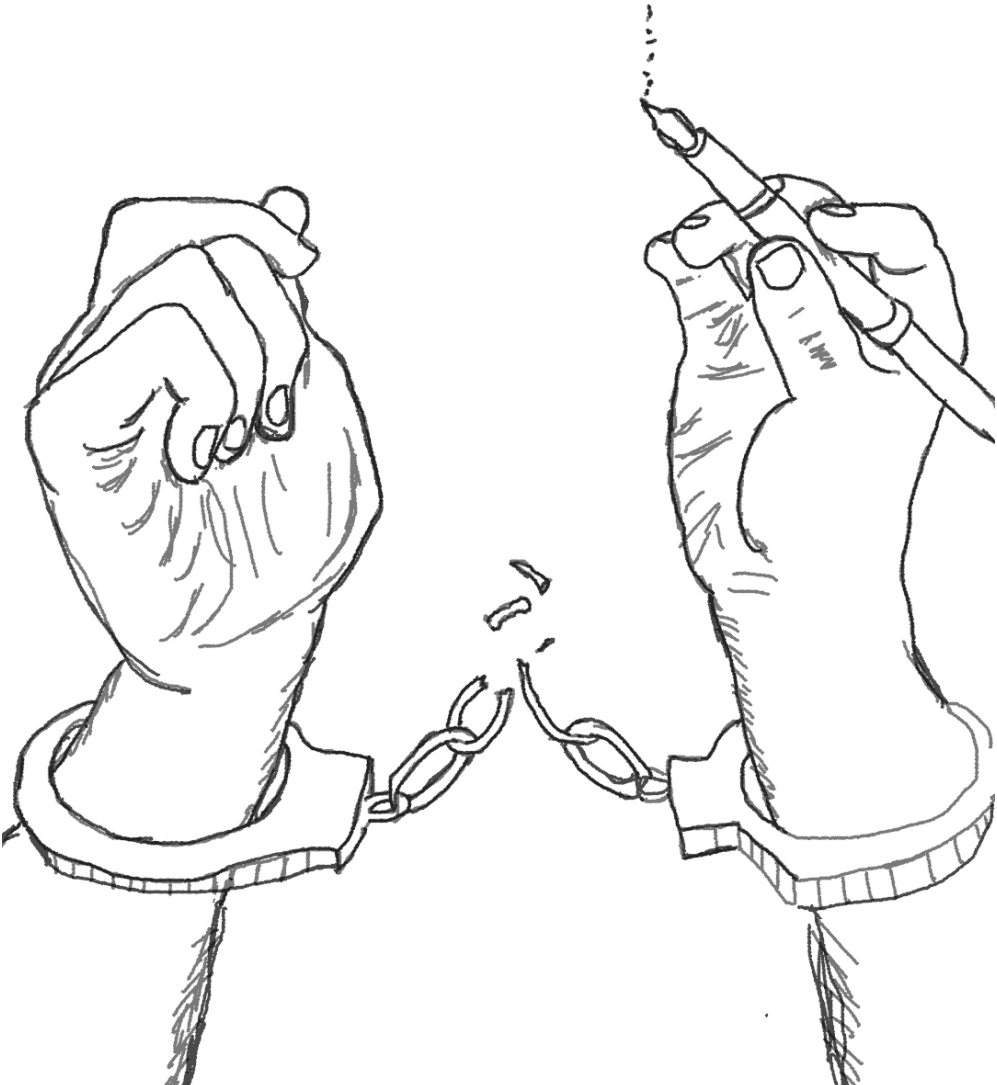
RECOMMENDATIONS

a. Abolish the death penalty and commute/re-sentence the sentences of all those on death row so that they are no longer subject to death row living conditions.

b. Improve the conditions of detention of people sentenced to death:
    - Amend the prison regulations to comply with international standards, including the Nelson Mandela Rules, for all categories of prisons, including Batu high risk security prison;
    - Train prison guards on the treatment of detainees, including the specificity of housing death row prisoners;
    - Modify the prison surveillance system so that it respects the privacy of prisoners;

- Ensure that regulations clearly describe the treatment of prisoners, including with regards to family visits, bedding, education, healthcare, library or sport
- Allow social, cultural, education and sporting activities for all male and female prisoners, in particular those sentenced to death;
- Ensure a psychological support program, implemented by qualified professionals, for men and women sentenced to death;
- Increase the healthcare budget to provide adequate medicine for prisoners. Allow prisoners access to medicines appropriate for their medical conditions;
- Increase the food budget to improve the quantity and quality of food provided, especially in prisons where visitors are not allowed to bring food to their relatives;
- Ensure that hygiene products are available to all prisoners in sufficient quantity.

FREEDOM OF PRESS



FREEDOM OF PRESS

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Legal Aid Center for the Press (LBH Pers)

Human Rights Working Group (HRWG)

Serikat Jurnalis untuk Keberagaman (SEJUK)

I. Introduction

1. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

2. LBH Pers is a civil society organization that was established in 2003, and consistently advocates for press freedom and expression in Indonesia, in particular providing legal assistance to journalists, activists, civil society, student press, and media workers.

3. HRWG is a network of more than 48 non-governmental organizations working on promoting human rights in Indonesia. It

was established in 2000 by NGOs sharing similar interests and seeking a platform to coordinate and lead international advocacy efforts.

4. SEJUK is The Union of Journalists for Diversity (SEJUK) was founded in 2008 by journalists from various mainstream media, human rights (HAM) activists, inter-faith dialogue and writers. SEJUK was born in the midst of a rising trend of conservatism among journalists and mass media coverage that corners minority groups, victims of discrimination and violence in the name of religion.

II. Overview

II.1. Based on the last UPR cycle, Indonesia supported four recommendations regarding freedom of press. The recommendations were:

a. Ensure that the freedom of speech of civil society organizations and special interest groups is promoted and respected across Indonesia so that they can, within the legal framework, voice their views and concerns, even on issues that can be sensitive;[78]

[78] Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.76 (Netherlands)

b. Ensure human rights obligations in Papua are upheld, respected and promoted, including freedom of assembly, freedom of the press and the rights of women and minorities;[79]

c. Adopt legislative measures to prevent and combat intimidation, repression or violence against human rights defenders, journalists, and civil society organizations.[80]

II.2. The Indonesian government has yet to fully implement the recommendation to ensure the freedom of speech for CSOs in order for them to be promoted and respected. This can be seen through several actions taken by CSOs which have been considered as defamation and hoax by the targeted government agent. These cases occurred not only to the designated CSO targeted by the government agent, but also individuals who are directly involved in certain cases.

II.3. The Indonesian government has also yet to implement the ensuring of human rights, including freedom of press in Papua. This can be seen through how journalists are prohibited to have coverage for Papua's condition. Other cases can also be seen through the internet shutdown incident in Papua by the President of Indonesia

79 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.67 (New Zealand)

80 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.24 (Mexico)

and the Ministry of Communication and Information Technology, making the case can be perceived as restricting access to information and communication on the pretext of protecting the Papuan people from hoaxes.

II.4. Indonesia has Article 28F of the 1945 Constitution of the Republic of Indonesia to regulate the freedom of press. But this has yet to be fully implemented since several CSOs, journalists, as well as activists need to be protected from threats such as those who are involved with natural resources.

III. Harassment, Intimidation, and Attacks Against Journalists

III.1. In the national law, journalists have legal protection based on several regulations including Article 28F of the 1945 Constitution of the Republic of Indonesia and Law Number 40 of 1999. Specifically, it is written in Article 8 that states, “In carrying out their profession, journalists receive legal protection.” so that hindering the work of the press, especially using violence is a violation of press freedom.

III.2. In the span of 2019 to 2021, LBH Pers recorded at least 251 cases of violence against the press. In 2019, there were 79 cases, 117 cases in 2020, and 55 cases in 2021. In those 3 years, the most common forms of torture were physical violence, followed by

intimidation, obstruction of journalistic activities, criminalization and cyber attacks. Meanwhile, the most recorded perpetrators are police institutions and public officials.[81]

III.3. In 2019, the most acts of violence against journalists occurred during the coverage of demonstrations with a total of 39 cases. The increase in violent cases in 2019, was largely influenced by the handling of demonstrations by the police which ended in chaos in a number of areas in Indonesia. Such as protests against the results of the presidential election at the Bawaslu building in May 2019, to student demonstrations against a number of packages of draft laws around the People's Representative Council of Indonesia (DPR RI) building in September 2019.

III.4. On September 24, 2019 in Jakarta, several journalists were violent: First, Nibras Nada Nailufar, a reporter for Kompas.com. He was intimidated while recording the behavior of the police who were violent against a resident in the Jakarta Convention Center (JCC) area. Second, violence against IDN Times journalist, Vanny El Rahman. He was beaten and asked to delete his photos and video recordings of police violence against demonstrators around the Slipi flyover, Jakarta. Third, violence against Katadata journalist Tri Kurnia Yunianto by the police. Tri was beaten, beaten and kicked by officers from the Police Mobile Brigade unit. Even though Kurnia

[81] Laporan monitoring kekerasan terhadap pers yang dilakukan oleh LBH Pers pada tahun 2018, 2019, 2020 dan 2021. Metodologi pengumpulan data adalah monitoring pemberitaan, pengaduan dan konfirmasi langsung

has shown the Press ID that hangs around her neck and explained that she was doing the coverage. Fourth, violence against Metro TV journalist Febrian Ahmad by an unknown crowd. The car that Febrian used while covering the Senayan area was beaten and damaged by the mob. As a result, the front and rear windows of the Metro TV car, as well as the windows were all broken.[82] The cases of violence against Nibras Nada Nailufar and Tri Kurnia Yunianto have been reported to the police, but until now the cases have not been resolved.

III.5. On September 24, 2019 in South Sulawesi, there was also violence against journalists Muh Darwin (Journalist of LKBN Antara), Saiful (journalist of inikata.com) and Isak Pasabun (Journal of Makassar today). Violence occurred when journalists were covering student demonstrations. The alleged perpetrators of violence are police officers. This case has been reported to the police. However, so far the case has not been resolved.[83]

III.6. In 2020, there were 117 cases of violence against the press, or a significant increase of 32% compared to 2019 with 79 cases. Data is collected through monitoring media coverage, direct complaints and victim confirmation during the period from January 1st to December 10th 2020. In 2020, perpetrators of violence against

82 https://jakarta.bisnis.com/read/20190925/77/1152357/aji-kecam-kekerasan-pada-4-jurnalis-saat-demo-mahasiswa

83 https://www.antaranews.com/berita/1082260/lbh-pers-mendampingi-tiga-jurnalis-melapor-ke-polda-sulsel

journalists are still dominated by security forces, especially from the National Police.[84] Of the 117 cases recorded, 76 of them were carried out by the police. Many of these repressive actions by the authorities occurred when journalists covered protests against the ratification of the Job Creation Act in October 2020.

III.7. In 2021, there were at least 55 cases of press violence. These 55 cases were spread across 19 provinces in Indonesia, with the most cases being obstruction of journalists from reporting. Terror/intimidation/threat against reporters still occur quite high in 2021.

III.8. On January 12, 2022, the Panel of Judges decided that the accused perpetrators of violence against journalists were sentenced to 10 months in prison and restitution of Rp. 13,813,000, - to Nurhadi and Rp. 21,850,000,- to F. The sentences handed down to the two perpetrators of violence against journalists were considered very low. This is because the perpetrators are police officers who carry out a series of actions such as obstructing journalistic work, persecution, and confinement of journalists who are carrying out press functions. The judge in his decision did not order the detention of the defendants even though the judge knew

84 http://new.lbhpers.org/laporan-2/

that currently Nurhadi was still under the protection of the Witness and Victim Protection Agency.[85]

III.9. The Chancellor of the University of North Sumatra (USU) Runtung Sitepu dismissed the Management of the Student Press (Persma) of USU for publishing a short story about lesbians. The case began when Suara USU published a short story entitled 'When Everyone Refused to Be Near Him' written by Yael Stefani Sinaga. This short story was published on their website, Suarausu.co on March 12, 2019. This short story has a long tail. The Chancellor was stung and took this case for a long time. The culmination was the issuance of a decree to dismiss the USU Persma management under the editor-in-chief Yael Stefani Sinaga.[86] A similar threat to the Student Press who came from the leadership of the University also occurred to the Management of the Limas Student Press Institute (LPM) of the Faculty of Social and Political Sciences of Sriwijaya University or Unsri which was threatened with a lecture suspension. The threat of punishment stems from the appearance of two caricatures criticizing university policies regarding tuition fees.[87]

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85 https://lbhpers.org/executive-summary-pandemic-oligarchy-and-the-unfreedom-the-press/

86 https://news.detik.com/berita/d-4655443/rektor-usu-bubarkan-pengurus-persma-karena-cerpen-lesbian-ahli-represif

87 https://sumsel.suara.com/read/2021/08/11/172915/bikin-karikatur-kritik-ukt-pengurus-lpm-limas-unsri-terancam-skorsing-kuliah?page=1

VIOLENCE AGAINST *WOMEN JOURNALISTS*

III.10. In 2021 the Media Regulation and Regulatory Monitoring Agency (PR2Media) issued a survey report on violence against women journalists in Indonesia. The survey was conducted through a survey (1,256 respondents) and interviews (six informants) of female journalists in 191 cities, representing western, central and eastern parts of Indonesia. From 1,256 journalist respondents, 1,077 respondents (85.7%) have experienced violence during their journalistic career. Of this amount, as many as 70.1% of respondents have experienced violence in the digital realm as well as in the physical realm, 7.9% of respondents have experienced only digital violence, and 7.8% of respondents have experienced only physical violence. Meanwhile, only 179 respondents (14.3%) never experienced violence at all.[88]

III.11. Of all types of violence in the digital and physical realms asked in the questionnaire, the type most experienced by respondents was comments on physical body shaming (59%), followed by non-sexual harassment/harassing comments online (48%), comments online body shaming (45%), verbal threats or harassment of a sexual nature (40%), non-sexual verbal threats or harassment (37%), online sexually harassing/harassing comments (34%), gender discrimination at work (32%), online spreading of misinformation/slander (28%), insults related to

88 https://pr2media.or.id/service/kekerasan-terhadap-jurnalis-perempuan-indonesia/

ethnicity/religion/race online (22%), and physical attacks of a sexual nature (22%).

III.12. Another finding in the study was that all informants (six journalists) said they had experienced sexual violence by the informants, both in the digital and physical realms. In the digital realm, informants experienced various forms of sexual violence, such as seduction by sources delivered via WhatsApp to sending photos of vital body parts by sources. Sexual violence in the physical realm, for example, being held by her hair, shoulders and cheeks, then being grabbed and held by her buttocks, and holding her hands.

DIGITAL BARRIERS AND ATTACKS AGAINST JOURNALISTS

III.13. Digital attacks on journalists in 2019 recorded 5 cases, and in 2020 there were at least 12 cases. Doxing practices or the dissemination of victim information and hacking occupy the highest numbers. In addition there are also acts of Ddos, Bullying, slander (duplication), threats, and digital harassment.

III.14. There are also forms of digital violence, such as hacking and digital attacks, which in the last three years, particularly in 2020, have increased, namely doxing or intimidation, cyber account break-ins experienced by a number of media companies. Such as the digital attack case, namely the tempo.co media case, which was attacked

by the @xdigeeembok account where the account carried out digital vandalism on the tempo.co official website. Meanwhile, Tirto.id media was hacked through the editor's email account, then deleted a number of news articles on the tirto.id page. Media tempo.co and tirto.id were hit by a hacking attack allegedly due to critical news related to the findings of the corona drug by several state institutions. The news that had aired on tirto.id was deleted by hackers. This action is also an open attack on press freedom in Indonesia.

III.15. In 2021, hoax labels on journalistic works will become one of the most dangerous patterns of attack on press freedom. At least LBH Pers recorded three cases of labeling false news to the media by the police, namely: Labeling of hoaxes against Kompas.com related to news of the scarcity of oxygen cylinders, labeling of hoaxes on news media of Kabar6.com and Republika.co.id related to news of mass persecution of demonstrations by the press. police officers in Tangerang City; and finally a hoax stamp against the Project Multatuli media regarding the news of the alleged rape of 3 children by their own father in East Luwu.[89]

III.16. The University of Lampung (Unila) Teknokra Student Publishing Activity Unit (UKPM) was terrorized by hackers on October 31, 2020. This time, UKPM Teknokra's email, Facebook and Instagram

[89] https://www.suara.com/news/2021/07/08/180402/humas-polri-stempel-hoax-berita-terkonfirmasi-aji-bungkam-kebebasan-pers?page=all

accounts were hacked. The Teknokra Student Publishing Activity Unit (UKPM) at the University of Lampung (Unila) was again terrorized by hackers on October 31, 2020. This time simultaneously, UKPM Teknokra's email, Facebook and Instagram accounts were hacked.[90]

RECOMMENDATIONS

a. For the Indonesian President and Chief of Indonesia's Police must ensure that violence against journalists cases are thoroughly resolved so as to minimize opportunities for impunity for perpetrators of human rights violations. The president must also reform the police organization.

b. The Indonesian Government along with the Press Council ensures the fast, cheap, and equal access to justice for journalists who are victims of violence.

c. Regarding press (journalists organizations and press company organizations) it is necessary to immediately develop written guidelines regarding steps in the event of violence against women journalists.

d. The Minister of Education and the Minister of Religion in charge of universities in Indonesia must ensure protection guarantees for student press institutions to carry out journalistic activities.

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90 https://lampung.idntimes.com/news/lampung/silviana-4/akun-media-sosial-teknokra-unila-diretas-secara-bersamaan-ada-apa/2

IV. Journalists Criminalization and Regulations that Hamper Freedom of Press

IV.1. The regulation about freedom of press and expression is very important to protect the journalists and to ensure the human rights of journalism. Basically, Indonesia has regulations for it, but the regulation is not well applied for there are many problems unregulated. Indonesia ranks 4th within the largest users of the internet globally, and therefore requires greater assistance from the United Nations to ensure the quality of freedom of speech and expression is maintained, and not manipulated by draconian laws and regulations. The ways in which the recent laws have negatively impacted Indonesian citizens are as follows. The widespread usage of the internet in Indonesia encourages the government to create regulations that are based on the protection of freedom of Press and Expression.

IV.2. One of them is Law of The Republic Indonesia No 19 of 2016 on the Amendment to Law No 11 of 2008 on Electronic Information and Transactions. Instead of protecting Freedom of Press and Expression, this law has actually given rise to many polemics which are considered as restraints on freedom of Press and Expression. The number of “rubber” articles in the Law can easily provide the criminalization process for anyone who wants to channel their freedom of Press and Expression.

IV.3. Article 19 of the Universal Declaration of Human Rights states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Indonesia is regulated under the International Covenant on Civil and Political Rights, of which the right to freedom of expression and opinion has been preserved so as to protect the Indonesian public. Despite the existence of said regulation being included in the Indonesian Constitution, the implementation of these laws remains to be executed.

IV.4. UU ITE the “rubber” articles include, Article 26 paragraph 3 concerning the deletion of irrelevant information; Article 27 paragraph 3 concerning defamation is considered to be used for repression of citizens who criticize the government, police, or state institutions; Article 28 paragraph 2 concerning hate speech; Article 36 concerning losses This article can be used to increase the criminal penalty for defamation; Article 40 paragraph 2a concerning prohibited cargo; concerning prohibited cargo. This article is problematic because it can be used as an excuse for internet shutdown to prevent the spread and use of hoaxes;; Article 45 paragraph 3 concerning the threat of imprisonment from defamation. This article is problematic because it can detain the accused during the investigation process.

IV.5. Another regulation that hampers press freedom is that the Supreme Court (MA) issued Supreme Court Regulation (Perma) No. 5 of

2020 regarding Trial and Security Protocols within the Court, dated December 4th 2020. In particular, Article 4 paragraph (6) stipulates the obligation to have permission from the judge/chairman of the panel of judges to be able to 'Take photos, audio recordings and/or audio visual recordings' in the trial process, and must be done before the start of the trial. In addition, Article 7 of Perma No. 5 of 2020 also classifies violations in Article 4 paragraph (6) as contempt of court or contempt of court. LBH Pers believes that the policy set by the Supreme Court threatens press freedom. This regulation will hinder the function and role of the press in seeking and broadcasting information to the public. The presence of journalists in the trial process is part of the disclosure of public information and guarantees of access to justice. In addition, Article 4 paragraph (3) of the Press Law has guaranteed press freedom, by giving the national press the right to seek, obtain, and disseminate ideas and information. We value the role and function of journalists to minimize judicial mafia practices that can interfere with the independence of judges in making decisions. The presence of journalists in the courtroom is important to ensure the judicial process runs according to regulations, and access to justice is fulfilled. Because, with limited access in the courtroom, it is guaranteed that the judicial mafia will be more free to move without the supervision of journalists.

IV.6. Regulation of the Minister of Communication and Information Technology No. 5 of 2020 concerning the Implementation of Private Scope Electronic Systems. This regulation includes the regulation of digital rights, including its limitations, but the content of the

regulation goes beyond the limits of the rules for the formation of laws because this regulation should be limited to the 'organization of certain affairs in the government. This regulation has the potential to conflict with article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, especially based on how to place personal data in the organizer of a private electronic system that is so easy to access by the interests of the authorities who have had two rights. basic matters, namely: (a) the absence of independent supervision in obtaining access to personal data; (b) in practice there is often misuse of personal data, especially by bureaucratic law enforcement officers and law enforcement. It also specifically regulates the extent of the Government's authority to terminate internet access without clear standards for human rights restrictions.

IV.7. The issuance of the National Police Chief's Telegram Letter Number: STR/645/X/PAM.3.2./2020 dated October 2, 2020, in section five the Indonesian National Police Chief ordered to "conduct cyber patrols on social media and media management to build public opinion" who disagreed with the demonstrations. In the midst of the COVID-19 pandemic. In point 6, the National Police Chief ordered to "contra narrate issues that discredit the government". As a result of the issuance of this policy, there are restrictions on the media and press freedom experienced by journalists to provide information and opinions on the situation that occurred during the COVID-19 pandemic. In addition, this policy is also evidence of an abuse of power by the police and is inversely

proportional to the task of the Police as mandated in Article 30 of the 1945 Constitution, namely maintaining security and order, not campaigning against the government.

IV.8. The impact of the many regulations that hinder the press, the ITE Law is a law that is often used to criminalize journalists by using articles on libel or hate speech. LBH Pers monitoring records, at least from 2018 to 2021 there were 40 cases of criminalization of journalists, most of which used the defamation article.

IV.9. Since 2019-2021, at least 3 journalists have been imprisoned because they were convicted of violating the defamation or hate speech articles in the ITE Law. Among them are the first, journalist Muhammad Asrul was sentenced to three months in prison by the Palopo District Court, South Sulawesi after trying to dismantle the alleged corruption case in Palopo through three of his writings published in berita.news. Second, the Chief Editor of Banjarhits, Diananta Putra Sumedi was detained for 3.5 months at the Kotabaru Police Detention Center. Diananta was detained because he was considered to have written news that was allegedly offensive to SARA and was charged with Article 28 of the ITE Law. Third, journalist Mohamad Sadli Saleh was sentenced to two years in prison by the Panel of Judges at the Pasarwajo District Court, Buton Regency, Southeast Sulawesi. The judge assessed that

Sadli was found guilty of spreading information and causing hatred in the community through his writings.[91]

RECOMMENDATIONS

a. The government together with the People's Representative Council of Indonesia made revisions by reviewing or removing the rubber articles in the ITE Law, Article 26 paragraph 3 concerning the deletion of irrelevant information; Article 27 paragraph 3 concerning defamation is considered to be used for repression of citizens who criticize the government, police, or state institutions; Article 28 paragraph 2 concerning hate speech; Article 36 concerning losses This article can be used to increase the criminal penalty for defamation; Article 40 paragraph 2a concerning prohibit cargo; concerning prohibited cargo. Likewise with the rules under it as mentioned above.

b. The Minister of Home Affairs must ensure that public officials, including regional heads under their authority, do not use criminal means when there is a reporting dispute with journalistic works.

91 https://www.cnnindonesia.com/nasional/20211125081120-12-725815/sudah-tiga-jurnalis-dipenjara-di-era-jokowi-maruf-pakai-jerat-uu-ite

V. Freedom of Press in Papua

V.1. One of the big problems as well as the main issue for the deteriorating condition is the throttling or the process or activity of limiting the bandwidth of electronic communication devices as Papua has experienced this situation back in the 21st August until 4th September of 2020.[92] One other problem is the prohibition of foreign journalists to give Papua coverage.

V.2. First, the throttling was done by the President of Indonesia and the Ministry of Communication and Information Technology was based on “securing the designated area from hoax”. Throttling was done by limiting the internet access to several points in Papua. Although this has been settled by the Administrative Court of Jakarta by sentencing the two actors mentioned, this didn’t really resolve the case. Since the act was seen as discriminatory and did not engage accountability that should be one of the main responsibilities from the state. The act has also yet to be reassuring that the throttling will not happen again in the future.

V.3. The main reason for this throttling is due to the hoax information as well as hate speech provocations spread across Papua on August 19th 2021. Seeing the condition where it led to the separation movement of Papua, the Indonesian Government and the Ministry of Communication and Information Technology decided to shut

92 https://kontras.org/wp-content/uploads/2021/01/Cahaham-2020__Indo-Vers.pdf

down the internet in the region. During this throttling, the Indonesian Government also increase the number of security forces there to also increase the security in Papua in order to create safety measures in Papua from the upcoming separative movements.

V.4. Not being able to access the internet means hampering the access for information for the people of Papua, thus resulting in the violation of Indonesia's Article 28F of the 1945 Constitution. The article stated one of the essentials of rights for the people, which is the right to know, namely every citizen has rights to communicate and obtain information. While in this case, the state hampers the process for 2 weeks, leaving the people of Papua unnoticed, uninformed, and left behind through new information, and discriminated against.

V.5. It doesn't stop there, the throttling or internet shutdown as well as the increasing deployment of security forces in Papua have left an impression from the Indonesian Government as well as the agents involved that they are avoiding supervision and transparency in dealing with the existing condition in Papua.

V.6. Another case which underlined the deteriorating state of human rights in Papua is the prohibition of foreign journalists to give Papua coverage. This is ironic since the Indonesian government has stated in the early stage of his governance (2019) that the

government will open access to foreign journalists to give Papua coverage. But it is unfortunate to see that the promise stopped in the middle of 2019, as it stopped only in front of the media.

V.7. On Friday 2 February 2018, three BBC Indonesian journalists (two Indonesian citizens and one foreign) were barred from reporting in Asmat Papua. They were investigated because one of the BBC journalists made a tweet on twitter, in text and photos, about assistance for children experiencing malnutrition in Asmat in the form of instant noodles, soft drinks and biscuits. Official information from the Cenderawasih and Immigration Military Command stated that the tweet was the reason the police and immigration investigated the BBC journalist. After being questioned by the police, Friday, February 2 2018, Dwiki flew to Jakarta from Agats. Meanwhile, Affan and Rebecca were examined at Mimika Immigration until Saturday, February 3, 2018. After the examination, Rebecca and Affan were unable to continue their coverage. Both of them were escorted by security forces to Timika Airport, for their flight to Jakarta, Saturday morning.[93]

V.8. Victor Mambor, a journalist for Koran Jubi and jubi.co.id, and Arnold Belau, a Suara Papua journalist, became victims of violence in the form of doxing on social media Twitter by the “shadow name” account on Thursday 22 August 2019. The owner of the account

93 https://nasional.tempo.co/read/1057037/aji-indonesia-kecam-pengusiran-jurnalis-bbc-dari-asmat-papua/full&view=ok

accused Victor of being a liaison for Free Papua Movement (OPM) and information supplier to human rights lawyer Veronica Koman.[94]

V.9. In September 2019 Febriana Firdaus Foreign media contributor Al Jazeera became a victim of violence in the form of bullying on social media until she received threats through a short message. In addition, they are also victims of doxing or tracking and revealing the identities of journalists who write that do not match the political aspirations of the perpetrators, then spread them on social media for negative purposes. Anonymous Facebook, Twitter and Instagram accounts spread Febriana's personal account regarding reports of victims of the riots in Papua. The owner of the account doubts the number of victims written by Febriana because it is different from the government's version. While the author has confirmed to the regent and the local church. As a result, Febriana received many threatening messages on social media. One of them was from the Twitter account owner @ilhamAziz31 who warned that intelligence had been monitoring Febriana's activities and asked to build a constructive narrative.[95]

V.10. The police barred three journalists from covering the opening of the Student Exodus Solidarity Post on the Cendrawasih University (Uncen) campus on Monday. The three journalists who were

94 https://tirto.id/jurnalis-jubi-victor-mambor-alami-doxing-terkait-papua-egS4

95 https://www.suara.com/news/2019/09/05/200109/jurnalis-aljazeera-febriana-firdaus-diintimidasi-karena-artikel-soal-papua?page=all

banned from covering were Hengky Yeimo (Journalist Jubi), Benny Mawel (Contributor to The Jakarta Post and journalist Jubi), and Ardi Bayage (Journalist of Suarapapua.com). Coordinator of the Papuan Indigenous Journalists Forum or FJAP, Arnold Belau, said the police action prevented three journalists from covering the opening of the Student Exodus Solidarity Post at the Auditorium of Cendrawasih University, Jayapura City, Papua, Monday 3 June 2019.[96]

V.11. The General Leader of Jubi Tabloid Victor Mambor became a victim of intimidation by unknown people. The car parked on the side of the road next to the house was damaged on April 21, 2021. The front windshield and rear left windshield were shattered, allegedly by being hit with a blunt object. The front and back doors on the left are scribbled with orange pilox. This is the umpteenth case experienced by Victor. Previous series of terrors have included digital attacks, doxing and the distribution of leaflets on social media with offensive content. It is suspected that the terror experienced by Victor was related to the Jubi Tabloid news that was not liked by certain parties. A similar case also happened to the Cendrawasih Pos Journalist. A car window belonging to the Chairman of AJI Jayapura Lucky Ireeuw was damaged by an unknown person at Hamadi Pier, South Jayapura District, Jayapura

96 https://jubi.co.id/fjap-pelarangan-liputan-oleh-polisi-melanggar-uu-pers/

City. The editor-in-chief of the Cenderawasih Pos Daily estimates that his car was damaged on Saturday, August 7th 2021, at night.[97]

RECOMMENDATIONS

a. Encouraging the Government of Indonesia to carry out its transparent and accountable functions by opening full access for foreign journalists to Papua without terms and conditions that complicate the administration and other needs of the journalists concerned as an act and commitment in promoting freedom of expression and freedom of the press.

b. The President of the Republic of Indonesia and the Chief of Police of the Republic of Indonesia must ensure that cases of violence against journalists are thoroughly resolved so as to minimize opportunities for impunity for perpetrators of human rights violations. The president must also reform the police organization

VI. Media Independence and Media Sustainability

VI.1. Digital disruption changes aspects of the production, business model and distribution of media information, which in turn threatens the viability and sustainability of this public institution. The dominance of mastery of technology owned by global digital giants has forced the media as news publishers to depend on them for the

97 https://www.suara.com/news/2021/08/08/211853/mobil-ketua-aji-jayapura-dirusak-orang-tak-dikenal-ada-dua-kejanggalan?page=1

most part of the reach of information distribution in the digital realm. This inequality does not only have an impact on the online media business model but also affects the quality of journalism in the digital realm. Indonesian Advertising Companies Association (PPPI) Janoe Arijanto digital advertising spending is still enjoyed by global platforms, not local publishers. Meanwhile, as much as 75 percent of the market share of the Indonesian advertising industry is enjoyed by global players, such as Facebook Group, Google, and Youtube.[98] The unequal competition on global platforms with local press media makes the press media increasingly eroded and threatens the sustainability and sustainability of the press media.

SELF-CENSORSHIP BEHAVIOR

VI.2. Journalists and the media often carry out self-censorship in reporting issues related to the majority religion and ethnicity, especially in the regions. The media are reluctant to take control (watchdog) functions related to discriminatory policies, because they experience various forms of fear.

VI.3. Based on the FGD, monitoring, and analysis of media coverage in the regions conducted by SEJUK (2017-2019) and Remotivi (2021), there is the same conclusion: coverage of diversity issues tends not to represent the voices of vulnerable groups. On the other

98 https://ekonomi.bisnis.com/read/20201216/12/1331877/internet-jadi-primadona-belanja-iklan-tapi

hand, journalists and media choose not to report (critically) on discriminatory cases involving religious or belief minorities, ethnic groups, indigenous peoples, the poor, including LGBT people. They had to censor themselves.

VI.4. In the case of the Ahmadiyya Muslim community in Sintang, West Kalimantan, where the mosque was damaged (3/9/2021), followed by the trials of the perpetrators, until the mosque was forcibly converted into a place of residence, not as an initial place of worship (February 2022), the media -The media does not dare to critically report on discriminatory practices against the Ahmadiyah congregation in the Harapan Hall, Sintang, West Kalimantan. The reason is that resistance, intolerance, and discrimination against Ahmadiyah are carried out by the Sintang Muslim Community Alliance, which is led by the Malay People's Association and officials and government officials from the provincial level, the Governor of West Kalimantan, to the regent and his deputy.

VI.5. In general, self-censorship occurs because: first, journalists and editors are still confined by their primordial sentiments, namely their faith or belief, in reporting on minority issues such as Ahmadiyah and LGBT. So, if they preach it will corner and make marginal groups more vulnerable. The media also only quoted statements from regional authorities or officials, leaving no room for victims or vulnerable groups to speak out. Second, pressures such as intimidation and even violence, both against journalists personally and media offices, are carried out by two actors:

a. Primordial (religious and ethnic/ethnic)-based citizen groups or mass organizations and religious figures who have great influence due to their religious, customary, and social authority, such as Tuan Guru in West Nusa Tenggara and traditional elites at the Minangkabau Natural Density Institute (LKAAM) in West Sumatra, which can provoke his followers to silence critical voices in telling the truth.

b. Regional rulers or leaders such as mayors, regents, governors, and other discriminatory, non- impartial officials who silence journalists or the media to deliver critical reports. They can limit their power to intimidation and use repressive means against journalists and the media. They also threaten to stop the "distribution" of their resources (advertising and other facilities) that benefit journalists, editors, and even local media.

RECOMMENDATIONS

a. The Indonesian government and the People's Representative Council of Indonesia make regulations that protect local media within the framework of publisher rights. Creating an equal and non-discriminatory digital business climate.

b. The Indonesian government and the Press Council protect journalists from freely conveying information and journalistic work, including on issues of diversity and not limiting or silencing journalistic work on diversity issues.

HUMAN RIGHTS DEFENDERS



HUMAN RIGHTS DEFENDERS

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Indonesian Legal Aid Foundation (YLBHI)

Human Rights Working Group (HRWG)

The Institute for Policy Research and Advocacy (ELSAM)

The Indonesian Human Rights Monitor (IMPARSIAL)

Yayasan Kemitraan

Perkumpulan HuMA Indonesia

Protection Desk Indonesia

I. Introduction

1. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

2. YLBHI is a non-governmental organization in Indonesia that provides structural, legal assistance for poor and marginalized people. Along with seventeen Legal Aid Foundation in seventeen provinces in Indonesia, the structural, legal assistance is implemented through litigation and non-litigation within the scope of issues, such as labor rights, rights of the urban poor, land rights and agricultural issues, rights to the environment, right to a fair trial, right to freedom of expression and religious tolerance, including discrimination against minority and vulnerable groups.

3. HRWG is a network of more than 48 non-governmental organizations working on promoting human rights in Indonesia. It was established in 2000 by NGOs sharing similar interests and seeking a platform to coordinate and lead international advocacy efforts.

4. The Institute for Policy Research and Advocacy (ELSAM), is a human rights organisation, based in Jakarta, established since August 1993. To actively participate in the efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR), has become ELSAM's driving objective. At the outset, ELSAM's spiritual commitment was to develop a democratic political order in Indonesia by empowering civil societies through advocacy and promotion of human rights.

5. The Indonesian Human Rights Monitor (IMPARSIAL), is a non-governmental organization established in 2002 with the aim of advocating in the field of human rights, including conducting studies and research, increasing capacity and knowledge about human rights, as well as campaigning on human rights issues, both at the

local, national and international levels, among which the focus is on issues of protecting human rights defenders, anti-death penalty, freedom of religion or belief, freedom of association and assembly, freedom of expression, peace and conflict resolution in Papua, and reform of the security sector.

6. Yayasan Kemitraan was established in 2000 after Indonesia's first free and fair elections in 1999. There are five pillars as the focus, such as human rights, law and anti-corruption, sustainable development, social inclusion, infrastructure and technology, and regionalization.

7. Perkumpulan HuMA Indonesia was established in 2001. It engages in legal reform issues relating to land and other natural resources. HuMA focuses on the issue of indigenous peoples, legal reform, legal pluralism, people's legal assistance, and REDD++ climate change.

8. Protection Desk Indonesia works directly with community-based human rights defenders who are at high risk in remote villages. It carries out capacity-building training on security to empower them and build their capacity in advocacy. The team also works at various levels: with the support of grassroots and national organizations, with the National Human Rights Commission by conducting multi-stakeholder dialogue for the protection of human rights defenders, and at the international level, by submitting a shadow report for the Universal Periodic Review.

II. Overview

II.1. In the third cycle of UPR in 2017, the Indonesian government accepted the recommendations regarding the situation of human rights defenders, namely to:

a. Adopt legislative measures to prevent and combat intimidation, repression or violence against human rights defenders, journalists and civil society organizations;[99]

b. Continue to strengthen national and regional efforts to promote and protect human rights defenders;[100]

c. Facilitate the work of human rights defenders and journalists throughout the country.[101]

d. Step up efforts to ensure protection of journalists and human rights defenders.[102]

e. Take further steps to ensure a safe and enabling environment for all human rights defenders, including those

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99 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139.24 (Mexico).

100 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139.64 (Ecuador).

101 Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139.65 (France).

102 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139.66 (Iraq).

representing the lesbian, gay, bisexual and transgender community and indigenous peoples.[103]

II.2. The recommendations above are not fully implemented yet. The situation of human rights defenders in Indonesia is at stake. The work of human rights defenders often involves criticism of government policies and actions, hence, human rights defenders and their works are often deemed as enemies of national security that need to be eliminated.

II.3. Human rights defenders in Indonesia face various attacks, where they or their family are being stalked, monitored, put under surveillance, targeted for criminal investigations and charges, and the negative portrayal or defamation in public. In addition, they also receive death threats and assassination attempts. Human rights defenders, who work to encourage a better enjoyment of human rights, are becoming vulnerable to human rights violations themselves. The potential vulnerability of human rights defenders is further strengthened by facts on the ground which show that nowadays more and more human rights defenders in various areas in Indonesia have to deal with various threats and attacks by state and non-state actors.

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103 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 141.56 (Norway).

III. Development on the Regulation on the Protection for Human Rights Defenders

III.1. "The long and winding road" might be the right phrase to describe the regulations for the protection of human rights defenders (HRDs) in Indonesia. This section will elaborate the regulations aspect into three parts; (1) the pre-cycle and post-cycle regulations that support human rights defenders; (2) challenges, obstacles, and threats to human rights defenders; (3) needs and recommendations.

PRE AND POST 3RD CYCLE OF UPR

III.2. Prior to the 2017 cycle, there were several regulations that were basically able to support the work and protect HRDs. There are regulations that explicitly mention human rights defenders, but there are also regulations that are sectoral.

III.3. There are only 2 regulations that explicitly mention and explain the Protection of Human Rights Defenders. First, Presidential Regulation/Decree No 18/2014 concerning the Protection and Empowerment of Women and Children in Social Conflict. In Article 8, mentions and acknowledges Women Human Rights Defenders (WHRD). Second, Komnas HAM Regulation No 5/2015 concerning Procedures for the Protection of Human Rights Defenders (HRD).

On the other hand, there are several regulations that implicitly support the role and protect HRDs, including:

a. Constitution Article 28 C paragraph (2);

b. Articles 100 – 103 of the Human Rights Law Number 39/1999 - normative in nature and there is no explicit article that regulates Human Rights Defenders and their protection;

c. Article 8 and Article 18 of Law 40/1999 on the Press. - Providing guarantees of protection for journalistic work, a quo regulates criminal acts for anyone who hinders journalistic activities.

d. Article 16 of Law 18/2003 on Advocates - Regulates legal protection guarantees for lawyers and advocates.

e. Article 5 paragraph 1 of Law No 13/2006 concerning Protection of Witnesses and Victims - Protection is limited to victims of human rights violations, victims of criminal acts of terrorism, victims of criminal acts of trafficking in persons, victims of criminal acts of sexual violence and victims of severe abuse.

f. Article 66 of the Environmental Law No. 32/2009 concerning Environmental and Forestry Protection and Management - Protection is given to Environmental Defenders who cannot be criminally prosecuted and civilly sued when defending the Environment.

g. Article 11 of Law No 16/2011 concerning Legal Aid - Legal Aid Providers cannot be prosecuted civilly or criminally in providing Legal Aid which is their responsibility which is carried out in good faith both inside and outside the court

trial in accordance with Legal Aid Standards based on regulations legislation and/or Advocate Code of Ethics.

III.4. There are several mechanisms or policies at the institutional level that are used to protect human rights defenders, including:

a. MoU between Komnas HAM and the Witness and Victim Protection Agency (LPSK) No: 01/MoU-KH/I/2020, No: 01/1.3.4.HMKS/LPSK/01/2020 concerning the Protection of Witnesses and Victims of Serious Human Rights Violations;

b. MoU between the Press Council and the National Police No:2/DP/MOU/II/2017. No:B//5/II/2017 concerning Coordination of Press Freedom Protection and Law Enforcement Related to Misuse of Professional Journalists;

c. Presidential Prerogative Mechanism. President Jokowi granted clemency to Eva Bande (WHRD who fought for land rights in 2014) and Baiq Nuril (WHRD who fought for the elimination of sexual violence) in 2019 who were criminalized by the principal of Senior High School 7 Mataram, West Nusa Tenggara who sexually abused her.

III.5. In addition, there are several regulations that emerged after the Cycle 2017 process, namely:

a. The existence of a Sub-Commission for Recovery and Remedy at Komnas Perempuan (National Commission for Anti Violence Against Women). Actively campaigned protection of WHRD, developed the protection manual for WHRD, developed instruments for documentation and

monitoring WHRD cases. All of those things were implemented together with civil society;

b. Standard Norms and Regulations (SNP) No 6 concerning Human Rights Defenders by Komnas HAM;

c. SK No.1B/T/2021 concerning Acceleration of Agrarian Conflict Resolution and Strengthening of Agrarian Reform Policies signed by the Chief of Staff of the Presidential Staff Office (KSP), Moeldoko - January 21, 2021).

CHALLENGES, BARRIERS, AND THREATS TO HUMAN RIGHTS DEFENDERS

III.6. From the existing regulations, implementation is still something that really needs to be considered. Starting from socialization through every stakeholder, the understanding from police and military forces, until it's implementation of the existing articles, is still far from being effective. In many cases, stakeholders do not understand or even be aware of the regulations that support the work of HRDs. Meanwhile on the other hand, there are various policies that potentially threatened the works of HRDs, including:

a. Omnibus Law (Work Creation) No 11/2020 – open space for investment by ignoring environmental aspects;

b. Article 27 of Law 11/2008 (now Law 19/2016) Information and Electronic Transactions (ITE). The defamation article is

often used to silence human rights defenders and critics[104], as well as Article 28 regarding fake news, hate and speech[105];

c. Chapter X Criminal Provisions, Article 82 paragraph 1 letter c[106]; Article 83 Paragraph 1 letter b; Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction & Article 362 of the Criminal Code (KUHP) - Forbidding anyone who does not have a certain certificate to cut down forests and take something, this is used to criminalize Indigenous Peoples because the Indigenous Peoples Law itself has not been ratified until now, including being a threat to the survival of indigenous peoples;

d. Article 167 paragraph (1) of the Criminal Code (KUHP) – Articles on trespassing, is used to trap people who refuse to sell their land (usually the company will fence off the community's access to the fields, so that when they go to the fields and through the land owned by the company, they would be charged using this article);

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104 The majority of victims of the Law on Information and Electronic Transactions came from activists, journalists, and critical communities. The article can be seen at: https://grafis.tempo.co/read/2549/daftar-aktivis-hingga-jurnalis-yang-terseret-uu-ite.

105 See more: Law of the Republic of Indonesia No. 11 of 2008 Concerning Electronic Information and Transactions. The document can be seen at: http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4846_UU_11_2008_e.html.

106 Article 82 (1) An individual who intentionally: c. felling trees in the area forest illegally as referred to in Article 12 letter c. See more: Undang-Undang Republik Indonesia Nomor 18 Tahun 2013 Tentang Pencegahan dan Pemberantasan Perusakan Hutan. The document can be seen at: https://www.dpr.go.id/dokjdih/document/uu/UU_2013_18.pdf.

e. Article 385 of the Criminal Code, - Anyone who plants something on land that he does not own (administratively/certification) can be punished. Being a threat to indigenous peoples and Trans migrants who depend on the natural landscape;

f. Article 170 of the Criminal Code paragraph (1) & Article 406 Paragraph (1) of the Criminal Code; – Used to punish protestors when they carry out acts of self-defense from violence. (when protestors fight using violence too, they can be charged using this article);

g. Article 162 of the *Minerba* (Minerals and Coal) Law Number 3/2020 about the change of similar Law No 4/2009 – The "rubber" article that prohibits anyone from interfering with mining activities, poses a threat to human rights defenders in the environmental sector or eco-defenders. The implementation of these rules has even opened a room for criminalization through the provisions of Article 162;

h. *Makar* (treason) is used for those who are considered to want to overthrow the legitimate government. Apart from the issue of Papua, the article of Treason had been used since 2016[107] and 2017. The term 'treason' (*makar*) which is taken and interpreted from the Dutch word *'aanslag*', is regulated in several articles including Articles 87, 104, 106, 107, 110, 139a, 139b, and 140 of the Criminal Code (KUHP). The

[107] See more: IDN Times. 2019. Ini Deretan Kasus Makar Selama Pemerintahan Jokowi. The article can be seen at: https://www.idntimes.com/news/indonesia/marisa-safitri-2/ini-deretan-kasus-makar-selama-pemerintahan-jokowi/6

Indonesian government also uses these articles to imprison mostly Papuan and Moluccan activists. Amnesty International protested the use of these articles because these articles criminalize the rights to freedom of opinion and expression and the defenders faced punishment due to these articles too;

III.7. Apart from these policies, HRDs cannot be separated from various forms of threats. Starting from doxing, hacking, digital threats, intimidation, criminalization, premeditated murder, and various other threats. The threats came from various directions, from government at various levels, corporations, thuggery, military and police, buzzers, to vigilante groups.

III.8. In 2018 the HRDs Coalition managed to invite HRDs from various sectors to meet stakeholders, the stakeholders listened to what was experienced by HRDs (their cases, experiences, lost, anything related with the human rights works), but there was no follow up. In 2019 the Coalition met with Balegnas (National Legislative Body) to push for the revision of Law 39/1999 on Human Rights by including a clause on the Protection of HRDs. Balegnas welcomed well, but no follow-up till now. The coalition also encourages the establishment of derivative instruments from Article 66 of Law 32/2009 concerning Environmental Law. The ministry of environment and forestry together with the Coalition of NGOs make a Draft Ministerial Regulation for Environmental Defenders. The draft has been agreed to be final but the Minister is still delaying its

ratification. Basically, what is needed is to ratify regulations that already exist but are hampered by bureaucratic aspects such as the Ministerial Regulation on the Environment, the Bill of Indigenous People Protection, and the Revised Law 39/1999. Then it should be socialized thoroughly so that it could be understood by all parties, also revoked the rules and "rubber" articles that had been used to silence human rights defenders.

RECOMMENDATIONS

a. Establish a comprehensive law on protection of human rights defenders, including to revise Human Rights Law regarding its articles on human rights defenders protection;

b. Revoke the problematic articles that could hinder the work of human rights defenders;

c. Recognize the work of human rights defenders, including their immunity that should be stipulated in the laws that protect human rights defenders.

IV. The Situation of Human Rights Defenders in Indonesia

IV.1. Violent incidents continued to occur against human rights defenders during the 2017-2021 period. In the span of five years, there have been more than 687 incidents of violence against

human rights defenders. Various incidents of attacks on human rights defenders were carried out directly such as confiscation, arbitrary arrests, repressive disbandment of activities, criminalization, violence, and intimidation, as well as through digital media such as hacking and account hijacking, occurred due to the government's attitude that deliberately turned its back on human rights values. Therefore, the state should be able to accommodate the protection of human rights defenders through special regulations to protect human rights defenders, in order to provide a sense of security in their work and/or efforts to promote human rights that have been undertaken so far. The absence of this special regulation makes human rights defense work closely related to threats, intimidation, terror, and even criminalization.

IV.2. In addition, throughout 2021, subpoena and criminalization slowly became a tradition. It can be seen that there is a new pattern carried out by public officials as an effort to silence criticism, namely through subpoenas. KontraS noted that throughout 2021, there were at least two subpoenas sent by public officials. First, the summons were sent by the Presidential Staff Office Chair (KSP) Moeldoko to Indonesia Corruption Watch (ICW), in particular Egi Primayogha and Miftah. Second, a subpoena was sent by the Coordinating Minister for Maritime Affairs and Investment (Menko Marvest), Luhut Binsar Panjaitan (LBP), to the Founder of Lokataru, Haris Azhar and the Coordinator of KontraS, Fatia Maulidiyanti that leads to criminalizations and threat of 6-10 years imprisonment.

IV.3. The criminalization of human rights defenders tends to be carried out using problematic legal instruments, such as the Criminal Code and the ITE Law. The Criminal Code ensnares human rights defenders with articles of insult, defamation, and treason. Meanwhile, the ITE Law ensnares human rights defenders in the digital realm with articles on defamation, hate speech, and threats of violence in cyberspace. Both of these legal products have “rubber” articles that are often used to silence the freedom of opinion and expression of human rights defenders. The ongoing criminalization of human rights defenders indicates that democracy in Indonesia is in a state of emergency. In the last two years, this criminalization has been carried out systemically because many public officials have done it with the help of law enforcement officials. The state should protect the existence of human rights defenders because of their vital role in controlling the government's performance so that it fits within the corridor of human rights.

IV.4. Terror is the most significant act to take place in 2021. The significance of this action is even more visible if you look at the absence of similar cases in the previous periods in 2021. This terror also threatens human rights defenders who are part of indigenous peoples. On Monday, September 27, 2021, in Bolaang Mongondow Regency - North Sulawesi, an attack occurred against the Toruakat Indigenous People who were checking the boundaries of their customary territory. The attack was carried out by thugs paid by the gold mining company PT. Bulawan Daya Lestari (PT BDL). This incident has resulted in fatalities. A resident of the Touakat Indigenous Community died as a result of being shot in the chest and

4 other people were injured when they were attacked by a group of paid thugs recruited by the company to provide security at the mine site. Previously, the Touakat Indigenous People received information that the company had entered the customary area and damaged a number of plantations belonging to the Indigenous Peoples. In response to this information, the Indigenous Peoples held deliberations to ascertain the location and check the boundaries of their territory.

IV.5. Another terrorist act experienced by the Yogyakarta Legal Aid Institute (LBH) office was carried out by an unknown person (OTK) in the early hours of Saturday 18 September 2021. The action was allegedly using a Molotov cocktail which caused the terrace of the LBH Yogyakarta office to catch fire and grab onto several areas. part. The terrorist acts that occurred, of course, cannot be separated from the linkage of advocacy work or structural legal assistance carried out by LBH Yogyakarta to help the poor, minority, and vulnerable groups. Whereas for the work carried out by LBH, it is possible for certain parties to feel displeased and carry out acts of terror which are intended to frighten them into stopping the advocacy efforts that have been carried out so far. The attack on the LBH Yogyakarta office can also be interpreted as an attack on human rights defenders and this is a serious problem.

IV.6. It is also important to highlight the criminalization of Papuan human rights defenders in Indonesia. Over the past two years, there have been many human rights defenders in Papua who have been

criminalized on charges of treason while conducting peaceful protests. This criminalization is the result of the stigmatization of Papuan human rights defenders who are considered as separatist and rebel groups. In fact, like other citizens, Papuan human rights defenders also have the right to freedom of expression whose existence is guaranteed by the constitution. The stigmatization carried out by the government and law enforcement officers seems to justify various treatments that degrade human dignity and violate the law to Papuan human rights defenders. The impact of this stigmatization is racial bias which results in the legal process against Papuan human rights defenders being far from fulfilling the element of justice. Often, Papuan human rights defenders receive harsher sentences than in other similar cases. One of the cases of criminalization against Papuan human rights defenders was experienced by two Papuan Student Alliance (AMP) activists, Ruland and Kevin. Both of them are members of the AMP which focuses on advocating for human rights violations in Papua, the rejection of the extension of the Special Autonomy (Otsus) for Papua, and the rejection of the New Autonomous Region of the Expansion of Papua Province. They were arrested on charges of beating and confiscation of goods. However, during the trial process, there was not a single convincing statement that could prove that it was Ruland and Kevin who did this. Then, this case also contains various irregularities such as the process of arrest and determination as a suspect without being preceded by an examination as a witness, as is usually the case with allegations of Article 170 of the Criminal Code. There are many irregularities and oddities in this case, such as the judicial process which seems forced to show that there are efforts to

criminalize human rights defenders who are actively holding the state accountable for human rights violations that occurred in Papua.

V. Violence and Threats Against Environmental Eefenders

V.1. During the period from 2019 to 2021, ELSAM recorded 120 cases of attacks against environmental defenders spread across various regions, where in 2019 out of a total of 27 incidents, 17 of them occurred in agrarian conflicts. In 2020 there was an increase in the number of cases of attacks and threats against human rights defenders against the environment which was quite significant, namely 60 incidents, this increase was closely related to the increasing repression of the apparatus in securing a number of bill projects (one of which was the Job Creation Law) and the escalation of the corrupted reform movement. 2021 was a heartbreaking year, even though we are in the midst of the COVID-19 pandemic, a number of development projects in the environmental sector that undermine people's rights are still ongoing, in the ELSAM report there are at least 33 incidents of attacks on human rights defenders on the environment that aim to eliminate defenders. Human rights are labeled as hindering development.

V.2. 23. Various forms of attacks carried out against environmental defenders include; physical attack, murder, terror, arrest, detention,

prosecution (criminalization) and unfair trial. The actors involved in these acts of violence and threats include state actors and non-state actors.

V.3. Since 2019, state actors have been dominated by the police as the most involved in violence and threats against environmental defenders, followed by the National Military Forces (TNI), politicians and judges, although in many cases state actors are also often associated with non-state actors such as thugs, vigilante groups and corporations.

V.4. Another aspect that also affects the condition of human rights defenders on the environment in Indonesia is the limited regulations regarding the protection of human rights defenders. This issue is actually a classic issue, at least if we trace from the start the issue of protecting human rights defenders has started to emerge as an important conversation of civil society in Indonesia, at least in the last three to four years. This condition becomes even more complicated when considering the intersection of political-economic issues that also influence the creation of pre-conditions of violence and threats to environmental defenders, such as militarism or the militaristic character that has germinated in public spaces.

V.5. In the context of environmental defenders, military involvement often occurs in miraculous ways, as in the case of the planned military exercise in Pakel Village, Banyuwangi, on November 11, 2021. The

bad news is, this kind of case does not happen once or twice. Outside the military, the police must also receive special attention, considering their role as state actors who are most involved in violent cases throughout 2021. Of the total 31 state actors involved, 22 are police.

V.6. This kind of situation certainly brings a problematic consequence. On the one hand, efforts to protect human rights defenders are non-negotiable when considering the need for a legal-formal protection framework. On the other hand, a big hole in the law enforcement process itself becomes a homework that seems impossible to close immediately, considering the current political-economic situation.

V.7. Without underestimating the role and efforts that have been made by civil society in Indonesia which have encouraged the birth of important regulations and agreements, including the Standard Norms and Regulations of the National Human Rights Commission which was ratified on 7 September 2021, and the Memorandum of Understanding (MoU) between the Consortium for Agrarian Reform (Konsorsium Pembaruan Agraria-KPA) and the Coalition for Human Rights Defenders. which was signed on December 21, 2021, it is clear that the ideal conditions for human rights defenders regarding the environment still need to be pursued through a long struggle.

VI. Human Rights Defenders amid COVID-19 Pandemic

VI.1. Efforts to hinder advocacy work carried out by human rights defenders continues and are carried out in various ways. In fact, the Covid-19 pandemic situation is being used to hinder advocacy activities carried out by human rights defenders. Government officials arrest and forcibly isolate numbers of human rights defenders on charges of being exposed to (positive) Covid-19. However, the officers did not show the results of the tests conducted on them previously. This was experienced by three activists from The Indonesian Forum for Environment (WALHI) and LBH of Samarinda City, East Kalimantan in early September 2020 who were accused of being infected (positive) with Covid-19 by the Samarinda Covid-19 Task Force without showing evidence of the results of the PCR swab examination. The three are the Director of the East Kalimantan Forum for the Environment (WALHI), Yohana Tiko and two lawyers at the Legal Aid Institute (LBH) Samarinda, namely Fathul Huda Wiyshadi and Bernand Marbun. They were forcibly picked up at the East Kalimantan Walhi Office in Samarinda City and asked to undergo isolation at the IA Moeis Samarinda Regional Public House (RSUD). In fact, the three of them did not show symptoms of being infected with Covid-19 and the results of the PCR test that had been carried out on them were not shown by the officers. The officer who picked him up forcibly promised to hand over the test results at the Abdul Moeis hospital. However, when they arrived at the Abdul Moeis Hospital, the officer still did not show the results of the test, and one by one the officers disappeared after taking the activists to

the hospital, before finally being picked up by their colleagues. These human rights defenders suspect that this is related to their activities in advocating for environmental issues related to the planned relocation of the State Capital to the North Penajam Paser area, East Kalimantan, which has the potential to damage forest ecosystems and seize customary lands from communities around the location of the new capital city.

VII. Impunity of Munir case

VII.1. The administration of President Joko Widodo refused and against legal orders to publish the report on the results of the Investigation of the Fact Finding Team which was formed in 2004 by the administration of President Susilo Bambang Yudhoyono. This fact-finding team has completed its work and has also submitted the report to President SBY on 24 June 2005 at the State Palace. The order to disclose the findings of the fact finding team is mandated in the 9th Decree of the Presidential Decree No. 111 of 2004 concerning the formation of Munir's fact finding team.

VII.2. Without a rational reason, then in February 2016 the government through the State Secretariat informed that the document was not at the State Secretariat office. This later became a legal polemic between the State Secretariat and Solidarity Action Committee for Munir (KASUM) in the trial to the Supreme Court. Although the

Supreme Court's decision rejected KASUM's claim and strengthened the government's argument that the document was not controlled by the State Secretariat, the legal obligation to continue to publish the findings of the fact finding team did not disappear.

VII.3. The delay in the resolution of the Munir case is also hampered by the National Commission on Human Rights (Komnas HAM). Komnas HAM, until this report was prepared, had not followed up on the complaint from KASUM to determine Munir's case as a gross violation of human rights. The coalition of various NGOs filed a complaint on September 20, 2020, considering that in the Munir murder case, the elements of gross human rights violations had been fulfilled, such as being addressed to civil society and carried out by involving state actors.[108]

RECOMMENDATIONS

a. Conduct proper control and accountability of the law enforcement officers, government representatives, and parliament members, in regard to human rights defenders' cases;
b. Increase legal protection for human rights defenders, not only to guarantee the protection of human rights defenders, but also to

108 See more: Kompas. 2021. KASUM Harap Kasus Pembunuhan Munir Tak Mengenal Asas Kedaluwarsa. The article can be seen at: https://nasional.kompas.com/read/2021/08/19/15500021/kasum-harap-kasus-pembunuhan-munir-tak-mengenal-asas-kedaluwarsa?page=all.

eliminate laws that have the potential to threaten human rights defenders;

c. Provide remedies for the human rights defenders who became victims of any kind of terror and intimidation;

d. Settle the past and present human rights violations of human rights defenders with full accountability, under the transitional justice principles.

VIII. The role of National Human Rights Institutions in the Protection of Human Rights defenders

VIII.1. The enactment of National Human Rights Institutions in Indonesia was an advance in the protection of human rights, including human rights defenders. In 2021, the National Commission on Human Rights (Komnas HAM) issued Standard Norms and Regulations (*Standar Norma dan Pengaturan* - SNP) on Human Rights Defenders as a guide for the state and non-state actors to respect, protect, and fulfill the rights of human rights defenders.

VIII.2. In this standard, Komnas HAM listed several obligations for the state as a duty-bearer to protect human rights defenders. The obligations included the non-intervention to human rights defenders' works, facilitating the safe environment for human rights defenders, protecting human rights defenders from non-state actors, and

providing a recovery mechanism, both through judicial and non-judicial institutions.

VIII.3. This standard has not been used by the state to protect human rights defenders, even further, to form a comprehensive regulation to guarantee the rights of human rights defenders. Subsequently, human rights defenders are still in a vulnerable position, and it is exacerbated by the lack of political willingness of the state to make significant effort to protect them. There are still many shortcomings and limitations in the scope of functions and authorities of state institutions related to the protection of human rights defenders. In filling this gap, each relevant state institution has made several efforts to improve the protection for human rights defenders. However, there is no optimal continuity and synergy between state institutions, namely Komnas HAM in conducting research, reviewing, and monitoring cases, with the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban* - LPSK) which provides direct protection for human rights defenders.

VIII.4. Due to the absence of optimal cooperation, the efforts of each institution are still not sufficient to cover the lack of normative provisions in Indonesia. This can be seen from the increasing number of cases of intimidation, violence, and criminalization of human rights defenders in Indonesia. The absence of a significant role from state institutions in providing protection to human rights defenders can be dangerous, because with little protection for human rights defenders or the absence of punishment for perpetrators of

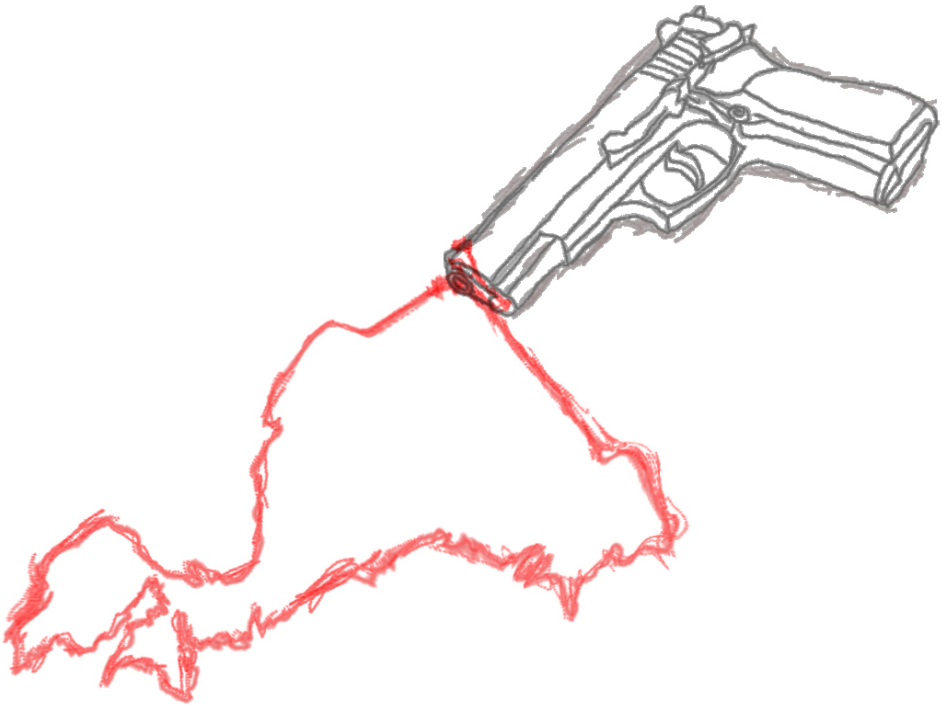
attacks against human rights defenders, there will be no deterrent effect which will further jeopardize the protection situation for human rights defenders in the future.

RECOMMENDATIONS

a. The government of Indonesia shall increase in efforts so that it is not limited to MoUs between institutions, but strengthens existing instruments such as the Press Law and also equips law enforcement officers with the concept of protecting human rights defenders so that they do not apply repression;

b. Komnas HAM shall has an improvement in the quality of the human rights defenders desk, so that the handling of human rights defender cases can be carried out quickly and responsively.

HUMAN RIGHTS IN PAPUA



HUMAN RIGHTS IN PAPUA

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

International Coalition for Papua (ICP)

Justice, Peace & Integrity of Creation Desk of the Papuan Tabernacle Church (JPIC Kingmi Papua)

Jakarta Legal Aid Institute (LBH Jakarta)

Centre for Study, Documentation and Advocacy on Peoples' Rights (PUSAKA)

World Council of Churches (WCC)

Geneva for Human Rights (GHR)

I. Introduction

1. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia and was established in 1998. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities.

2. The International Coalition for Papua (ICP) was established in March 2003. The ICP is an international coalition of faith-based and civil society organisations in Europe, Australia and Asia addressing the serious human rights condition in West Papua and supporting a peaceful solution to the conflict there.

3. The Justice, Peace & Integrity of Creation Desk of the Papuan Tabernacle Church (JPIC Kingmi Papua) Kingmi Papua carries out investigations and advocacy on environmental and human rights abuses in West Papua as part of its duty to protect God's creation on earth. Kingmi Papua is a Papuan church with its synod office based in Jayapura, Papua Province.

4. Jakarta Legal Aid Institute (LBH Jakarta) was established in 1971 to provide legal assistance to people who are unable to fight for their rights, especially poor and marginalized people who have been evicted, marginalized, ignored, and had their human rights violated.

5. Centre for Study, Documentation and Advocacy on Peoples' Rights (PUSAKA) was established in 2001 by social, legal, and environmental activists who were involved in advocating the rights of indigenous peoples and local communities around forest areas, agrarian reform, and the environment.

6. The World Council of Churches is a fellowship of 352 churches from more than 120 countries, representing over 580 million Christians worldwide. Through ecumenical advocacy, the WCC encourages and supports engagement of member churches and their partners in the reporting mechanisms of the UN human rights system, speaking out against injustice and discrimination, being a voice for the voiceless, and amplifying unheard voices.

7. Geneva for *Human Rights – Global Training* (GHR) is a training organization. It aims at human rights implementation in the countries, GHR prioritizes the strengthening of national protection mechanisms and the empowerment of all those involved in human rights promotion and protection. With its *Global Training*

Department (*GTP*), it conducts dozens of Courses in Geneva and in the regions. Its *Human Rights Policy Studies Department* (*HPS*) supports these training activities by monitoring the UN human rights system. GHR has consultative status with ECOSOC.

II. Overview

III.1. In the last cycle of Universal Periodic Review in 2017, Indonesia supported five recommendations regarding the human rights situation in Papua. The main concerns of these recommendations are the guarantee of human rights, settlement of human rights cases, cooperation with the Special Rapporteurs, and protection of indigenous peoples in Papua.

III.2. These recommendations were not implemented yet. The violence in West Papua[109] is ongoing, while the government has not made any significant progress in the settlement of past human rights cases. The police and the military are still the dominant perpetrators of the violations. Despite the basic human rights training carried out by the National Commission on Human Rights for 150 members of the Mobile Brigade unit in September-October 2017 in four regions in Papua, human rights violations such as arbitrary arrests, torture, and

[109] The term West Papua in this submission refers to Indonesia's easternmost provinces of Papua and Papua Barat.

extra-judicial killings continue to occur as part of law enforcement or military operations in West Papua.

III.3. On the other hand, United Nations' human rights mechanisms and institutions have repeatedly expressed concerns regarding the human rights situation in West Papua. The UN Special Procedures have brought attention to the armed conflict in Intan Jaya, the enforced disappearance of two indigenous Papuans (IDN 2/2021), the killing of a pastor and a church worker (IDN 5/2020), and the internal displacement of 50,000 Papuans in Intan Jaya and other provinces (IDN 1/2020). The Indonesian Government continues to restrict access to West Papua for international humanitarian organizations, human rights observers, and foreign journalists. A suggested invitation to West Papua by Zeid Ra'ad Al Hussein, the former UN Commissioner for Human Rights, was never seriously followed-up by the government.

VIOLENCE AND RACISM

- **Extra-judicial killings and enforced disappearances**

III.4. 7. Extra-judicial killings (EJKs) frequently occurred in all parts of West Papua over the past four years in relation to armed conflict or crowd control and other law enforcement operations. During 2017-2021, the number of EJKs has been increasing. In 2017, there were only ten cases. While in 2018, it increased to more than twenty cases. The majority of cases in 2019 and 2021 (more than sixty

cases in total) were related to security force operations against the West Papua National Liberation Army (TPNPB), many of which were carried out in the remote central Papuan highlands. Accordingly, EJKs were committed by members of the military and the police. In contrast to EJKs, cases of enforced disappearances (EDs) are limited to conflict areas with a high military presence. The evidence and witness testimonies in all reported ED cases between 2018 and 2021 indicate that the crimes were invariably committed by military members.

III.5. Both, EDs and EJKs, have significantly increased since the aggravation of the armed conflict in West Papua in early December 2018, as members of the TPNPB killed at least 19 road workers in the regency of Nduga, Papua Province. This observation is particularly worrying, given the rampant impunity enjoyed by police and military members in West Papua.

III.6. At least half of the cases of EJKs in the past three years were committed by joint security forces during raids against the TPNPB. The operations are carried out with the utmost brutality, which has also resulted in the killing of children. In 13.8% of reported EJK cases in 2019 and 2020, the victims were minors. Operations by joint security forces make it difficult for witnesses to clearly distinguish the affiliation of perpetrators, which facilitates impunity. The police and military have separate internal procedures if complaints of torture or extra-judicial executions are brought against their members.

III.7. All victims of documented EJKs and EDs between 2018 and 2021 – with one exception – were indigenous Papuans.[110] The statistics mirror the widespread racial discrimination faced by indigenous Papuans in Indonesia. Military and law enforcement personnel often consider indigenous Papuans as lazy, trouble makers and supporters of political independence. Particularly, the stigma of indigenous Papuans being members of the TPNPB is a common pattern found in relation to EJKs and EDs. The number of EJKs in West Papua is significantly higher than in any other region in the country.

III.8. Case patterns in the past decade indicate a strong co-relation between torture and EJKs. Many killed victims died as a result of injuries which they sustained during torture by security force members. In some of these cases, the perpetrators disappeared the victims' bodies to destroy evidence.[111]

[110] On 21 January 2019, members of the Sorong District Police shot dead a non-Papuan student, Indra Wijaya Taran, in Sorong. Evidence indicates that Indra Wijaya Taran was a drug user an was trying to escape as officers wanted to arrest him.

[111] Apianus Zanambani and Luter Zanambani had been reported missing since 21 April 2020. Witnesses saw military personnel arresting them during a military raid in Sugapa, Intan Jaya. A military internal investigation revealed that army members had tortured both men, resulting in their deaths. The perpetrators then burnt the bodies at the military base and disposed of the ashes into a river.

- **Torture and ill-treatment**

III.9. The overall data on cases and victims do not suggest any reduction in acts of torture[112] and ill-treatment[113] in the past five years. While the number of victims strongly varies between years, the number of reported cases of torture and ill-treatment in West Papua remains consistent. The widespread use of torture and ill-treatment is closely linked to the impunity granted to perpetrators in the police and the military. This situation is aggravated through the lack of a legal definition of torture in the current Criminal Code (KUHP) in accordance with the International Convention against (CAT) Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Indonesia already ratified in 1998. The difficulty of accessing information to and from Papua is often misleading in cases that occur there.

III.10. Police officers committed almost 52% of all reported cases throughout 2019 and 2020. The average percentage for the involvement of police officers in such acts was even higher with 66% between 2017 and 2018. Both figures strongly illustrate that the police are the top perpetrators of torture and ill-treatment in West

112 Definition as stipulated in CAT (Article 1).

113 The term 'ill-treatment' is used for procedural violations – often characterised by arbitrary acts or the use of excessive force – that do not match the legal definition of torture in international human rights law but cause mental and physical suffering to a person.

Papua. A study of cases of the past five years revealed that torture and ill-treatment were most commonly applied as a punishment or during crowd control operations.

III.11. 14. Similar to cases of EJKs and EDs, case patterns between 2017 and 2021 mirror the racial discrimination in the Indonesian law enforcement apparatus and the military. The vast majority of victims of torture and ill-treatment were indigenous Papuans. The annual statistical figures for this period vary between 89% and 100%. The data also shows that about five percent of the victims during this period were below the age of 18 years.

- **Impunity**

III.12. The national human rights system in Indonesia includes various mechanisms which may be used to file a complaint. The most important mechanisms consist of semi-independent institutions such as the National Human Rights Commission (Komnas HAM), the National Police Commission (Kompolnas) and the Ombudsman as well as internal complaint procedures within the Police and the Military. Despite the existence of these mechanisms, only a small percentage of human rights violations in West Papua result in the prosecution of perpetrators, making these options rather 'unattractive' for the victims and their relatives. The semi-

independent institutions have limited mandates and powers,[114] while the internal mechanisms within the military and the police lack transparency and impartiality.

III.13. Law No. 39 of 1999 gives Komnas HAM the authority to receive complaints from victims and to initiate an investigation following such a complaint. At the conclusion of its investigation, Komnas HAM may issue a report setting out its findings and recommendations, all of which are not legally binding. An investigation conducted by Komnas HAM may result in a trial before the Human Rights Court only in limited circumstances, namely, in cases involving genocide and crimes against humanity. Such courts do not include other internationally recognised crimes such as torture, extrajudicial executions, enforced disappearances, or war crimes.

III.14. Komnas HAM has carried out 15 preliminary judicial investigations into allegations of gross human rights violations, including three cases in West Papua. To date, the Attorney General has refused to initiate full judicial investigations and proceed with prosecution, with the exception of the Paniai Case which occurred on 8 December 2014 in the Papua province.[115]

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114 Komnas HAM, Kompolnas and Ombudsman can only issue reports and provide recommendations, both of which are not legally binding.

115 On 3 December 2021, the Office of the Attorney General gave the official order to form a team which shall investigate allegations of gross human rights violations in Paniai. A special team formed by the Attorney General collected evidence and interviewed about 40 witnesses, including six civilians. Most of the witnesses were affiliated with the police and military. The results of the investigation have not been shared with the public as of March 2022.

III.15. Complaints against police officers may be filed to an internal division of the Police named Propam,[116] that is supposedly responsible for maintaining its officers' accountability. Propam departments are only situated at the Police Headquarters in Jakarta (Mabes Polri) or the Provincial Police Headquarters (Polda) in Jayapura (Papua Province) or Manokwari (Papua Barat Province). Given the vast territory of West Papua, combined with inadequate public transportation, it is challenging for victims to access the Propam mechanism.

III.16. The main concern of the internal police mechanism under Propam is that most allegations of police misconduct in the context of human rights violations only result in internal disciplinary sanctions. This practice disregards Indonesia's Police Law (No. 2/2002), according to which any police officers suspected of committing a criminal offence should be prosecuted in a civilian court. Written reports on the results of the internal police process are not made available to the victims, their relatives, or the public.

III.17. Under Indonesia's criminal justice system, military personnel can only be tried in military courts. All parties in the military criminal justice system – from the judges and prosecutors to legal defence – are military officials, although the military court system has been integrated into Indonesia's judiciary institutions. The military court

116 Propam stands for 'Divisi Profesi dan Pengamanan' in Indonesian language, literally the Division of Profession and Security.

mechanism lacks transparency from the investigation process to the prosecution stage and often results in lenient sentences compared to the gravity of the crimes, implicating low-rank personnel while excluding the responsible commanders.

III.18. The police and the military have issued internal investigations into allegations of human rights violations in West Papua. However, the internal accountability mechanisms resulted in sanctions against the perpetrators in only seven cases since 2017. Not a single case was brought to a civilian court. The vast majority of cases remained unaddressed. Most military-internal investigations into alleged human rights violations in West Papua were never followed-up through tribunals.

- **Racial discrimination in law enforcement**

III.19. Law enforcement officers such as police, prosecutors, and judges still treat Papuans who are placed as suspects or defendants in Jakarta with discrimination and tend to be racist. Discriminatory attitudes are seen when there are differences in treatment of Papuans in the law enforcement process. This is not a new thing considering that it has happened in previous years. However, with repeated incidents, we must question how law enforcement officers treat Papuans as human beings who are equal to others. on August 28, 2019, there were arrests of 6 Papuan activists namely Charles Kossay, Surya Anta, Ambrosius Begint, Dano Tabuni, Isay Wenda,

and Arina Elopere who expressed their opinions peacefully in public as a form of protest against racism and discrimination constantly happening to Papuans in front of the Presidential Palace. The six Papuan activists were arrested by unlawful means, without an arrest warrant, and at gunpoint. The police searched them without showing permission from the local district court as required by law and forcibly reserved property belonging to the six activists. Whereas freedom of opinion is guaranteed by the 1945 Constitution and the action has complied with the provisions of Law No. 9/1998 regarding Freedom of Expression and Opinion in Public by carrying out an orderly and peaceful action preceded by a mass act notification letter to the Police. However, from the beginning of the arrest to the examination, the six activists were immediately determined and examined as suspects without a summons as a witness and without conducting a case. Even before the examination was conducted, legal counsel was not permitted to meet and provide assistance. The actions of the Metro Jaya Regional Police investigator clearly violated a series of laws and regulations.

III.20. In 2021, cases of obstruction of Papuan student demonstrations in Jakarta will still occur. At least, there are 2 actions that get blocked and proceed to legal cases. These actions were the Reject the Special Autonomy action in February 2021 and the Rome Agreement Commemoration action in August 2021. Both actions were blocked by the Police and the National Military Forces (TNI) at the demonstration location so that Papuan students could not continue the action on the grounds of the Covid-19 Pandemic. Even though in this action, the participants have tried their best to carry out health

protocols such as wearing masks, keeping a distance, and providing hand sanitizers for personal protection. In preventing the action and disbanding, law enforcement officers did several things that violated the law, including: a) Sexual harassment of women participating in the action during the disbandment and when they were forced to get into police trucks; b) Physical violence at the time of disbandment, such as being forced into a truck by being pushed and making the participants jostle.

III.21. During the August 2021 action, participants in the action were arrested and taken to the Central Jakarta Police for 1 night. They were questioned regarding their involvement in the action. The examination is not groundless because the actions of Papuan students conducting demonstrations are basically a form of freedom of expression which is protected by laws such as Law no. 39 of 1999 concerning Human Rights and Law no. 9 of 1998 concerning Freedom to Express Opinions in Public. Moreover, in this action, Papuan students did not do things that violated the law.

III.22. In the process of legal assistance, a discriminatory attitude is also still shown by Law Enforcement Officials. In the case of Ruland and Kevin that we handled in February-August 2021, there were several discriminatory treatments. The right to health for Papuan students is not given. One of the Papuan students, Ruland, needs medicine for his illness and must be taken regularly and through a doctor's prescription. The team of attorneys has asked the panel of judges and prosecutors for permission so that doctors can check them so

they can get medicine, but this was not done by the prosecutor who is responsible for this case. Even the Legal Team had submitted a ban for Ruland, who was also affected by Covid 19, but the Panel of Judges did not respond to the request for dismissal. We have reported this to the Prosecutor's Commission and the Judicial Commission, but the response from the two institutions is not favorable to the law enforcement process in this case.

III.23. The defense or plea from Ruland-Kevin and the Team of Lawyers was ruled out by the Panel of Judges to formulate a decision, even though many important points were presented as legal facts. The interval between the reading of the plea and the reading of the verdict which was only one day apart was a deliberate reason not to include the defense in the consideration of the decision.

RECOMMENDATIONS

a. Increase the efficiency of the national complaint mechanisms for victims of torture, ill-treatment, extra-judicial killings and enforced disappearances by strengthening the institutions' mandate, e.g. grant unlimited access for family members and human rights defenders to all military and police detention facilities and link complaint mechanisms with enforcement institutions. The mechanisms should ensure follow-up, independent investigations, the prosecution of perpetrators and provide adequate remedies to victims;

b. Establish a human rights court in West Papua and extend its mandate to process all human rights cases, not only those meeting the criteria of systematic and widespread attacks against civilians;

c. Issue policies that will end the arbitrary stigmatization of Papuans as separatists or terrorists.

IMPLICATIONS OF THE SECURITY APPROACH ON HUMAN RIGHTS CONDITIONS IN PAPUA

- **Internally displaced persons**

III.24. Since its aggravation in December 2018, the armed conflict in West Papua has spread over the seven regencies Intan Jaya, Pegunungan Bintang, Mimika, Nduga, Maybrat, Yahukimo, Puncak and Kepulauan Yapen. Security force operations accompanied by human rights violations have resulted in a great number of internal displacements over the past three years. The total number of internally displaced persons (IDPs) is estimated to reach more than 60,000 IDPs, as of February 2022 (see table below). The Papuan People's Solidarity Rejecting State Violence (SORAKPATOK)

documented a total number of 13,687 new displacements between January and November 2021, alone.

III.25. The Government of Indonesia continues to deploy troops to the conflict areas in an attempt to prosecute the perpetrators and demonstrate its military strength against the TPNPB. However, the deployment of additional security forces has turned out to perpetuate the circle of violence in West Papua. Therefore, the internal displacements in West Papua must be understood in the context of the long-standing political conflict in West Papua. As a result of the deployments, indigenous Papuans flee their homes in fear of being killed during armed clashes between conflict parties or security force raids.[117]

III.26. The majority of IDPs in West Papua have not returned to their homes due to the heavy security force presence and ongoing armed clashes in the conflict areas.[118] Many continue to live in temporary shelters where they have no access to food and are exposed to the harsh

117 In September and October 2021, IDPs from Pegunungan Bintang alleged Indonesian military forces of dropping mortar grenades from helicopters on indigenous settlements, destroying houses and gardens.

118 The situation is particularly worse for IDPs from Nduga, who have been living in displacement since December 2018. Most of them have moved to other Papuan regencies where they do not receive relief supplies and continue to lack access to free health care. The lack of coordination between the local government in Nduga and other local governments has caused the exclusion of Nduga IDPs from public healthcare services as many have lost their documents. According to solidarity groups, 400 IDPs died between December 2018 and November 2020 in the Jayawijaya Regency alone as a result of diseases and other strains. The number has reportedly risen to 621 as of November 2021.

weather conditions in the Papuan central highlands, without humanitarian access. The conditions in the shelters particularly affect pregnant women, children and elderly people. Hundreds of IDPs died as a result of sickness, malnutrition, exhaustion, and hypothermia. Others stay with relatives in other districts or regencies which they consider as safe. Most displaced children do not have access to education after fleeing their villages.[119] Apart from isolated initiatives to provide aid deliveries,[120] The central government ignores the presence of IDPs in West Papua, while deploying additional troops to West Papua.

- **Security Approach and Military Interests Behind Intan Jaya Mining Operations**

III.27. Many non-organic military members have been deployed to West Papua without following legal government procedures. Article 7 (2) and (3) of Law No.34/2004 on the Indonesian Military stipulates that all military operations which are not related to warfare, including overcoming armed separatist movements, overcoming armed

[119] Military members occupied a school in the Hitadipa District, Intan Jaya Regency, and used it as a military outpost, causing the collapse of education services in the district.

[120] In July 2019, the Indonesian Ministry for Social Affairs (Kementerian Sosial RI) prepared aid deliveries worth €44,079 (IDR 740,449,000) for IDPs from Nduga. The deliveries included 50 tonnes of rice, toys, school supplies, sports supplies, and supplies for vulnerable groups.96 Representatives of the Ministry came to the town of Wamena to coordinate the distribution of humanitarian goods. On 29 July 2019, a meeting between representatives of the local government, Ministry for Social Affairs, and the military was held at the KODIM 1702 military base. However, the humanitarian goods because the Ministry of Social Affairs insisted on distributing the products through the military, whom the IDPs regard as “enemy”. Their culture forbids them from receiving help from an enemy.

rebellions, securing borders, and securing national vital objects, must be based on state policies and political decisions. Neither the president nor the parliament has officially adopted policies regarding ongoing military operations in West Papua. Recent findings indicate that the deployments may also serve the purpose to secure extractive industrial activities and interests.

III.28. Human rights organisations identified links between the military and extractive mining businesses in Intan Jaya Regency, Papua Province. These links indicate that the military deployments should pave the way for gold mining operations in the Papuan regency Intan Jaya. Through spatial analysis, NGOs found four companies which may potentially profit from the presence of the police and military, namely PT Freeport Indonesia (PTFI)[121], PT Madinah Qurrata'Ain,[122] PT Nusapati Satria, and PT Kotabara Mitratama[123].

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121 PTFI has a mining business permit. While its main concessions are located in Mimika District, it has long carried out gold exploration in the Sugapa District, Intan Jaya. Its exploration in Blok Wabu revealed a gold reserve of more than 116 million tonnes of gold ores. The concession location in Blok Wabu is near Hitadipa Preparatory Military Sub-District Command.

122 PT Madinah Qurrata'Ain holds a a mining business permit with a concession area of 23,150 ha. This company' soperations are still at the phase of gold exploration. PTMQ stepped into an agreement with an Australian company, West Wits Mining, that held 64% shares in the mentioned company. In 2016, West Wits Mining also gave 30% of its shares to Tobacom Del Mandiri (TDM), a Toba Sejahtera Group subsidiary, as a token of a business alliance agreement. PTMQ concessions are located near several security posts such as the Sugapa Sub-district Police Station, the Intan Jaya District Police Station, and the Intan Jaya Preparatory Military District Command.

123 Although administratively located in Paniai District, Papua Province, the company's concessions that control a total area of 40,116 ha are located precisely at the boundary of Intan Jaya. Its business permit was issued in 2010 through Paniai District Head Decree No. 017.

III.29. Not all companies identified in Intan Jaya appear to have links with the police and military forces. NGOs found links with security forces at PT Freeport Indonesia (PTFI) and PT Madinah Qurrata'Ain (PTMQ). In the PTMQ case, there are at least three officials who are involved with the companies, namely Mr Rudiard Tampubolon (RT; a retired police officer), Paulus Prananto (a retired TNI official), and a former military general who now holds the office of the Coordinating Minister of Maritime and Investment Affairs, Mr Luhut Binsar Panjaitan (LBP). RT is a commissioner at PTMQ. Even West Wits Mining[124] (a PTMQ shareholder) believes that his leadership and experience have successfully paved the way towards the commencement of the mining operation. Besides holding the commissioner position, another company he leads, PT Intan Angkasa Aviation, also owns 20% shares in PTMQ.

III.30. The presence of retired and active security force members in the mentioned companies indicated a more profound interest[125] in a

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124 West Wits Mining also shared 30% of its Derewo River Gold Project with TDM, whose president is Mr Paulus Prananto, a retired member of the army. West Wits Mining explicitly mentioned that TDM was responsible for forestry permits and safe access to project locations in its publications. TDM itself is a subsidiary of the PT Toba Sejahtera Group, in which Mr Luhut Binsar Pandjaitan is a shareholder. Mr Prananto and Mr Pandjaitan, were both voluntary members of President Joko Widodo's 2014 and 2019 campaign teams (Bravo Lima).

125 Concerning the planned gold mining in Blok Wabu, the research found links with five police and military officials affiliated with three different companies, all subsidiaries of MIND ID, an Indonesian mining company. Mr Hinsar Siburian (HS; a retired military official) works as commissioner with PTFI, the previous owner of the concession at Blok Wabu. In 2015-2017, HS was a Military Area Command C-in-C of Regional Military Base XVII/Cendrawasih Papua. He was also involved in President Joko Widodo's campaign team in 2019 as a voluntary member (Cakra 19). PT ANTAM was appointed to operate the PTFI concession in Blok Wabu after the Indonesian government took over the concession. In PT ANTAM, the

series of illegal military operations in Intan Jaya. Also, many identified security force members joined the campaign team of the incumbent president, Joko Widodo. It is likely that former security officials are now sitting in important positions in these companies to secure and guarantee the companies' economic interests behind the series of armed violence in Intan Jaya. Whilst the conflict in Intan Jaya was ongoing, the Indonesian Minister of State-owned Enterprises, Mr. Erick Thorir, announced in late September 2020 that he is planning to permit the Indonesian mining company PT ANTAM to exploit extensive gold resources under the Wabu Mountain in the Intan Jaya Regency.

- **Implications of terrorist labelling towards Papuan Civil Armed Group**

III.31. On April 29, 2021, the Coordinating Minister of Political, Law, and Security Affairs, Mahfud MD, officially labelled the West Papua National Liberation Army (TPNPB) as a 'terrorist group.' This act is supported by the Indonesian Law No. 5 of 2018 on Terrorism. Article 43I stipulates that the National Military is allowed to tackle terrorism acts. It resulted in the escalation of hostile armed conflict between

researchers found two further security force members, namely Mr Agus Surya Bakti (a retired military member) and Mr Bambang Sunarwibowo (Commissioner General of Police). Mr Bakti holds the position of President Commissioner, while Mr Sunarwibowo is a Commissioner. Mr Sunarwibowo is still currently holding the position as the Main Secretary of the Indonesian State Intelligence Agency. Even in MIND ID, there are names of retired and incumbent security force members, such as Mr Doni Monardo (President Commissioner) and Mr Muhammad Munir (Independent Commissioner), who is still holding the position as the Head of Strategic Analysis Board of Indonesian State Intelligence Agency.

the group and the Indonesian National Army (TNI). Non-organic military members have been deployed many times, even before the labelling. Despite Mahfud saying that the presence of the military in Papua has been meant to chase down TNPB instead of harming civilians, innocent Papua civilians are often subjected to the military's repressive violence.

III.32. The deployment of military forces in Papua is indeed violating the criminal justice model of a democratic state. The state should have provided a mechanism for handling and tackling terrorism through a transparent and uphold criminal justice model, human rights, and peaceful mechanism through the role of law. The involvement of military forces will only put justice in Papua on the brink. Not only that but also will perpetuate and worsen the situation in Papua.

III.33. Furthermore, the labeling of terrorists against the Civil Armed Group (KKB) can invite public suspicion of the practice of covert Military Operation District (Daerah Operasi Militer – DOM) in Papua. In fact, the DOM status in Papua has been revoked since 1998 or when the New Order regime collapsed. So that the issuance of DOM status for Papua is not legally valid. Basically, humanitarian law has determined differences in status in situations of armed conflict. The status of civilians in non-international armed conflicts is that civilians are the party that must be protected. The status of such protection is clearly regulated in the 1945 Geneva Conventions and their Additional Protocols as well as customary international humanitarian law. What happened in the eradication of terrorism in Poso should

not be repeated. Since the beginning of the operation, many people have not been protected. In fact, residents around the area of operation must also be a priority for protection.

III.34. The Indonesian government's decision will continue to criminalize Papuan people, and everyone could be suspected as a member of KKB if they do not comply with the *status quo* Government. Frequently, wrongful arrest, wrongful detainment, and even executions—killings are no longer rare. This happens as if it has been the norm and the standard way of approaching the conflict in Papua. This, too, could target the civilians in Papua and be accused of KKB's affiliation to criminalize them. It is undoubtedly an act of violation of human rights, not only that but also the rule of law itself. If this still happens, it will further harm and a more profound psycho-social implication towards the society in Papua. This short-term policy to label KKB as a terrorist group to legitimize the continuous deployment of military forces in Papua will not solve the conflict in Papua.

RECOMMENDATIONS

a. Engage in dialogue with the United Liberation Movement for West Papua (ULMWP) to allow for a peaceful resolution of the political and historical conflict;

b. Immediately start a process of demilitarization in the provinces of Papua and West Papua, particularly in conflict regions where indigenous civilians have been internally displaced and severely affected by the presence of security forces**;**

c. Allow humanitarian access for the International Commission of the Red Cross (ICRC) to West Papua;

d. Withdraw all military apparatus in the region and start to address socio-cultural problems in Papua;

e. Conduct evaluation and supervision regarding the military deployment;

f. Revoke the definition of terrorist operation that causes civilians as casualties;

g. The alleged civil armed groups shall be put into court to reduce the civilians' conflicts;

h. The government of Indonesia shall be transparent and accountable in opening the public information related of military deployment;

i. Open transparency and accountability regarding the public officials' involvement in mining operations in Papua that cause human rights abuses as well as to conduct a mining moratorium in Papua.

PROTECTION OF HUMAN RIGHTS DEFENDERS IN PAPUA

III.35. Pusaka Bentala Rakyat Foundation (PUSAKA) documented cases of violence, arrests, property destruction, internal displacement, intimidation and death threats experienced by indigenous peoples and environmental human rights defenders, namely: the Moskona indigenous community in Teluk Bintuni Regency (April 2020), the community Aifat customs in Maybrat Regency (April – May 2020), Environmental Human Rights Defenders in Ikana Village, Kais Darat, South Sorong Regency (June 2020), indigenous peoples in Kali Kao, Jair District, Boven Digoel Regency (June 2020), Papua Province. Violence by the police against one of the awyu tribe residents in Getentiri in Boven Digoel (2021).[126] It is recorded that throughout 2021, there have been 30 cases of human rights (Human Rights) violations in Papua, including 4 (four) cases of violence and 2 (two) cases of terror threats related to business activities in Papua, which openly involve state security forces. as well as non-state actors, who are suspected of having a motive for securing business and silencing

126 See more: PUSAKA. 2022. Ancaman Kepada Pembela HAM Lingkungan Papua Tahun 2020. The documents can be accessed at: https://pusaka.or.id/ancaman-kepada-pembela-ham-lingkungan-papua-tahun-2020/. Or it can be accessed at: https://pusaka.or.id/catahu-pusaka-2020-tak-surut-meski-pandemi/.

the voices of indigenous community activists and environmental human rights defenders.[127]

III.36. Some of these cases were repeated acts of violence against victims of Environmental Defenders. These cases relate to the attitude of indigenous peoples and environmental defenders in voicing, defending and defending their basic rights, rights to life, rights to land, rights to the environment, rights to food, rights to their livelihoods, which are threatened with disappearance and confiscated for corporate interests and capital accumulation in oil palm plantations and logging.

III.37. Among these cases, Indigenous Women have become objects of direct or indirect threat, especially when they are involved in efforts to defend land rights. Indigenous women – whose relatives or families, such as husbands, children, brothers or sisters, are involved in the defense of environmental human rights – also become targets of violence. One of the indigenous women of the Awyu tribe in Boven Digoel received violence and verbal threats from a 'pro' company community group. He is considered to have hindered plans for investment in oil palm plantations and hindered progress in his village. In addition, as a woman, she is also considered not to have the right to talk about customary land, because she does not have ownership rights attached to her. This causes women defenders of

127 See more: PUSAKA. 2022. Catahu PUSAKA 2021: Kemenangan Masyarakat Adat. The documents can be accessed at: https://pusaka.or.id/catahu-pusaka-2021-kemenangan-masyarakat-adat/.

environmental human rights in Papua to face enormous challenges in defending their rights.

III.38. Violence that occurs against indigenous peoples is contrary to the provisions stipulated in the United Nations Declaration on the rights of indigenous peoples which states that indigenous peoples are equal to all other communities, the right to self-determination freely to determine their political status, develop economic, social and economic progress. culture including autonomy in self-government with regard to internal and local affairs.

RECOMMENDATIONS

a. The Government of Indonesia is obliged to recognize, empower and protect Human Rights Defenders, including Women Environmental Human Rights Defenders and other parties working for the advancement of Human Rights in Papua, by taking effective measures and developing protection policies, stopping security approaches and military operations, as well as prosecuting and stopping investment. businesses suspected of and involved in violating human rights and committing environmental crimes;

b. The Government of Indonesia continuously performs the function of monitoring and enforcing the law on licensing and company activities that violate the rights of women and indigenous peoples, and urges business actors to carry out their responsibilities to respect human rights through evaluating

company policies, formulating commitments and business activities for prevention and treatment. cases of human rights violations in the business area, including the protection of environmental human rights defenders.

ISOLATION OF PAPUAN RIGHTS FROM INTERNATIONAL SPHERE

III.39. One of the big problems as well as the main issue for the deteriorating condition in Papua is the throttling or the process or activity of limiting the bandwidth of electronic communication devices as Papua has experienced this situation back in the 21st August until 4th September of 2020.[128] One other problem is the prohibition of foreign journalists to give Papua coverage.

III.40. First, the throttling was done by the President of Indonesia and the Ministry of Communication and Information Technology was based on "securing the designated area from hoax". Throttling was done by limiting the internet access to several points in Papua. Although this has been settled by the Administrative Court of Jakarta by sentencing the two actors mentioned, this didn't really resolve the case. Since the act was seen as discriminatory and did not engage

[128] See more: KontraS. Annual Human Rights Report 2020. The document can be accessed at: https://kontras.org/wp-content/uploads/2021/01/Cahaham-2020__Indo-Vers.pdf.

accountability that should be one of the main responsibilities from the state. The act has also yet to be reassuring that the throttling will not happen again in the future.

III.41. Not being able to access the internet means hampering the access for information for the people of Papua, thus resulting in the violation of Indonesia's Article 28F of the 1945 Constitution. The article stated one of the essentials of rights for the people, which is the right to know, namely every citizen has rights to communicate and obtain information. While in this case, the state hampers the process for 2 weeks, leaving the people of Papua unnoticed, uninformed, and left behind through new information, and discriminated against.

III.42. Another case which underlined the deteriorating state of human rights in Papua is the prohibition of foreign journalists to give Papua coverage. This is ironic since the Indonesian government has stated in the early stage of his governance (2019) that the government will open access to foreign journalists to give Papua coverage. But it is unfortunate to see that the promise stopped in the middle of 2019, as it stopped only in front of the media.

III.43. We perceive the case above as threatening to the People of Papua. Whereas the government is 'willing' to protect Papua, especially from hoax, but this resulted in actually hampering the process of information and communication coming to the designated area. This

has also resulted in the government to hamper voices of Papua people to state their current human rights condition to journalists.

RECOMMENDATIONS

a. Halt the implementation of internet throttling and open the access of information for Papuan people;

b. Open the access for journalists as committed by President Joko Widodo in 2015 to cover the actual situation in Papua.

RIGHT TO SELF-DETERMINATION AND FREEDOM OF EXPRESSION

- **Restrictions and inconsistent implementation of Papuan Special Autonomy**

III.44. The Indonesian government agreed on a special autonomy status (Otsus) for the Papua Province in 2001,[129] after aspirations for self-

[129] The legal foundation of the Papuan special autonomy is Law No 21/2001 on the Special Autonomy for the Papua Province. The law mandates that local governments regulate and manage the interests of the local people, at its own initiative through the enactment of bye-laws and greater authority to decide over revenues raised in the provinces Papua and Papua Barat.

determination significantly increased in West Papua, following the downfall of military dictator Suharto in 1998. NGOs, Papuan churches and other civil society groups argue that the special autonomy has failed to bring prosperity for indigenous Papuans and improve the human rights situation in West Papua.[130]

III.45. Article 34 (3) of the special autonomy law contains a provision according to which the special autonomy funds will be allocated for 20 years. The expiration of the legally established timeframe for allocating special autonomy funds in 2021 triggered a public discourse about the fate of the Papuan special autonomy. In 2020, civil society groups publicly rejected a 'prolongation' of special autonomy in public protests. Many groups demanded that the government allow the Papuan People to exercise their right to self-determination through a referendum.

III.46. In accordance with its mandate,[131] The Papuan Peoples' Assembly (MRP) launched a series of consultation hearings (Rapat Dengar

130 There is widespread rejection of the Papuan special autonomy among many indigenous Papuans as the law was never fully implemented. The central government blocked the enactment of bye-laws which were considered as contradicting national interests, among them a bye-aw on the establishment of political parties in West Papua. A human rights court and the KKR were never established. Violations of the principle of free, prior, and informed consent (FPIC) of indigenous communities regarding development projects on customary land are common despite special autonomy provisions requiring investors and local governments to uphold the principles.

131 Article 77 of law No. 21/2001 provides the legal foundation for "any proposals regarding the amendment of the Law". It mandates the MRP to hold RDP hearings across West Papua.

Pendapat or RDP) to determine the aspirations of the Papuan people regarding a prolongation of Special Autonomy funding in November 2020. The hearings were prevented by the police and non-state actor groups. MRP members were arbitrarily arrested, detained, intimidated and obstructed in the presence of security force members.[132] There were indications that the non-state actors – among them civil militias – were facilitated by security forces and local government representatives.[133]

III.47. The Indonesian Parliament unilaterally revised the Special Autonomy Law for Papua on 15 July 2021. By doing so, the government ignored the voices of the Papuan provincial parliaments, the Papuan Peoples Assemblies (MRP & MRPB) and thousands of West Papuans protesting against the revision of the law. The amendments concerned articles regulating the allocation of special autonomy funds and the formation of new autonomy regions. Others, such as establishing a Papuan human rights court and Truth & Reconciliation Commissions (KKR), were left aside. Security forces dispersed protests against the revised law in various parts of

132 On 17 November 2020, local police officers arbitrarily arrested 55 persons, including MRP members, resource persons and civil society representatives who had come to the town of Merauke to participate in the RDP meeting. The officers searched hotels and seized documents, banners and other materials.

133 A leaked confidential letter by the state intelligence (R/052/X/2020) dated 29 October 2020 reinforces this suspicion. The letter recommends the state intelligence monitor the RDP hearings, consolidate pro-government groups and encourage them to show public presence as counter-initiative to pro-independence activism. The letter also suggests the Papuan Regional Police (Polda Papua) disperse or prevent mass assemblies by pro-independence groups and obstruct their participation in the RDP meetings.

Indonesia, claiming that protesters violated COVID-19 health protocols.[134]

- **Restriction of Political Activism Promoting the Right to Self-Determination Through Peaceful Means**

III.48. There are many groups inside and outside of the Provinces Papua and Papua Barat promoting political self-determination for West Papua through peaceful means[135]. Accordingly, repression is directed not only against West Papuans, who live in and outside their home land, but also Indonesians who support their cause[136]. They are at constant risk of being arrested and criminalised[137], tortured[138]

134 The Jayapura police forcefully dispersed a demonstration against the Otsus revision at the Cenderawasih University campus on 14 July 2021 and arrested 24 protesters. In Jakarta, the police reportedly arrested 40 protesters in front of the Indonesian Parliament building on 15 July 2021. On 19 July 2021, police members dispersed another peaceful protest against the law in Sorong. They arrested 36 protesters, including two minors, and at least six were injured.

135 The most known groups are the West Papua National Committee (KNPB) with branch offices in all parts of West Papua, and the Indonesian Peoples Front for West Papua (FRIWP), which conducts peaceful protests and commemorations in cooperation with Papuan Student Alliance (AMP) in other parts of Indonesia.

136 Indonesian activist Paulus Sury Anta Ginting was arrested along with five Papuan activists. All were charged with articles 106 and 110 KUHP on treason for raising the morning star flag during a peaceful protest outside the State Palace in Jakarta on 28 August 2019. He was sentenced to nine months imprisonment.

137 In February 2021, judges at the Sorong District Court found the chairperson of the KNPB branch office in the Maybrat Regency, Adam Sorry, guilty for the alleged involvement of a homicide and sentenced him to 6 years imprisonment.

138 On 13 December 2020, joint security force members allegedly destroyed parts of the KNPB office facilities in Merauke and arrested 14 KNPB members. All were subjected to physical torture during arrest and police detention.

or even killed[139]. The authorities particularly target the leaders of such groups to break the peaceful resistance and silence criticism of government[140].

III.49. Security forces commonly disperse peaceful demonstrations, arrest the protesters and detain them for less than 24 hours. Criminal charges are mainly pressed against members of movement organisations promoting the right to self-determination.

III.50. Indonesian law enforcement institutions employ vague legal provisions to prosecute activists.[141] Reports on the conditions of political detainees or prisoners indicate that they are often subjected to ill-treatment and torture throughout all stages of the law enforcement process. Human rights observers documented multiple

139 Kristian Yandun, one of 13 KNPB members arrested in December 2020, passed away during police detention on 27 February 2021. According to the lawyers, Mr Yandun's request for medical attention during detention at the Merauke District Police Headquarters was ignored for almost one month.

140 Police officers arrested Victor Yeimo, the international KNPB spokesperson, in Jayapura on 9 May 2021. The police charged him with multiple criminal charges, including Article 106 of the Indonesian Criminal Code (KUHP) on treason, Article 110 KUHP on criminal conspiracy against the state and Article 160 KUHP on incitement.

141 The most common fabricated charge against activists was Article 106 of the Indonesian Criminal Code (KUHP) on treason in the context of West Papua. The article appeared in 74% of the charges or indictments of documented criminalisation cases in 2019 and 2020. Another frequently invoked provision, applied in 57% of cases, was Article 110 of KUHP on criminal conspiracy. Article 160 of KUHP on incitement was employed in4% of cases. Other vague legal provisions that repeatedly appeared in the context of criminalisation were Article 28 (2) of Electronic Information and Transactions Law No. 11/2008 (ITE Law) on hate speech and Articles 1 and 2 of Emergency Law No. 12/1951 on unlawful possession of sharp weapons and firearms.

cases[142] in the past years in which law enforcement institutions and officers ignored the health issues experienced by political activists during detention[143].

RECOMMENDATIONS

a. Commence a dialogue and hearing with every Papuan stakeholder to solve the occurring conflict;

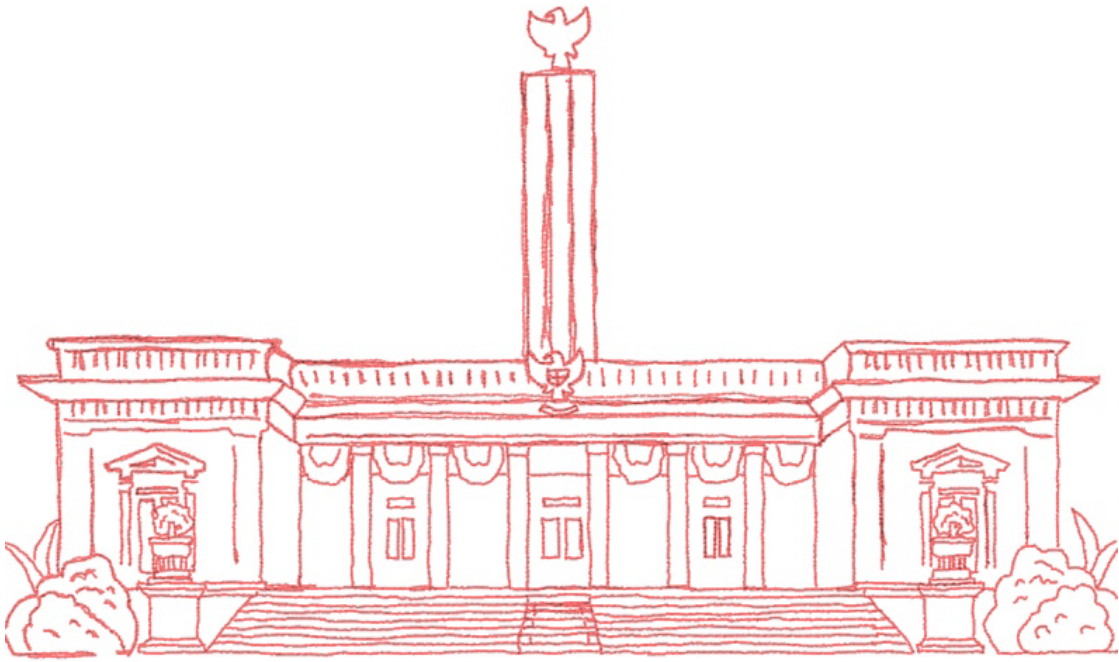
b. Provide access for the people of Papua to basic needs and fundamental rights, including the position in the political bureaucracy

c. Prevent further violence within a meaningful and inclusive platform to evaluate the Special Autonomy Law

142 Such violations of the detainees' right to health occurred during detention of KNPB spokesperson, Victor Yeimo, and a KNPB activist named Kristian Yandun who passed away during police detention on 27 February 2021 after his request for medical attention during detention was ignored for almost one month.

143 Cases of negligence were reported in at least three cases, while torture or ill-treatment during arrest or detention was committed against at least 18 activists between 2019 and 2020.

IMPUNITY AND ONGOING GROSS HUMAN RIGHTS VIOLATIONS





IMPUNITY AND GROSS HUMAN RIGHTS VIOLATIONS

Submitted by:

Asia Justice and Rights (AJAR)

The Commission for the Disappeared and Victims of Violence (KontraS)

I. Introduction

1. AJAR is a regional human rights organization whose aim is to strengthen human rights and contribute to the alleviation of entrenched impunity in the Asia-Pacific region. Its work focuses on countries in transition from a context of mass human rights violations to democracy. Working together with partner organizations in these countries, AJAR strives to build cultures based on accountability, justice, and a willingness to learn from the root causes of mass human rights violations to help prevent the recurrence of state-sanctioned human rights violations.

2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.

3. AJAR and KontraS have evaluated the implementation of recommendations made to Indonesia during its previous UPR in 2017, in particular recommendations related to impunity. We are concerned by the continued failure of Indonesia to ensure truth, justice, reparations and guarantee of non recurrence for the victims of past human right violations and their families.

II. Overview

II.1. In its previous cycle, Indonesia supported several recommendations regarding impunity in Indonesia. These recommendations are:

a. Ratify without delay the Optional Protocol to the Convention against Torture, as well as the International Convention for the Protection of All Persons from

Enforced Disappearance, and expedite the harmonization of legislation in accordance with them.[144]

b. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.[145]

c. Ratify the Rome Statute of the International Criminal Court.[146]

d. Continue to combat impunity, including by strengthening laws and regulations as well as their implementation.[147]

e. Thoroughly and transparently investigate past human rights abuses.[148]

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144 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139. 5 (Bosnia and Herzegovina).

145 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 139.6 (France) (Portugal) (Ukraine) (Sierra Leone); (Japan); (Kazakhstan).

146 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 141.11 (Bostwana).

147 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 141.61 (Turkey).

148 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 141.62 (United States of America).

II.2. This submission also took notes on the request of information by the Human Rights Committee to the Indonesian government in the List of Issues Prior to Submission of the Second Periodic Report of Indonesia, CCPR/C/IDN/QPR-2

a. the progress in establishing a court to investigate cases of enforced disappearances committed between 1997 and 1998;

b. the status of the case of the murder of a prominent human rights defender, Munir Said Thalib, including the Government's intention to release the report of the fact-finding team as requested by the Public Information Commission;

c. the implementation of the recommendations issued by the Truth, Reception and Reconciliation Commission, in 2005, and by the Truth and Friendship Commission, in 2008, including those on the search for, and reparation for, children who were displaced between 1975 and 1999; and

d. the progress of the Aceh Truth and Reconciliation Commission.

II.3. Human rights have only been formally recognized, both by law and in the Constitution, after the fall of Suharto's authoritarian regime in 1998. A transitional justice framework which encompasses truth, justice, reparations and the guarantee of non-recurrence emerged in response to the widespread and systematic human rights violations carried out during this period of dictatorship. The transitional justice approach in Indonesia also seeks state accountability and recognition of victims as well as the encouragement of peace processes, reconciliation, and democracy. This recognition of human rights is in line with the international conception of human rights standards where the State has the duty to protect the rights of every citizen. Civil liberties, which had never been respected during the Suharto regime, also became 'constitutional rights' in the post-1998 era[149]

II.4. To date, Indonesia has enacted the Human Rights Law (No. 39/1999) and the Human Rights Court Law (No. 26/2000) establishing a mechanism to investigate and prosecute gross human rights violations, defined as crimes against humanity and genocide (but not including war crimes). The government has been initiated to revise the human rights law and human rights court law.

[149] AJAR has written a brief summary on Indonesia's path in transitional justice. Available at: https://asia-ajar.org/wp-content/uploads/2018/12/English-Indonesia-Case-Study.pdf.

II.5. However, such achievements do not necessarily provide protection to the people. They did confirm that all repression, injuries, and suffering needed to be repaired and that any violation, harm, or abuse of individual rights and social justice should be punished according to the law. Across the country however, many victims still suffer the consequences of past human rights abuses while ongoing violations still occur in parts of Indonesia such as in Papua. While victims of historical or ongoing human rights violations have tried to utilize human rights-related laws and institutions, their efforts have been largely unable to drive institutions to initiate the legal processes for the protection and fulfilment of human rights.

II.6. Conflict not only violates the victim's civil and political rights, but is also accompanied by the violation of social economic rights. Yet widespread abuses of social and economic rights are largely missing from accounts of conflict and oppression. These abuses include the loss of access to land, natural resources and livelihoods, poverty, destruction of homes and possessions, forced displacement to squalid camps, and exclusion from education and health care services. In addition, the economic, social and cultural aspects of victims' lives have been impacted. The failure of the Indonesian government to be accountable for conflict and gross human right violations also entrenches the impunity and increases the vulnerability of victims as they face impoverishment and are marginalized from their rights.

III. Indonesia Entrenched Impunity from the View of Transitional Justice Mechanism

- **Truth-seeking process**

III.1. A law to establish a national truth and reconciliation commission was passed in 2004, but struck down by the Constitutional Court after a judicial challenge. Civil society and victims' groups sought an amendment to articles that required victims to forgive perpetrators in order to receive reparations. However, the Constitutional Court then annulled the entire law, a defeat in the struggle against impunity. In early 2020 the Government initiated a revisit to the national truth commission law through a Presidential Decree. However, the discussions on the law have not taken place due to COVID-19 restrictions.

III.2. To date, the government in its promise to deal with past human rights violations only offers a mechanism deemed to be more attractive to perpetrators including the military generals. The proposed mechanism only focused on reconciliation of elites and "harmonization" with a policy to forgive and forget, rather than considering the needs and desires of victims in order to reveal the truth. The mechanism called National Harmony Council (Dewan Kerukunan Nasional)[150] tossed by Wiranto as Coordinating Minister

150 Dewan Kerukunan Nasional (DKN) proposed in 2016 by retired Army General Wiranto who at that time served as Indonesia Coordinating Minister of Political, Legal, and Security Affair. Wiranto is also the individual allegedly responsible for several past human rights violations in He is the former national Military Chief, allegedly involved in the case of crimes against humanity in East Timor during a referendum in 1999. He is also allegedly involved in the cases of student shootings in Trisakti and Semanggi 1998-1999. Available at: https://kontras.org/2018/07/19/kontras-imparsial-dan-keluarga-korban-pelanggaran-ham-berat-masa-lalu-dewan-kerukunan-nasional-dkn-bukan-jawaban/.

of Political, Legal and Security Affair which was rejected by the civil society and victims.

III.3. In Aceh, after decades of conflict, a peace agreement was reached in 2005 between the Indonesia Government and Free Aceh Movement (GAM), which included a mandate to establish a truth and reconciliation commission. The Aceh TRC was established in October 2016 through the passing of a local law after long-term advocacy by civil society. Their mandate includes: uncovering the truth behind past human rights violations to strengthen peace initiatives; helping promote reconciliation between perpetrators of human rights violations, both individuals, institutions, and victims; recommending comprehensive reparations for victims of human rights violations, in accordance with universal standards relating to the rights of the victims. By the end of its first term in October 2021, Aceh TRC has conducted three public hearings, and documented more than 5264 statements from individuals across Aceh spanning the entire 1976-2005 conflict. [151] The total of 50 victims and their families involved in the public hearings, with officials also invited and given remarks on the process. By 2022, it is expected to release their first final report.[152]

III.4. In 2020, the Aceh TRC recommended urgent reparations for 245 victims of mass violations which included medical and psychological

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151 For more information on the second Aceh TRC Public Hearing in July 2019, see AJAR Press Release in: https://asia-ajar.org/2019/07/aceh-truth-and-reconciliation-commission-public-hearing-in-north-aceh-the-urgency-to-provide-reparation-for-victims/

152 See more at: https://asia-ajar.org/2021/12/31/indonesia-handover-of-truth-and-reconciliation-commission-findings-and-recommendations-to-aceh-parliament/

assistance, entrepreneurship, social insurance, and administration registry with priority given to the elderly. The Aceh Government then issued a Decree on The Determination of the Recipient of Urgent Reparations and the Fulfillment of Victims of Human Rights Violations. However, the government has yet to provide any actual "immediate reparation"[153] for 58 women victims verified by the TRC. Thus, the concerns that the allocation of funds for the implementation of urgent reparations will not be available until the 2022 fiscal year.[154]

III.5. In Papua, the extension of special autonomy status through Law No. 2/2021 still provided a local human rights court and truth and reconciliation commission. However, the establishment of the truth and reconciliation commission and human rights court has been stalled until now. The discourse on establishment of truth and reconciliation in Papua has been circulating in civil society, while still questioning its effectiveness considering the situation of conflict, violence and security approach that still occur in Papua.

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153 Aceh TRC proposed two reparation mechanisms for victims: urgent and comprehensive. The form of urgent reparations consists of 5 things; 1) medical; 2) psychological; 3) venture capital; 4) life guarantee; and 5) population status and prioritization for victims who are elderly. This urgent reparation will continue to be recommended by the Aceh TRC according to the needs of the victims. Meanwhile, the comprehensive reparations recommendation will be submitted by the Aceh TRC to the President of the Republic of Indonesia, the Governor of Aceh, and the Aceh DPR at the end of the 2016-2021 period of the Aceh TRC. Available in Bahasa Indonesia at: https://kkr.acehprov.go.id/berita/kategori/news/pernyataan-kkr-aceh-penetapan-penerima-reparasi-mendesak-korban-pelanggaran-ham.

154 National Commission on Violence Against Women, *Press Release on the Commemoration of 16 years of Peace Accord in 2021.* Available in Bahasa Indonesia at: https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-menyambut-16-tahun-nota-kesepahaman-helsinki-15-agustus-2021.

RECOMMENDATION

a. Establish the national truth commission and ensure that any mechanism to address past human rights violations not be used as a substitute for the responsibility of the criminal justice system to investigate and prosecute those responsible for grave human rights violations and crimes under international law.

b. Ensure the effective establishment of the TRC in Aceh by acknowledging truth about the conflict, provide justice for victims and their families, and provide effective reparation for victims of the Aceh conflict in the framework of peace.

c. Ensure the establishment of Human Rights Court and Truth Commission in Papua, as recommended in Local Special Law 2/2021.

- **Access to justice**

III.6. Based on the human rights court law, the human rights court heard three cases: the massacre of Tanjung Priok (1984), Timor-Leste (1999), and the Abepura case in Papua (2001) with evidence drawn from investigations conducted by The National Commission on Human Rights (Komnas HAM) and the Attorney General's Office (AGO). Nevertheless, these three cases resulted in the acquittal of all defendants, either by the first ruling or on appeal.

III.7. Komnas HAM established ad hoc *pro justicia* inquiries for 13 cases of crimes against humanity.[155] They recommended criminal investigation and prosecution, but the AGO refused to take a further investigation, claiming the files were administratively incomplete and insufficient evidence, which Komnas HAM disputed. In fact, civil society claimed that the problem was mostly based on lack of political will by the government.[156] In particular, the government committed to establish the Human Rights Court for Wasior-Wamena in Makassar as stated by the Minister of Foreign Affairs during her speech in the 3rd cycle of UPR, 2017. However, there has been no implementation of her statement.

III.8. At the end of 2021, the AGO started conduct an investigation for the killing and torture of civilians by the military in Paniai Regency, Papua, in 2014, with a promise to established the human rights court this year.[157] However, victims and civil societies criticized the process as it undermines victims' involvement in the judicial process.

III.9. The refusal of the AGO to follow up the gross past human rights violations cases has been happening since 2008, and the President

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155 The 13 cases are: shootings of students at Trisakti and Semanggi I and II (1998-1999); the Paniai case in Papua (2014); Wasior (2001-2002) and Wamena (2003) cases in Papua; the May Riots (1998); activist disappearances (1997-1998); the Talangsari case (1989); summary killings (1982-1985); 1965-66 atrocities; three cases in Aceh called Jambo Keupok, Aceh (2003), Simpang KKA (1999), Rumah Geudong (1989-1998); and Banyuwangi Killings on Black Magic Shaman (1998).

156 These reasons include: insufficient evidence to support the investigation, Komnas HAM' investigators have not been sworn in (although it is not required by the Human Rights Court Law), and an ad hoc Human Rights Court has not been established (in fact it can be established after the Attorney General has conducted the investigation, following the decision by the Constitutional Court).

157 See more at: "*Mahfud MD p ledges Paniai human rights case be solved"* available at https://en.jubi.co.id/mahfud-md-pledges-paniai-human-rights-case-be-solved/

has never provided any response regarding this situation. On the other hand, Komnas HAM and AGO were taking a series meeting in dealing with this issue, however, there is no further action to solve it. A ping-pong situation has been going on for decades that has frustrated the victims.

III.10. In 2021, the Government of Indonesia passed the amendment of Law No. 11 of 2021 concerning the Prosecution. The law added the duty and authority of the prosecutor to "participate and be active in the truth-seeking process of gross human rights violations cases" outside their law enforcement roles as investigators of gross human rights violations. Consequently, the Indonesian General Attorney Office has two distinct roles in resolving gross human rights violations; as law enforcement officers and as the authority to truth-seeking work. Thus, the AGO now owns non-judicial authority which is outside its function as law enforcers.

III.11. Despite lack of political will from the government, civil societies continue to push accountability for justice. Family victims of the shooting of students of Trisakti Semanggi also filed a lawsuit against the statement from the AG) who decided that the Semanggi I and II tragedies were not gross human rights violations to the Jakarta State Administrative Court. However, the Administrative Court decisions were in favor of AGO.

III.12. This failure to deliver justice reveals a systemic weakness in the judiciary and a lack of political will in the administration. Taken with

the AGO's refusal to follow up on Komnas HAM inquiries into other cases, the Government is not pursuing justice for past gross human rights violations.

Recommendation

a. Immediately resolve the impasse between Komnas HAM and the AGO by establishing an effective mechanism for cooperation between the two institutions under the President's supervision;

b. Conduct an independent, effective, and thorough investigation of the Paniai case in Papua to bring perpetrators to justice and ensure reparation for victims.

c. Immediately conduct an audit towards the AGO regarding the case handling of gross human rights violations cases for accountability and transparency; which include establishing an independent prosecutor which is free from political interest to prosecute the gross violations of human rights;

d. Establish ad hoc human rights courts for all cases involving crimes against humanity that have been determined by Komnas HAM, including the human rights court for Wasior-Wamena, and as committed by the Government of Indonesia during the 3rd cycle of UPR, 2017;

e. Accede to the Rome Statute of the International Criminal Court, in accordance with the commitment made in the National Human Rights Action Plan of 2011-2014.

Right to reparation

III.13. The most challenging in providing reparation in Indonesia is that the reparation can only be provided if a court has acknowledged human rights violations and according to the court verdict. Law No. 13/2014 regarding the Protection of Witness and Victims regulates a victim's right to restitution, rehabilitation, compensation, satisfaction, and non-repetition (of human rights violations). The regulation regarding restitution, compensation and rehabilitation is also included in the human rights court law.

III.14. The current human rights legislation allows reparations provided by a decision made by a court of law. Thus the demise of the human rights court has effectively blocked victims from receiving reparations. However, the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban*, LPSK), is empowered to provide referrals for urgent health and psychosocial services for victims, including those whose cases were investigated by the national human rights commission. Currently however, LPSK has integrated this assistance into the national policy health system (BPJS). The change means that ongoing advocacy to acknowledge them as victims has become difficult as they are now included in a public service mechanism.

III.15. However, reparations are only provided if a court has acknowledged human rights violations. LPSK can provide referrals for urgent health and psychosocial services based on a recommendation from Komnas HAM of a person's "legal status as a victim." From 2012 until 2021, Komnas HAM has issued 5858 SKKPHAM (Surat Keterangan Korban Pelanggaran HAM) for individuals receiving the legal status as victims of gross human rights violation. Notwithstanding the importance of these services, the period to obtain urgent health and psychosocial services is only 6 months with a maximum extension of up t0 1.5 years. The majority of the victims applied for the status are elderly (over 65 years) and in many cases the applicant has died before Komnas HAM can verify. Throughout the mandate of LPSK, there are various obstacles despite amendments to regulations since Law No. 13/2006 was introduced.

III.16. In 2021, the government is in favor of only initiating social services for victims of human rights violations, without overriding existing judicial laws that could be used to reveal the truth about past violations. They had a plan called *Unit Kerja Presiden untuk Penanganan Peristiwa Pelanggaran Hak Asasi Manusia yang Berat* or Presidential Work Unit for Handling Gross Human Rights Violations (UKP-PPHB).[158] The government also developed *Tim Terpadu Penanganan Dugaan Pelanggaran HAM* (the Integrated Team for the Settlement of Alleged Human Rights Violations) to

158 KontraS, Press release, April 2021, Available at: https://kontras.org/2021/04/09/komisi-untuk-orang-hilang-dan-korban-tindak-kekerasan-rancangan-peraturan-presiden-republik-indonesia-tentang-unit-kerja-presiden-untuk-penanganan-peristiwa-pelanggaran-hak-asasi-manusia-yang-berat-me/.

solve case of Talangsari[159], ignoring the voices of the victims[160], and provide money to individual victims without a clear legal basis and recognition for victims of gross human rights violations. The current draft regulation also fails to address the issue of adequate reparations for the victims.

Recommendation:

a. Revise the Law to include the definition of the victims of gross human rights violations in the reparation mechanism to be specified as the reparation beneficiary;

b. Provide victims with comprehensive reparations that complement justice mechanisms, restore victims' trust, and provide social and economic programs, prioritizing rehabilitation for women, the elderly, children, and those living in geographically isolated locations.

c. Ensure effective programs for women victims of both domestic and state violence, including programs for women who need legal assistance or medical care.

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159 Talangsari Tragedy, Jakarta Post, November 2014, "Jokowi urged to get to bottom of Talangsari case". Available at: https://www.thejakartapost.com/news/2014/11/10/jokowi-urged-get-bottom-talangsari-case.html.

160 See more: KontraS. 2022. Press Release. The article available at: https://kontras.org/2022/02/09/33-tahun-talangsari-1989-gonta-ganti-kebijakan-yang-tetap-tidak-berpihak-pada-korban-dan-keadilan/.

- **Guarantees of non-recurrence**

III.17. Since 1998, the military and the police have been separated, while the military has a defence role and police has a security's function. Apart from the Indonesian Military Law No. 34 of 2004 has stated that civilian courts have the authority to try military personnel in cases of crimes against civilians, the military remained openly opposed to amendments to the Military Court Law No. 31 of 1997 as an effort to place military accountability under civil law. Therefore, the mentioned law is still in use today, accompanied by a lack of transparency in military courts and military disciplinary procedures, and also weak sanctions.

III.18. The lack of trust between the military and the police then triggered the military's rejection of the civil criminal justice system. This mistrust is exacerbated by the competition between the two institutions for resources and overlapping security mandates, which hinder state accountability. It is also exacerbated by corruption and weak legal institutions, hence, expanding the authority of civilian courts to try military personnel will produce little progress in the courts remaining corrupt and vulnerable to political influence. The need for security sector reform cannot be separated from the need to reform other justice institutions.

III.19. Vetting and lustration mechanisms are not acknowledged in state policy. The military, police and intelligence services continue to assign a number of personnel involved in gross human rights violations. In several cases, security forces who were revealed to

have been involved in human rights violations were not fired, but only transferred to other units, and even received promotions.

III.20. General Wiranto who was one of the indicted military officers in East Timor in 1999 by the UN Serious Crime Unit, appointed as the new Coordinating Minister of Politics, Law, and Security in 2016. Lieutenant General (Ret.) Prabowo Subianto, suspected of being the mastermind behind the 1997-1998 enforced disappearances by Indonesia's National Commission on Human Rights (Komnas HAM) official investigation, appointed as the Minister of Defense in 2019. In addition, three former military officers of *Mawar* team,[161] who were involved in 1997-1998 activists disappearances have been given strategic positions.[162] Lastly, the President gave the award of *Bintang Jasa Utama* - one of the nation's third-highest civilian honors - to Eurico Guterres, a former militia commander during the popular consultation of Timor-Leste 1999 and tried in a human rights court in Indonesia.[163]

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161 *Mawar* Team is a Group IV Army Special Forces Command led by Prabowo Subianto. The team was already sentenced 16-20 months imprisonment for the activist kidnapping operation ahead of the 1997 General Election and the People's Representatives Assembly (MPR) General Session in 1998.

162 Former *Mawar* Team members, namely Brigadier General Yulius Selvanus and Brigadier General Dadang Hendrayudha, were respectively appointed to serve as Head of the Defense Strategic Installation Agency and Director General of Defense Potential of the Ministry of Defense through the President issued Presidential Decree of the Republic of Indonesia Number 166/PA of 2020 concerning Dismissal and Appointments from and in Senior High Rank Leaders in the Ministry of Defense (Keppres No. 166 / TPA 2020). Another *Mawar* Team member, Untung Budiharto, has also been appointed to become the Commander of the Jakarta Raya Military Regional Command on January 7, 2022, despite being sentenced to 20 months imprisonment and dismissal from the army in the Military Court for enforced disappearances in 1997-1998.

163 Eurico Guterres was accused of being involved in a number of massacres in East Timor. He was deputy commander of the Integration Fighters Force (PPI) and commander of the Timor Leste Aitarak militiaIn 2002, he was tried at the East Timor Human Rights Court and sentenced to 10 years in prison, but was later released in Supreme Court.

RECOMMENDATIONS

a. Immediately conduct a thorough evaluation of security sector reform-related laws and strengthen the criminal justice system to combat impunity, as well as measures to strengthen the independence and professionalism of the judiciary.

b. Revise the 1997 Military Court Law to require military officers who committed crimes to be tried in civilian court as stated in the 2004 Indonesian Military Law ;

c. The government of Indonesia and the House of Representatives shall establish vetting mechanism policy to avoid the involvement of alleged perpetrators of gross human rights and corruption to be elected as public officials.

IV. Emblematic Gross Violations of Human Rights Cases

VI.1. Indonesia continues to neglect its responsibility to investigate past human rights abuses thoroughly and transparently based on the recommendation of 3rd UPR 2017.[164] Below is the update of the

[164] Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 recommendations No. 141.62 (United States of America).

situation on emblematic gross violations of human rights in Indonesia, which significantly eroded the current situation of human rights in Indonesia.

- **The Premeditated Murder of Human Rights Defender, Munir: Deadlocked Legal Process**

VI.2. Munir, a prominent human rights defender and a former Director of KontraS, was killed in 2004. He had campaigned for enforced disappearance, and helped to uncover evidence and military involvement of human rights violations by the Indonesian security forces, particularly in conflict areas and was actively involved in investigations into the violence that occurred in Timor-Leste. This case is not an ordinary criminal case, because it involves a state airline, Garuda Indonesia and the State Intelligence Agency.

VI.3. Munir's murderer, Pollycarpus Priyanto, was initially convicted, but later acquitted by the Supreme Court in 2009. His acquittal was reversed after a case review, and he was given a 20-year sentence. However, he was granted a number of remissions, and released early in 2014. Pollycarpus made more than 40 phone calls to a senior intelligence official, Muchdi Purwopranjono, around the time of Munir's murder and the release of the autopsy report. He faced trial in 2008, but was acquitted and many activists claim the process was flawed. The prosecutor alleged that Muchdi had ordered Pollycarpus to carry out the murder. However, some witnesses failed to appear in court, and others who had provided

incriminating statements to police withdrew them at trial. Muchdi was acquitted on 31 December 2008. Further, the findings of a 2005 independent Fact-Finding Team (FFT) into the killing, which was established by the President, was disregarded by the government and has never been published. In 2010, Komnas HAM also identified flaws in the police investigation, prosecution and trial of Muchdi and recommended a new police investigation.

VI.4. Civil society has asked the State Secretariat to publish the FFT report, but it has not responded. The dispute between civil society and the Government over release of government findings regarding Munir's death continues in the Public Information Commission in 2016. The commission granted that the document of Munir FFT should be open to the public and requested the President towards the State Secretariat to open the document. However, the State Secretariat refused to open the document because they claimed that they did not know of its existence and which state institution held the document. Up until now, the government has still resisted to recognize the existence of the official Munir FFT investigation report.

VI.5. In 2022, in accordance with Indonesia's Criminal Code, Munir's case will expire and cannot be reinvestigated. Civil society organizations continue to push Munir's case as a crime against

humanity[165], therefore, the statute of limitations does not apply. Currently, Komnas HAM is re-examining the case to be put under the case of gross violation of human rights.

RECOMMENDATIONS

a. Immediately open the Munir FFT investigation report to the public as a form of truth-telling process;

b. Immediately prosecute the main perpetrators of Munir's case;

c. Immediately determine the case of Munir as a gross violation of human rights.

- **Addressing Enforced Disappearances and Delayed of the Ratification of the International Convention for the Protection of All Persons From Enforced Disappearance**

VI.6. The enforced disappearances, particularly of student activists have become a discourse amongst the public since the fall of the New Order Era by Suharto in May, 1998. It was strongly alleged that 23 people are victims of enforced disappearances because of their political activities. From the list, 9 people were returned, one of

[165] Kontras, 'Tetapkan Kasus Munir Sebagai Pelanggaran HAM Berat', (Press Release, 29 January 2021) Available at: https://kontras.org/2021/01/29/tetapkan-kasus-munir-sebagai-pelanggaran-ham-berat/

them found dead and 13 people still disappeared whose fate, whether alive or not, is still unknown.

VI.7. During 2005-2006, Komnas HAM conducted a pro-justicia investigation and concluded the presence of evidence concerning gross human rights violations within the cases of enforced disappearances during 1997-1998. The result from the findings was delivered to the Attorney General Office in 2006. Until now there is no further follow up towards the inquiry process.

VI.8. Enforced disappearances still continue in Papua. In 2018-2020, at least six cases of enforced disappearances were documented during the armed conflict between the security forces and the TPNPB in Intan Jaya and Nduga. There were 16 Indigenous Papuans reported missing during 2019-2020. Two patterns were seen in the identified cases of enforced disappearance: one, the victim was arrested with alleged involvement in the TPNPB and disappeared after the arrest; two, the victim disappeared after the military attacked or swept the village with gunfire.[166]

VI.9. The Indonesian government signed the International Convention for the Protection of All Persons from Enforced Disappearance on 27

166 See more: International Coalition for Papua. 2021. Human Rights in West Papua 2021. Available at: https://humanrightspapua.org/hrreport/2021/.

September 2010, but has yet to ratify it.[167] Whereas the ratification of this Convention is a mandate from the recommendation of the Indonesian House of Representatives (period 2004-2009) for cases of kidnapping and enforced disappearances 1997/1998.[168] Indonesia has agreed to follow up concluding observations in 2015 and 3rd UPR, 2017.[169] In 2021, the Ministry of Law and Human Rights targets the Law on the Ratification of Enforced Disappearances to be passed on December 10, 2021. To date in March 2022, one of the obstacles that hindered the drafting process of this Convention Bill is that Prabowo Subianto, the alleged human rights violations perpetrator who is now the Defence Minister, has not yet signed the draft.[170]

RECOMMENDATIONS

a. Establish ad hoc human rights courts for enforced disappearances in 1997-1998 that have been determined by Komnas HAM.

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167 International Convention for the Protection of All Persons from Enforced Disappearance https://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf

168 The recommendation stated that "recommends the government to immediately ratify the Convention against Enforced Disappearances as a form of commitment and support to stop the practice of enforced disappearances in Indonesia."

169 Report of the Working Group on the Universal Periodic Review; Indonesia, 14 July 2017, Paragraph 139, UN Doc. A/HRC/36/7

170 See more: *Ratifikasi Konvensi Anti Penghilangan Paksa Terhambat Paraf Prabowo,* available at: https://tirto.id/ratifikasi-konvensi-anti-penghilangan-paksa-terhambat-paraf-prabowo-gpqG.

b. Acknowledge and reveal the truth on the whereabouts of the disappeared persons of 1997/1998.

c. Immediately ratify without delay the Convention for the Protection of All Persons from Enforced Disappearances that has been accepted within the 3rd of UPR, 2017.

- **The Ongoing Gross Human Rights Violations in Former Indonesia Occupied Territories of East Timor (1975-1999): The Disappearances of Children and Second Generation East Timorese Refugees**

VI.10. One of the remaining cases related to conflict is the issue of “stolen children” from Timor-Leste, children who were forcibly taken by Indonesia officials in the period of occupation of East Timor (1975-1999). The impact for the girls, now adult women, of “stolen children" is particularly related to psychological trauma due to the experience of violence inside the adoptive families, some mentioned facing sexual harassment. To date, they are living in parts of Indonesia, unable to go back due to economic hardship, fear of rejection, and isolation. Many families in Timor-Leste still look for them, some consider them missing persons or dead in conflict, after being lost decades apart.[171]

[171] Asia Justice and Rights, Long Journey Home: Stolen Children Timor Leste, available at: https://asia-ajar.org/2016/08/long-journey-home-stolen-children-timor-leste/.

VI.11. The Indonesia and Timor-Leste Government established the Commission for Truth and Friendship (CTF) in 2005 and in 2008 released its report with recommendations to be implemented by the two countries. One recommendation was the formation of a Commission for Missing Persons to identify children who had been taken to Indonesia and reunite them with their parents in Timor-Leste. Until recently, the two countries had not implemented this recommendation.

VI.12. However, beginning in 2013, a group of civil society organizations in Indonesia and Timor-Leste in collaboration with the national human rights institutions of Indonesia and Timor-Leste, began looking for these stolen children. By the end of 2021, more than 160 stolen children documented, 80 of whom have since participated in reunion visits with their families in Timor-Leste.

VI.13. However, thousands still separated from their families, without contact for many decades. Our findings show that the majority of victims in Indonesia faced difficulties obtaining citizenship documents that essential to access basic services, experienced abuse that impacted their physical and mental health up until today, while also hardships and challenges to own land and obtain jobs due to their lack of education. Many show signs of ongoing trauma.

VI.14. Moreover, since 1999 repatriation has been taking place, those who remain are often persons identified as human rights violators or those who no longer have any relatives in East Timor to help them start a better life if they go back. When the UN High Commissioner for Refugees (UNHCR) released the Declaration of Cessation in 2002, it estimated that 28,000 ex-refugees stayed in Indonesia. The East Timorese, however, claimed almost 200,000 persons were in West Timor, and the local government of East Nusa Tenggara stated that more than 100,000 people stayed.

VI.15. After more than 20 years, they are now facing hardship in receiving financial assistance, and face limited access to basic services such as housing, land tenure, and job opportunities. The conditions affected the second generation of the Timorese who were internally displaced from East Timor and resettled in West Timor under an unfinished resettlement scheme after East Timor had been separated from Indonesia and formed into Timor-Leste.

RECOMMENDATIONS

a. Establish ad hoc human rights courts for enforced disappearances in 1997-1998 that have been determined by Komnas HAM;

b. Acknowledge and reveal the truth on the whereabouts of the disappeared persons of 1997/1998;

c. Immediately ratify the Convention for the Protection of All Persons from Enforced Disappearances that has been accepted within the 3rd UPR, 2017;;

d. Establish a bilateral commission with the Government of Timor-Leste to study and implement the recommendations of previous truth commissions (the Timor-Leste Commission for Reception, Truth, and Reconciliation/CAVR and the Indonesia and Timor-Leste Commission for Truth and Friendship/CTF) that relate to the separated children and the search for the disappeared;

e. Ensure the acknowledgment of the case of the Stolen Children in Timor-Leste and provide reparations for the victims, particularly to reunite victims in Indonesia to their families in Timor-Leste.

f. To review and continue the Senior Official Meeting (SOM) between Government of Indonesia and Timor-Leste that has been halted since 2016 to address the recommendations of previous truth commissions particularly that relates to the rights of the refugees in the camps including their right to own land.

- **Dealing With 1965 Atrocities and attempting to Restrict Civil Society Efforts to Push Accountability**

VI.16. Between 1965 and 1979, hundreds of thousands of civilians were detained without trial and became victims of torture and ill-treatment. Many detainees disappeared or were killed, some perished in detention centers. Those who survived were released by 1979. However, they faced continued stigmatization and discrimination, reinforced by state policy and social norms.[172]

VI.17. The government has repeatedly resisted attempts to openly grapple with this chapter of history. It has closed all access to the truth about the 1965 history atrocities and other abuses, has ignored recommendations regarding past gross human rights violations issued by Komnas HAM in 2012, and continues to deny the existence of mass graves related to 1965 atrocities.

VI.18. An international people's tribunal, organized by Indonesian civil society and held at The Hague in November 2015, announced its judgment that the Indonesian state is guilty of crimes against humanity and possibly genocide. Although this initiative has

[172] See AJAR report: Still Denied, Right for rehabilitation for torture victims during the mass detention of 1965 in Indonesia, Available at: http://www.asia-ajar.org/files/Submission%201965.pdf.

quenched victims' thirst for truth, senior government officials have made statements refuting the people's tribunal findings.

VI.19. In 2016, the government showed interest in opening the discussion around 1965 atrocities. Participants included not only victims, but also academics, journalists, practitioners, activists, victims' representatives, and, to some extent, military representatives and members of the accused groups who were part of the prolonged and extra-judicial violence of 1965-66.[173] However, several current and former high-ranking officials speaking at the symposium, voiced their reluctance to apologize and acknowledge the violence of 1965. There was a strong backlash against the symposium, and its recommendations have yet to be implemented.The growing sentiment from military and fundamentalist groups then halted this process. In 2017, the Jakarta Legal Aid office was attacked while hosting events related to the issue. Military also demand communities to watch the controversial movie produced in the New Order regime while conducting raids on books related to socialism, communism, or anything involving the discourse of 1965 in Indonesia.

[173] See AJAR press release, "Acknowledgement and Truth for 1965 Victims, A Call for Comprehensive Reparations in Indonesia: A Response to the Symposium on 1965 in Indonesia," https://asia-ajar.org/2016/04/acknowledgement-truth-1965-victims-call-comprehensive-reparations-indonesia/.

VI.20. Victims continue to suffer physical trauma resulting from ill-health and socio-economic deprivation as a consequence of the violations. Some have urgent needs that are not being addressed; for example, they have not received medical assistance and trauma counselling for injuries resulting from violence, torture, and detention.[174] Victims' property ownership documents and certificates for houses, land, and farms were also confiscated by military officers. In some cases, they were forced to sign a letter stating they had given their land to the state.

VI.21. Hundreds of survivors recognized as crimes against humanity victims have been able to access psycho-social support and medical services through the Witness and Victims' Protection Agency. This is mainly because the National Human Rights Commission completed a pro-justicia investigation of these cases and has formally recognized them as victims of human rights violations.

VI.22. Through long advocacy from civil society, there are many positive developments from the local government in enacting the policies to provide partial reparation for victims. In Palu, Central Sulawesi, Mayor of Palu declares an apology to victims and provides redress

174 AJAR in 2016 has written a research report on the story of 140 women survivors of torture and other forms of violence from Indonesia, Timor-Leste and Myanmar. Based on participatory action research with women survivors, "Enduring Impunity" presents a new approach and knowledge on how women experience impunity in conflict and post-conflict settings in Southeast Asia. Available at: http://www.asia-ajar.org/files/ENDURING%20IMPUNIY%20final-23%20Nov-press.pdf.

and services to victims, which include assistance such as home repairs, scholarships, and access to government health services, sanitation facilities, clean water, and economic empowerment training for victims.[175] In Maluku, victims received new official marriage certificates, to replace those that had identified them as "ET"—former political prisoners. Local officials have apologized and have produced new certificates. In 2003, the court decided that the government had commit an unlawful act through arbitrary and discriminatory classifications towards one of the victims, Nani Nurani. As the plaintiff, Nani Nurani was then able to access public facilities and services.[176]

VI.23. In 2012, the Supreme Court annuled the Presidential Decree No. 28/1975 on the Discriminatory Treatment towards Those Allegedly Involved in the Failed Coup attempt on 30 September 1965.[177] The Supreme Court considered that this Presidential Decree discriminates against individuals allegedly identified as directly or indirectly involved in the failed coup attempt on 30 September 1965.

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175 See more: Rudy Mastura: The Mayor who said "sorry" for 1965, Available at: https://www.thejakartapost.com/news/2013/10/25/rusdy-mastura-the-mayor-who-said-sorry-1965.html.

176 Koalisi Keadilan dan Pengungkapan Kebenaran (KKPK), Justiabilitas Ekosob (Pemulihan Hak Korban Pelanggaran HAM Masa Lalu Melalui Jalur Litigasi: Pengalaman dan Panduan), p.25. ; Jakarta State Administrative Court Decision No. 60/G.TUN/2003/PTUN.JKT; Higher State Administrative Court Decision No. Jakarta No.203/B/2003/PT.TUN.JKT; Cassation Decision No. 400 K/TUN/2004.

177 Supreme Court Decision No. 33 P/HUM/2011.

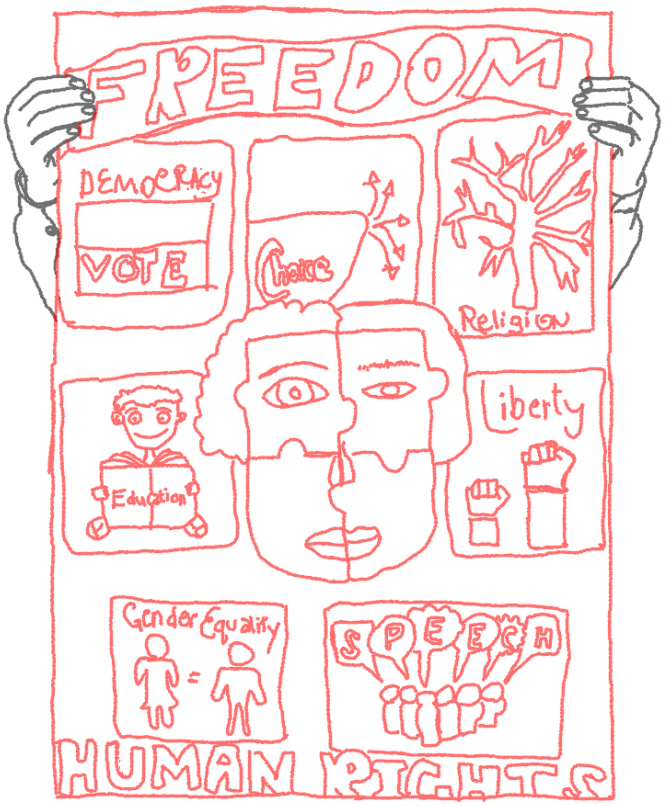
However, this decision cannot be implemented as it requires the President to issue another Decree for the annulment. Up until now, the annulment Decree has not been issued.

RECOMMENDATIONS

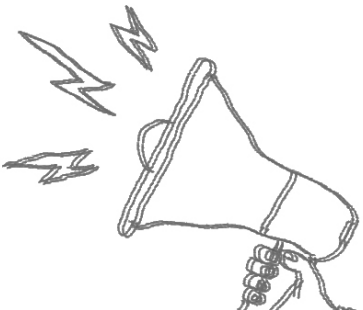
a. Establish the nationwide Truth Commission to reveal the truth on the 1965 atrocities, provide acknowledgement and comprehensive reparations for the victims;

b. Establish ad hoc human rights courts for crimes against humanity in 1965-1966 that have been determined by Komnas HAM.

RIGHT TO DISSENT







RIGHT TO DISSENT

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Southeast Asia Freedom of Expression Network (SAFEnet)

I. Introduction

1. KontraS is a national human rights non-governmental organiβzation based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.

2. SAFEnet is a regional digital rights organization based in Denpasar, Indonesia. SAFEnet was founded with a vision of realization of a digital space that upholds human rights values for all people and mission to defend digital rights in the Southeast Asia region, including their rights to access the internet, rights to express freely, and rights to feel safe in digital spaces. SAFEnet has been actively advocating for victims of the digital right violations,

especially critical groups who use the Internet as a tool for expression and opinion.

II. Overview

II.1. In the third cycle of UPR in 2017, the Indonesian government accepted the recommendations regarding the situation of Rights to Dissent:

a. Improve training and administrative instructions for police and local authorities to ensure that the right to peaceful assembly is universally respected, including in the provinces of Papua and West Papua;[178]

b. Ensure human rights obligations in Papua are upheld, respected and promoted, including freedom of assembly, freedom of the press and the rights of women and minorities;[179]

[178] Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.51 (Germany)

[179] Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.67 (New Zealand)

c. Repeal or amend articles 106 and 110 of the Criminal Code to avoid restrictions on freedom of expression and peaceful assembly;[180]

d. End prosecutions under articles 106 and 110 of the Criminal Code for exercising freedom of expression and peaceful assembly;[181]

e. Ensure that existing legal and constitutional provisions protecting human rights in particular freedom of expression, association and assembly are fully implemented nationwide;[182]

f. Intensify all efforts to respect and uphold freedom of expression, assembly, and religion and belief, and to prevent discrimination on any grounds including sexual orientation and gender identity;[183]

II.2. Tracing back to the previous UPR cycle up until this date, Indonesia has yet fully implemented a secure and safe training as well as

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180 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 10 recommendations No. 141.30 (Germany)

181 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 10 recommendations No. 141.31 (United States of America)

182 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 10 recommendations No. 141.58 (Ireland)

183 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 10 recommendations No. 141.59 (Australia)

administrative instructions for the police officers and local authorities since security officers still use force either bare hands or weapons to ‘secure’ citizens who are trying to take protests. This is done to ‘protect’ or ‘secure’ several local areas from turmoil.

II.3. According to KontraS's documentation, Papua has also yet received such respect and promotion of human rights. In fact, conditions to dissent in the area are deteriorating. This can be seen through the militarism by being sent out militaries which dominated security in Papua. This militarism seems to pervade in Papua as citizens there are scared to utter their own dissent.

II.4. Article 106 and 110 of the Criminal Code that have been mentioned several times in the recommendations have also yet been implemented since there are a couple of times when Papua Citizens were threatened and silenced. Examples can be seen through the death of Father Yeremia in Papua who was shot dead due to him being vocal in voicing out his thoughts. This pattern of silencing vocal people in Papua seems to be impaled deeply in the area. Times when Papua’s internet connection got cut off was also an iconic moment where the Indonesian Government was trying to ‘keep Papuan Citizens safe from hoax’.

II.5. The series of acts also conclude that freedom of expression, association and peaceful assembly has yet been fully implemented in Indonesia, particularly Papua as a main study case. Although

Indonesia has implemented several articles related to the cases such as Article No. 9 of 1998 as well as Article No. 19 of 2016 regarding freedom of expression in general and through online, the cases have yet represented Indonesia to fully execute the designated law.

- **Regulation on Freedom of Expression and Potential Threats in the RKUHP (draft Criminal Code Bill) and other regulations**

II.6. We have mapped a number of regulations in Indonesia that are used systematically to limit the Freedom of Expression: defamation articles (article 310 and 311 of the Criminal Code (KUHP), article 27 (paragraph 3) in conjunction with article 45 (paragraph 3) ITE Law), hate speech articles (156 and Article 157(1) of the Criminal Code, Article 6 of Law No. 9 of 1998 concerning Freedom to Express Opinions in Public and Article 28(2) of the ITE Law), blasphemy articles (Article 156a of the Criminal Code), fake news article (Article 14 and Article 15 of Law Number 1 of 1946, article 390 of the Criminal Code, Article 28 paragraph 1 in conjunction with Article 45 paragraph 1 of the ITE Law), treason articles (Article 106 of the Criminal Code and article 110 of the Criminal Code), Cut Internet Access article (Article 40 paragraph 2b of ITE Law), contempt of court article (Article 281 in the new Criminal Code Bill).

- **Defamation articles**

II.7. Indonesia inherits defamation legal framework from the Dutch Criminal Code or Wetboek van Strafrecht ("WvS"), which was ratified under Wetboek van Strafrecht voor Nederlandsch Indie or Kitab Undang-Undang Hukum Pidana ("KUHP"). This legislation entered into force on 1 January 1918, by the issuance of Koninklijk Besluit (King's Decree) No. 33 dated 15 October 1915. KUHP stipulates defamation articles in various provisions and chapters. The defamation articles regulate defamation towards a person to defamation against a deceased person. KUHP also acknowledges other provisions using defamation as an offense, such as defamation towards a public institution. Additionally, KUHP also incorporated defamation against the President and Vice President, which was already revoked by the Constitutional Court under Decision No. 013-022/PUU-IV/2006.

II.8. The Indonesian government retains most of the defamation articles in the Criminal Code even though Indonesia has ratified the International Covenant on Civil and Political Rights ("ICCPR"), which stipulates freedom of expression and explicitly states such right under the 1945 Constitution that was enacted on 18 August 1945. After the demise of the New Order 1998, constitutional guarantee on freedom of speech was later affirmed under Article 28E (3) and Article 28F, which states: "Every person shall have the right to

communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by utilizing all available types of channels."

II.9. In the new Criminal Code Bill, some defamation articles appeared: the criminal article on insulting the president and vice president; Article on the crime of insulting the legitimate government; and Articles of criminal defamation of state institutions. Actually, a number of defamation articles were previously annulled by the Constitutional Court in 2006 through the Constitutional Court's Decision Number 013-022/PUU-IV/2006, especially the criminal article for insulting the President and Vice President in the Criminal Code.

II.10. Not only defending defamation articles in the new Criminal Code, the Indonesian government has also expanded the defamation provisions in the Information and Electronic Transactions Law (ITE Law) in 2008. Defamation on this law is regulated in article 27 (paragraph 3) in conjunction with article 45 (paragraph 3), with a criminal penalty of 6 years in prison and a fine of 1 billion rupiahs. In the 2016 amendment to the Law, its criminal penalty was later changed to 4 years in prison and a fine/penalty 750 million rupiahs. This provision expanded the scope of defamation in the online sphere to include electronic information published unintentionally or by third parties, covering all acts distributing and/or transmitting and/or making accessible defamatory electronic information.

II.11. The defamation regulation in the ITE Law is a serious obstacle to freedom of expression in the online space. Article 27 paragraph 3 in conjunction with Article 45 paragraph 3 in the ITE Law, is a duplication of articles 310, 311, 315, 317, 318, 319 in the Criminal Code. This provision removes the gradation of insults (slander, libel, laster, etc.). In the Criminal Code, the term 'insult' is the title of a separate chapter where the form of action consists of six forms of criminal acts, namely blasphemy, blasphemy by letter, slander, minor insults, false complaints or slanderous complaints, and slanderous acts. Meanwhile, in the ITE Law, there is no categorization of offenses against insults.

II.12. The defamation article should be formulated very clearly referring to Article 19(3) of the International Convention on Civil and Political Rights and given the opportunity to defend the truth/verification (GC 34). UN General Comment No. 34 recommends the abolition of defamation, if it is not possible, defamation is only allowed for the most serious cases with non-imprisonment threats. This has an impact on a very wide spectrum of actions or expressions that can be charged with the provisions of this article which then results in confusion in its implementation.

II.13. In its application, Article 27 paragraph 3 of the ITE Law is often used as the basis for reporting journalists, anti-corruption activists, human rights defenders, environmental activists, academicians. Not only on content distributed by individuals, journalism products are also reported with this article. Based on SAFEnet digital rights situation

report in 2018-2021, there are more than 30 cases of online defamation targeted toward journalists, activists, human rights defenders, academicians. In practice, there is an expansion of the interpretation of Article 27 paragraph (3) which is often used to ensnare insults directed at companies and state institutions. With the existence of this article, it has the potential to ensnare legitimate expressions issued in the public interest because they do not recognize exceptions and limit the right to expression and opinion.

- **Hate Speech Articles**

II.14. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted by the United Nations in December 1965 is an international human rights instrument that becomes a reference for preventing hate speech, which is specifically based on hatred of race, ethnicity, skin color, or national origin.

II.15. In Indonesia there are several regulations for hate speech, namely 156 and Article 157(1) of the Criminal Code (KUHP), Article 6 of Law No. 9 of 1998 concerning Freedom to Express Opinions in Public and Article 28 (paragraph 2) of the ITE Law.

II.16. Based on SAFEnet digital rights situation report in 2018-2021, there are more than 26 cases of Article 28 paragraph 2 of the ITE Law,

including case Diananta Putra Samedi, a journalist at Balikpapan, sentenced to 6 months jail for hate speech, although his investigation report based on facts on land grabbing of indigenous people by a palm factory company.

- **Blasphemy Articles**

II.17. Article 156a of the Criminal Code (known as the 1965 Blasphemy Law) in its application can be weaponized to prosecute religious minorities. The pending draft amendments to the Criminal Code expand the 1965 Blasphemy Law to add six broad provisions of religion-related speech.

II.18. Furthermore, the law poses threats to online expression due to the criminalization of broad categories, including insulting public authorities and institutions; writing, promoting, or broadcasting information about contraceptives or abortion; spreading or associating with communism; distributing false or inaccurate information; and defamation.

- **Fake News Articles**

II.19. Although Indonesia did not have a specific law to regulate fake news, Indonesia uses three laws to criminalize fake news perpetrators.

First, Article 14 and Article 15 of Law Number 1 of 1946 concerning the Criminal Law Regulations with a maximum prison sentence of two years. Law No. 1 of 1946 is an affirmation of the enactment of the criminal law that was drafted since the Dutch colonial era. However, the use of the 1946 Law is considered inappropriate because this regulation was passed when Indonesia was newly independent and of course long before the internet era. In addition, the 1946 Act was used to regulate a high level of chaos. The uproar among netizens on social media is considered not enough to categorize it as 'chaos' and use it as the basis for determining the suspect. Second, Article 390 of the Criminal Code which regulates a similar issue but with a slightly different formulation, by using the phrase “publishing fake news”. The maximum sentence given under this article is 2 years and 8 months. And third, Article 28 paragraph 1 in conjunction with Article 45 paragraph 1 of the ITE Law which reads: "Any person intentionally, and without rights spreads false and misleading news which causes consumer losses in Electronic Transactions." Violation of this article is subject to imprisonment for 6 years and or a fine of Rp 1 billion.

II.20. The ITE Law has become an anti-fake news law similar to that enforced in the Southeast Asian region. The punishment of fake news or hoaxes in the digital era is something new for the police and the legal system landscape in Indonesia. In its application, the results of the SAFEnet study in 2020 showed the inconsistent application of the articles used and instead became a practice of silencing expressions. The article 28 paragraph 1 is problematic because it does not provide a clear formulation of what "fake and misleading

news" is. This article actually regulates fake news that causes consumer losses in electronic transactions.

II.21. In the Indonesian context, the regulation of hoaxes in the 1946 Law and the ITE Law is very limited to emphasize the protection of freedom of expression in accordance with the human rights legal framework. In the two laws, strict restrictions are not carried out and open space for interpretation. So that in practice, it gives to ambiguity or arbitrary interpretation and is often misused. The capacity of law enforcement to understand and interpret human rights law standards is also not sufficient, so that efforts to enforce laws related to hoaxes are very biased in interest.

II.22. In a number of cases, hoaxes or fake news are actually used to silence freedom of expression. Citizens or activists who upload critical content are vulnerable to criminalization because they are accused of spreading hoaxes or fake news.

- **Treason Articles**

II.23. The treason articles (derived from the word Aanslag) are derived from Wetboek van Strafrecht voor Nederlandsch Indie (WvSNI) which was first enacted with Koninklijk Besluit (Order of the King) Number 33 dated October 15, 1915 and came into force on January 1, 1918. WvSNI is a derivative from WvS (Wetboek van Strafrecht)

in the Netherlands which was created in 1881 and enforced in the Netherlands in 1886. The colonial government at that time applied the principle of concordance (adjustment) for the implementation of WvS in its colonies.

II.24. The main problem is that the Criminal Code does not provide a definition or understanding of the word "Aanslag". Another problem is that there is no official Indonesian translation of the Indonesian Criminal Code. Finally, "Aanslag" which is an important phrase in the articles of the Criminal Code is widely translated into Indonesian as the word "Makar". Thus, the treason phrase is then translated according to the preferences of each translator. The Aanslag articles originating from Wetboek van Strafrecht voor Nederlandsch Indie (WvSNI) have not been changed even once by the Government of Indonesia after their enactment.

II.25. Treason articles could be found in Article 106 of the Criminal Code and article 110 of the Criminal Code.

II.26. Until this report was made, the amendment to the article on treason in the Criminal Code has not occurred, as is also not evident in the new Criminal Code Bill which is currently being discussed by the government and the legislature."

II.27. Number of treason cases: Throughout 2019, 85 Papuans and 1 non-Papuan named Jakub Fabian Skrzypski were prosecuted with Article 106 and Article 110 of the Criminal Code.[184] Meanwhile, Tempo media reported that during 2019-2020 there were 120 Papuan activists and civilians who were imprisoned on charges of treason.[185] In 2021, apart from Victor Yeimo who was arrested in May 2021, Frans Wasini was arrested and prosecuted in December 2021.[186]

- **Cut Internet Access Article**

II.28. The Amendment Law of UU ITE in 2016 gives the Government a right to terminate access and/or order Electronic System Operators to terminate access to Electronic Information and/or Documents with content that violates the law. There is a current Negative Content Regulation issued by the Minister of Communications and Informatics, which authorizes the MOCI to block internet websites with negative content based on reports from the public, Government institutions or law enforcement authorities. The Amendment Law has included a similar right (although without the need for reports to be

184 ALDP, Laporan Situasi Umum Hak Asasi Manusia Tahun 2019 di Papua, 2020, last modified 29 February 2020, https://www.aldp-papua.com/laporan-situasi-umum-hak-asasi-manusia-tahun-2019-di-papua/

185 Tempo.co, "Dua Tahun Terakhir, 120 Warga Papua Dipenjara Atas Tuduhan Makar", 2020, last modified 10 June 2020, https://nasional.tempo.co/read/1351718/dua-tahun-terakhir-120-warga-papua-dipenjara-atas-tuduhan-makar/full&view=ok

186 ALDP, "Satu Lagi DPO Kasus Aksi Tolak Rasisme 2019 Diadili Pasal Makar di PN Jayapura", last modified 21 December 2021, https://www.aldp-papua.com/satu-lagi-dpo-kasus-aksi-tolak-rasisme-2019-diadili-pasal-makar-di-pn-jayapura/

made to the MOCI) and now the Negative Content Regulation has a firmer legal basis on which the MOCI can act.

II.29. The Amendment Law provides that there will be a Government Regulation implementing these provisions, however in the absence of the implementing regulation, it is likely the MOCI will continue to use the Negative Content Regulation issued by the Minister of Communications and Informatics.

II.30. Article 40 paragraph 2b says: “In carrying out the prevention as referred to in paragraph (2a), the government has the authority to cut off access and/or order the electronic system operator to cut off access to electronic information and/or electronic documents that have content that violates the law.”

II.31. In August 2019, the Jokowi administration showed securitization approaches to handle the situation in Papua, especially responding to the racial discrimination case targeting several Papuan students who lived in Surabaya and Malang dormitories. During that time, not only repressive measures from the security apparatus, but Jokowi administration decided to “kill the switch” This is also recorded in history as the first internet shutdown by the Indonesian government. (Anthony Lee, 2020) During the period, the government shut down the internet in Papua for 338 hours, start with slow down the internet on 19-21 August 2019, followed by the internet shutdown on 22

August to 4 September 2019 under the pretext of preventing the spread of false information in Papua and West Papua.

II.32. In 2020, there were 4 reports allegedly bandwidth throttling (partial shutdowns) being imposed again in Papua and West Papua provinces and in 2021, another 12 internet outages, where 8 of them allegedly internet shutdown related to Indonesia military operations.

- **Contempt of Court Article**

II.33. In the new Criminal Code Bill, specifically Article 281, the Indonesia Government tries to revive criminal acts against the judicial process (contempt of court) punishable by imprisonment for a maximum of 1 year or a fine of a maximum of 10 million rupiah.

II.34. The existence of a contempt of court article in the Criminal Code Bill also has the potential to threaten the independence of the journalist profession who tries to report on cases that are going on in court. The essence of the article contains a prohibition on publishing or allowing to publish any information regarding the judicial administration process that may interfere with the independence of the court in deciding cases.

RECOMMENDATIONS

a. Ensure that existing legal and constitutional provisions protecting human rights in particular freedom of expression, association and assembly are fully implemented nationwide;

b. Repeal or amend problematic articles of ITE Law so that there is no more abuse of the law to punish those people who express criticism and dissenting opinions;

c. Repeal or amend articles 106 and 110 of the Criminal Code to avoid restrictions on freedom of expression and peaceful assembly;

d. End prosecutions under articles 106 and 110 of the Criminal Code for exercising freedom of expression and peaceful assembly;

e. Revise article 40 of ITE Law to end efforts to limit and terminate access that violate the law and are not proportional and based on court decisions;

f. Repeal Article 281 in the new Criminal Code Bill that threatens the independence of the journalist profession who tries to report on cases that are going on in court.

- **A Culture of Violence That Threatens Freedom of Expression During Pandemic**

II.35. During the Covid-19 pandemic, the freedom of expression in Indonesia was not yet progressing; otherwise, it was getting worse.

Despite the urge to handle pandemics properly, the government ignored it and tried to silence the critics. The culture of violence was perpetuated through irresponsible policies that violated human rights.

II.36. The police, particularly General Idham Azis as the Chief of National Police, signed a few telegrams, which were claimed to guide the police to carry out their duty during the pandemic. In reality, one telegram numbered *ST 1100/iv/huk.7.1/2020* issued in April 2021 instructed all the police to cyber-patrol and enforce the law against people criticizing the president, public officials, and state institutions. When the police issued this telegram, we found an escalation of attacks on freedom of expression in the form of arresting people who allegedly spread hoaxes one month before and one month after the issuance of the telegram. Overall, we saw this telegram letter to intimidate the people who want to criticize the state, which leads to the silencing of public expression.

II.37. In April 2020, the government issued a directive to police to combat alleged disinformation about the Covid-19 pandemic and criticism of the government, resulting in arresting 51 individuals under this policy by June. The chief of the National Police in October 2020 issued instructions for online surveillance of activists and engagement in pro-government counter-narratives. Along with many protests against a controversial omnibus law, this policy added to the list of hundreds of protesters arrested in 18 different provinces.

II.38. Even further, albeit the worsening situation of the Covid-19 pandemic, the government did not stop shrinking the civil space. On February 19, 2021, the National Police Chief signed a circular letter establishing a unit to prevent cybercrime. This unit was called the virtual police unit and was established with a circular letter numbered *SE/2/11/2021* concerning Awareness of Ethical Culture to Create Clean, Healthy, and Productive Indonesian Digital Space. In the operations, the National Police claimed to prioritize restorative justice, which means that prosecution is the last step in dealing with violations of the Electronic Information and Transactions (ITE) Law. However, the actual formation of this virtual police is contradictory with President Joko Widodo's statement, which highlighted the opportunity for the ITE Law to be revised because virtual police existed as a response to the widespread use of offenses in the ITE Law. The implementation of virtual police only aimed to remove any critical contents that have been published in social media without providing knowledge regarding infringed content because the police do not convey in detail the criteria for content deemed to have violated the ITE Law.

II.39. The virtual police establishment was also problematic in terms of its regulation. The circular letter only regulated its establishment, while the procedures for the virtual police's duty in monitoring and issuing a warning has no clear basis law. The content of the warning issued by the virtual police was written like a court verdict. Individuals who were reprimanded are considered to have fulfilled the elements of the article in ITE Law and have the potential to violate the mentioned law. Moreover, the verification of the content should have been

carried out by the appointed expert, and this process was mainly ignored by the virtual police, who determined the element of offense solely based on a subjective process without any evidence.

II.40. Since its first establishment, at least 476 accounts have received a warning for allegedly containing hate speech content. However, the measure of hate speech has never been precise. The increase in numbers showed that the implementation of the virtual police had become a new tool of repression in the digital world, as they threatened the public's freedom of expression on social media. Based on KontraS's monitoring, the virtual police's warnings tend to target those actively criticizing the government.

RECOMMENDATIONS

a. Recognize the rights of citizens to express themselves, express differences of opinion, both online and offline, and provide protection based on the protection of human rights;

b. Halt the operations of cyber police or any kind of unit that monitors the freedom of expression in digital space;

- **The Threat of Doxxing (in digital space) in Suppressing Freedom of Expression**

II.41. The National Human Rights Commission (Komnas HAM) said that in the 2020-2021 period, the most cases of violations of freedom of expression occurred in the digital space.[187] In five recent years, digital attacks against human rights defenders in Indonesia have tended to increase. Based on SAFEnet monitoring, for instance, at least 193 incidents of digital attacks took place in 2021. This is an increase of 38% compared to the previous year in 2020 (147 incidents).[188] The highest number of attacks in 2021 was related to the national political situation throughout the year, particularly in the context of the National Civics Test undertaken by KPK staff.

II.42. From the backgrounds of the victims, it becomes clear that digital attacks in Indonesia are increasingly political in nature. This can be seen through the high rate of attacks against critical groups, such as activists, journalists/media, students, and civil society organizations. Attacks against these four groups represented 58.95% of all digital attacks in 2021.

187 "Komnas HAM: Sepanjang 2020-2021 Pelanggaran Kebebasan Berpendapat Paling Banyak Terjadi di Ruang Digital", 2022, last modified https://nasional.kompas.com/read/2022/01/17/20321111/komnas-ham-sepanjang-2020-2021-pelanggaran-kebebasan-berpendapat-paling

188 SAFEnet, “Laporan Situasi Hak Digital Indonesia Tahun 2021”, 2022

II.43. In general, hacking was the most common method of digital attack, with 136 incidents (70.46%) in 2021. This was followed by doxing with 24 incidents (12.43%), data breaches and other attacks with 14 incidents each (7.25%), impersonation with nine incidents (4.66%), and phishing with six incidents (3.11%).[189]

II.44. From the 47 various doxing cases from 2017 until 2021[190], it can be seen that doxing can happen to all internet users. However, journalists and activists have a higher vulnerability compared to others. This shows that doxing has been used by certain parties to terrorize those who were targeted by attacks.

II.45. Even though doxing is done online, it has caused real and serious harm to victims by transferring bullying from the Internet to the physical world. In the doxing cases that have occurred, apart from facing online trolling, it turns out that many people get physical terror, starting from their homes being visited by unknown people, surrounded and persecuted, receiving death threats. It is not rare that the latter is to be directed at the victim's family, parents and spouses.

II.46. In addition, because they feel they have received direct threats via Direct Message, mentions, instant messages, or telephone calls

189 SAFEnet, "Laporan Situasi Hak Digital Indonesia Tahun 2021", 2022, last modified

190 SAFEnet, "The Rise and Challenge of Doxing in Indonesia", 2021, last modified 29 June 2021, https://safenet.or.id/2021/06/the-rise-and-challenges-of-doxing-in-indonesia/

from unknown numbers, victims of doxing experience psychological trauma, become paranoid in their surroundings, shut themselves off and even in certain cases have to move locations, whether to stay overnight at a relative's house or into a safe house for a while.

II.47. Another risk that victims of doxing face are the legal risks of being taken to the police station and criminalized. Most of these victims were subject to the articles of blasphemy or the articles of hate speech when the group carrying out the pick-up at the victim's house was not satisfied with the apologies that the doxing victim gave.

II.48. Another issue that should be highlighted regarding the right to feel safe online is data breach and online gender based violence. The Indonesian government fails to protect the personal data of its citizens after data breaching involving prominent government websites such as National Insurance Body (JKN), e-HAC, and Indonesian Police website.

RECOMMENDATIONS

a. President of Republic of Indonesia to urge all the ministers to respect the critics from the public and not to use any repressive approach;

b. The National Police to conduct law enforcement of doxing perpetrators, hence it will not repeat in the future.

- **Minor and Students' Right to Freedom of Expression**

II.49. In regards to freedom of expression for children and students, it cannot be separated from the silencing acts from the government and the agents towards thoughts voiced out by the mentioned group. The act can be seen through several cases such as the arbitrary mass arrests during demonstration, threats of drop out, online attacks, etc.

II.50. In June 2020 to May 2021, there have been 3 cases of mass arbitrary arrest. Several areas that were engaging with demonstration activities in those times were in Jakarta, Semarang, and Central Java and have arrested 95 protesters. The biggest number was in October 2020, where the Indonesian Omnibus Law invited protests through demonstration acts. Several of the protesters include students and they were caught without the legal process. It doesn't stop there, in Jakarta, 8th October 2020, security officers use force such as using tear gas to push back the protest crowd.[191]

II.51. Next is the case of Indonesia's International Labor Action and the National Education Day on 1st - 3rd May 2021. In this range of time, dozens of students were caught and brought to the police cars.

191 KontraS, "Brutalitas Polisi Makin Menjadi di Tengah Pandemi - Laporan Tahunan Bhayangkara ke-75", pg. 5-6, accessed from https://kontras.org/wp-content/uploads/2021/06/Laporan-Bhayangkara-ke-75.pdf

Rationalizations done by the police for this act are to prevent riot and students should not be allowed to be in charge of this act.[192]

II.52. Cases mentioned above are baseless in regards to the police statement of 'prevention act' since tracing back to the International Human Rights Standardization, such arrests which do not follow the procedures are categorized as enforced disappearances. This is highlighted in the International Convention for the Protection of All Persons from Enforced Disappearance.[193]

II.53. Recalling to the Omnibus Law incident, students are also threatened to be dropped out by the MoU given from the security officer to the designated university (rectorate). The MoU was signed by both parties so that students are not allowed to participate in demonstrations. If so, the student will receive a Police Record Certificate (SKCK) and send it to the rectorate for them to take action.[194]

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192 Ibid

193 Ibid

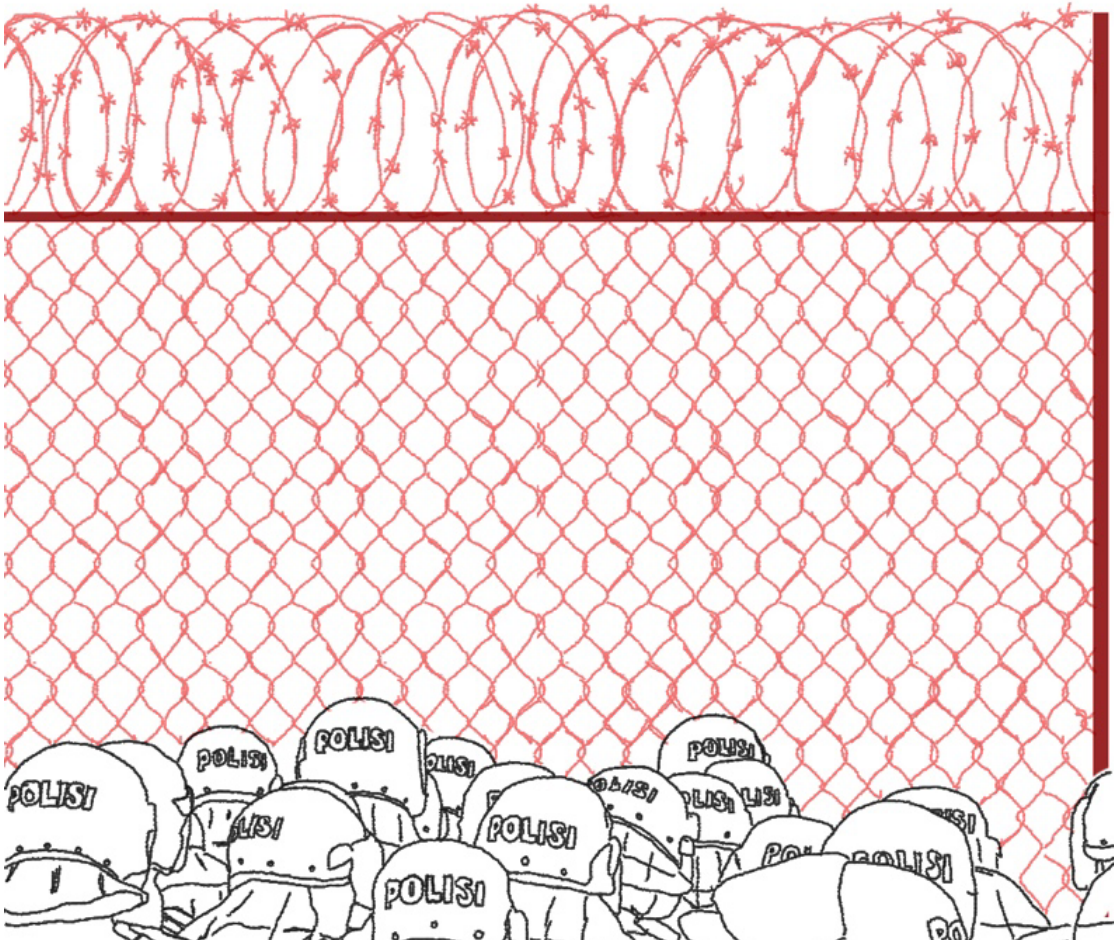
194 KontraS, "Temuan Tindakan Kekerasan Aparat & Pembungkaman Negara terhadap Aksi-Aksi Protes Menolak Omnibus Law di Berbagai Daerah", accessed from https://kontras.org/2020/10/25/temuan-tindakan-kekerasan-aparat-pembungkaman-negara-terhadap-aksi-aksi-protes-menolak-omnibus-law-di-berbagai-wilayah/

RECOMMENDATIONS

a. The Indonesian Government shall ensure the rights for students and children to express their voices by ensuring the existing legal and constitutional provisions protecting human rights in particular freedom of expression, association and assembly are fully implemented nationwide.

b. The Indonesian Government along with the agents to abolish individual and mass arbitraty arrest when there are protest acts.

TORTURE



TORTURE

Submitted by:

The Commission for the Disappeared and Victims of Violence (KontraS)

Asia Alliance Against Torture (A3T)

March, 2022

I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS), a Non-governmental organization that is based in Jakarta, Indonesia - would like to submit our report in regards to the situation and condition of torture in Indonesia for the past three years. KontraS is a Civil Society Organization that actively monitors, arrange reports, engage case advocacies, engage public campaign and lobbying stakeholders for the sake of honoring, promoting, and protecting human rights in Indonesia.
2. Asia Alliance Against Torture (A3T) is a regional level coalition 11 organizations working at the grass-root level in Asia on prevention and accountability for torture and other forms of cruel, inhuman, or degrading treatment or punishment.

3. In summary, we identified several causes of torture incidents, especially in Indonesia, namely: a. Supervision acts that were never carried out strictly and targeted at the roots of the problem.; b. The law enforcement that does not deter perpetrators of torture; c. Torture is a part of a violence culture that are still normalized in the midst of society; d. Positive law instruments in Indonesia are yet acommodated to torture acts or criminalized torture by law enforcement officers. In the Criminal Code (KUHP), the offense of torture has yet to be regulated.

4. In this report, we have also expressed several recommendation points that has to be immediately executed by the Indonesian government to reduce the room of torture practices, structually or technically.

II. Overview

II.1. In the previous UPR cycle, Indonesia supported several recommendations regarding torture in Indonesia which are:

a. Ratify the Optional Protocol to the Convention against Torture (OP-CAT)[195]

[195] Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.5 (Bosnia and Herzegovina)

b. Take measures to put an end to torture and ill-treatment by the police forces[196]

c. Review the Criminal Code to align it with the definition of torture in the CAT[197]

d. Adopt the anti-torture bill and establish an effective national preventive mechanism[198]

e. Continue efforts to fight against torture[199]

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196 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 10 recommendations No. 141.7 (France)

197 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.23 (Honduras)

198 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.54(Serbia)

199 Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Indonesia,* 14 July 2017, Document A/HRC/36/7 - Para. 139 recommendations No. 139.135(Russian Federation)

II.2. To this date, Indonesia has yet to ratify the OP-CAT as according to the recommendations supported by Indonesia. As a result of this absence of ratification, several community groups were subjected to acts of torture. The absence of this ratification has also form a domino effect of a continuous torture acts in Indonesia. Indonesia has yet also devise and implement a particular law regarding torture and the ill-treatment from The Police as one of the dominant actors. Therefore, recommendation which was supported regarding taking measures of ending torture and ill-treatment from the police forces have yet been implemented.

II.3. One form of Indonesia's ratification of CAT is stated through Law No.39 of 1999 Article 1 paragraph 4 regarding definition of torture. If compared, two languages that describe torture have the same meaning, so it can be said that Indonesia has succeeded in implementing the recommendation before the recommendations were given. However, in this law, Indonesia does not have a derivative law to boost the anti-torture regulatory mechanism. Although there have been actions from the National Commission on Human Rights, the OP-CAT has yet to be ratified, making the process related to regulatory mechanisms also difficult to carry out.

II.4. The presence of impunity from the security officers has made acts of torture continue so that the recommendations against torture have not been fully implemented by Indonesia.

III. Recent Issues and Recommendations

III.1. Cyber Torture

Along with technology and information advancement, the international world has also detected the possible existence of cyber torture.[200] Moreover, ever since it was introduced in March 2020, we saw the escalating cyber torture exercises and are neglected by the state. The apparatus seems to not want to know nor the will to solve the form of cyber torture. Furthermore, we found a certain pattern, that cyber torture acts are primarily done by those who are actively criticize as well as balancing the state's discourse. There are also cyber torture forms that kept happening in several years in Indonesia such as doxing, hacking, stigma, discrimination, and other forms of cyber torture. The consequences of cyber torture are to make individuals or groups feel anxious, stressed, isolated, from the social environment, and prolonged depression, even in the risk of suicide. The consequences of the exercise of cyber torture also make an individual lose a sense of security to express his/her expression in the digital space. Aside from that, in several cases, digital attacks are officially known by the state, usually in the form of reports. Unfortunately, no serious responses have been taken. Meanwhile, digital attacks also happen to intimidate people. So that the element of torture as stated in Article 1 of UNCAT is indeed fulfilled in cyber torture practices.

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200 Since introduced in March 2020 by Nilz Melzer, the issue of cyber torture has not received much attention. In fact, the practice is so massive that it refers to the use of cyber technology for the purpose of torture. The internet can be used to systematically target individuals remotely through intimidation, harassment, surveillance, public shaming, and slander. See Daniel Erhardt Nielsen, 'Cybertorture*'* *– A New Frontier in Human Rights Application?,* https://www.globaljusticeblog.ed.ac.uk/2020/09/23/cybertorture-a-new-frontier-in-human-rights-application/

We perceive a repetitive pattern from these cyber torture cases, which is the hacking that is carried out systematically and massively. Aside from that, perpetrators also carry out targeted cyber attacks (targeted digital attacks). These case are also driven by political motives, namely parties who loudly balance government's discourse (the Ravio Putra WhatsApp-hacking case, the Constitutional Law Society (CLS) UGM public discussion hacking case, Papuan Lives Matter case, Activists rejecting Omnibus Law, criticism of handling COVID-19, and the National Insight Test (TWK) for the Corruption Eradication Commission (KPK) Case). Meanwhile, the state was very passive in responding to some of these events. There was no effort from the police as the legal authorities to stop or follow up and find the perpetrators. Those who do the hacking are able to freely continue the practice at a later date. The public will never know who the actors behind these events are. In addition to having implications for fear, automatic omission will cause recurrence in the future.[201] Up until this day, there has been zero cases of cyber torture solved by the Police, even though suffering in the form of psychological impacts continue to occur to the victim.

RECOMMENDATIONS

In a situation of cyber torture, an increasing number occur as case become more massive, we recommend the government through its authority or apparatus investigate the perpetrators of cyber torture such as hacking, doxing, stigma, discrimination, and other forms of cyber torture seriously. This form of omission of these practices should not be continued because it will

201 Within the framework of Human Rights, a State that acquiesces to the practice of human rights violations can also be classified as a form of human rights violations by omission.

cause repetition. The virtual police owned by the Police at the moment[202] should take action and find the perpetrators of these cyber crimes. Aside from that, there needs to be one strict and binding regulation to criminalize the cyber torture perpetrator. The government should also use the technological tools and instruments such as the virtual police to take action to cyber torture perpetrators, not to control the civilian's expression.

III.2. Dominant Actors in Torture Cases

According to these past 4 years of KontraS documentation, the Police institution is still the dominant actor of torture, other cruel, inhuman, degrading, ill-treatment and punishment. Other institutions that we noted are still carrying out acts of torture in high numbers are the Indonesian National Armed Forces and prison guards. Specifically, we noted that the Police were involved in acts of torture, namely in May 2017 - 2018 (80 cases), June 2018 - May 2019 (57 cases), June 2019 - May 2020 (36 cases). Of these cases, the locus of torture was closed places, such as police detention cells. Meanwhile, the level of the Resort Police (*Polres*) in the District/City is the highest actor in carrying out acts of torture. This means that there is a mechanism that is not working optimally by the Regional Police.

In exercising torture and other cruel treatments, we documented that the Police mainly use bare hands. Hard objects, electricity, cigarettes, and firearms were also often used in support of acts of torture. From these findings,

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202 The Virtual Police was formed through the Chief of Police Circular Number: SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy and Productive Digital Space for Indonesia. In the circular, it is stated that the Virtual Police aims to monitor, educate, warn, and prevent the public from potential cybercrimes/

we suspect that torture and other cruel treatments are dominantly carried out during the interrogation stage during the process of investigating a person as a suspect. This is done in order to get a confession from the victim.

RECOMMENDATIONS

We see that the culture of violence that results in acts of torture is caused by the inadequate training process for members, monitoring and supervision mechanisms are not running well and law enforcement against perpetrators of torture tends to be resolved through internal mechanisms so that it does not have a deterrent effect. From the many cases of torture and other cruel treatment carried out by the Police, we recommend that the government reform the police force seriously. Evaluation and changes must be carried out structurally and comprehensively so that they touch the root of the problem.

Reform can be started from the education process of members which must be made effective in order to instill anti-violence values. Human rights curriculum and education must be ensured to be properly internalized in each member. So that arrogance and violence can be minimized when on duty in the field. Furthermore, the police culture that continues to legitimize acts of torture must slowly be changed. Broad discretion must also be accompanied by serious supervision. Repressive efforts against perpetrators of violence so far have only been formalistic, the majority of which have been resolved internally and culturally, such as punishment by superiors. Resolutions that are far from the principles of transparency and accountability will not have a deterrent effect.

To be precise, there is a need to build a strict supervision system to minimalize torture, especially in the Police institution. Internal control such as the Division of Profession and Internal Security must impose strict and measurable sanctions in order to provide a deterrent effect for perpetrators of torture. Meanwhile, in the long term, provisions of the Indonesian criminal procedure law as stated in the Criminal Procedure Code (KUHAP) must be revised as soon as possible. This is due to the Indonesian criminal justice system still provide a very wide gap for law enforcers to carry out torture.

III.3. The Impunity of the Officers Who Carried Out Torture

Torture as a part of the apparatus violence culture is surely inseparable from their past violence. Moreover, incidents of violence in the past have not been completely and fairly resolved. The culture of impunity and a blunt law enforcement will certainly perpetuate the practice of torture. In fact, UNCAT has mandated that the state through its institutions must respond quickly and independently if there has been an alleged torture, not to cover it up as if the case never existed.[203]

If we refer to the pattern that has occurred over the past few years, we see that the trend of impunity is getting stronger. This can be seen from the several legal remedies taken that always approach several categories, such as making peace with the victim's family, the lack of response and answers from

[203] Article 12 UNCAT - Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

the competent authorities, to using the bribery route by giving a number of unequal compensations to the victim.

KontraS also highlighted several accountability efforts for the stagnant gross human rights violation cases in the absence of good news, as well as progress, especially for cases of gross human rights violations that have the dimensions of the crime of torture and serious violations of the definition of *jus cogens*, such as the case of the incident. The 1965/1966 Massacre, the Enforced Disappearances of Activists 1997/1998, and a series of cases of gross human rights violations that are currently still being investigated specifically in the Aceh region. The talent for impunity which has turned out to be a form of neglection for justice to the victims of torture today is also an inseparable unit.

In the context of the Indonesian National Armed Forces (TNI), the military court still leaves many problems, because the process if often used as a legitimate impunity for TNI members who carry out torture. Military courts are not the right place to try TNI members who commit criminal acts or crimes, because through military courts there are practices of “protection” or “privilege” for military personnel who commit crimes. In the trial process for the perpetrator of Jusni’s torture, for example, we found indications that from the outset the judicial process was merely a formality and was intended not to reveal the actual facts. This can be seen in the various anomalies that we found during the trial process and the verdict. Whereas some of the irregularities as mentioned, such as the indictment prepared by the Military Prosecutor, do not expose the allegations of torture. As a result, Decision Number 86-K/BDG/PMT-II/AD/XII/2020 removes additional criminal sanctions

in the form of dismissal from military service for Lt. Oky Abriansyah and Serda Mikhael Julianto Purba who are members of the TNI from the 4th Transport Supplies Battalion (Yonbekang) of Army Transport Supplies Center Water Transport Unit (Satagair Pusbekangad). The rotten military court mechanism is strong enough to be the reason that the Law on Military Courts must be revised.

RECOMMENDATIONS

Based on the never ending impunity chain, we recommend that the resolution of cases of torture should be carried out in a transparent and accountable manner through the applicable legal mechanism. In addition, non-judicial ways with the lure of money, the provision of compensation should not hinder access to justice. Leaders cannot protect perpetrators on the pretext of doing their job. In addition, the government must also strengthen the existence of supervisory institutions within the framework of the oversight mechanism. That way, it will be easier for victims to access justice.

III.4. Application of Caning Law for Criminal Acts:

Despite having ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment / UNCAT (Law No.5 of 1998, the practice of inhumane punishment has yet been abolished in various regions in Indonesia. One of them is in Aceh, which is still legalizing and implementing caning for its citizens through Qanun Jinayat or Islamic criminal

provisions.[204] Although, the elements of caning meet the UNCAT definition of punishment that is inhumane and degrading to human dignity because it causes severe pain and suffering.

In monitoring open data conducted by KontraS, during May 2017 - May 2018 we found that there were 59 cases of caning that occurred in Aceh with 324 victims being injured. Then, in the period of June 2018 - May 2019 there were 40 cases of caning with 226 victims being injured. Then, in the 2019 - 2020 period, there were 75 cases with 319 injured. Meanwhile, in June 2020 - May 2021, 34 cases occurred with 98 injured people. The high number shows that caning is actually not an effective way of punishment that provides a deterrent effect.

Ratifying UNCAT for almost 24 years, does not necessarily make Indonesia a country that is anti-punishment which is inhuman and degrading to human dignity. Implementing caning in recent years, making this country one of those countries whose punishment is still supporting the practice of torture as well as a violator of human rights treaties.

Instead, Indonesia should have stopped law practices that are inhuman and degrading to human dignity in the law implementation, because in the constitution the prohibition has been regulated, namely in the 1945

204 Badan Pembinaan Hukum Nasional, "*Majalah Hukum Nasional Nomor 1 tahun 2018*," in Vol. 48. No 1, doi:https://doi.org/10.33331/mhn.v48i.

Constitution Article 28 G paragraph 2 which states that everyone has the rights to freedom to avoid torture or treatment that degrades human dignity.

RECOMMENDATIONS

We recommend the Indonesian Government to intervene in laws implemented in Aceh by slowly removing the provision for punishment of Jinayat through the Caning method, because it is contrary to the spirit of UNCAT ratification. The Aceh provincial government has also had to shift irrelevant punishments to more humane punishments and prioritize aspects of recovery for victims.

III.5. Circumstances and Places of Torture

In KontraS documentation, at least there are several conditions and locations where torture often occurs. According to the data from May 2017 - May 2021, there were 346 incidents of torture that occurred in Indonesia. The incident with a relatively large number indicates the practice of violence that often occurs, both within the scope of the police, TNI, and even the prison warden.

21. Based on the monitoring that we have carried out, at least we have noted that there are several conditions and locations where torture is commonly used by perpetrators to carry out practice of torture and other cruel acts, in general we summarize them in 3 places, namely public places, closed places,

and detention cells. At least we recorded in May 2017 - May 2018 (38 events in public places), (28 events in closed spaces), and (64 events in detention cells); June 2018 - May 2019 (27 events in public places), (13 events in closed places), and (32 events in detention cells); June 2019 - May 2020 (29 events in public places) and (34 events in prison cells); as well as June 2020 - May 2021 (57 events in public places) and (23 events in prison cells). The high number of cases from public spaces, closed spaces, and prison cells have proven that patterns of torture can occur anywhere.

RECOMMENDATIONS

Torture and ill-treatment can occur without and our knowledge, thus it is very important to be able to increase transparency by state officials. A series of additional steps needed to increase transparency can be taken, including for example provision of body CCTV to every apparatus in carrying out their duties, in addition to independent monitoring of places of deprivation of liberty, complaints mechanisms that can be accessed effectively, and others.

III.6. Use of Weapons in Torture:

At least this time we consider that torture is not born, but torture itself is something that is nurtured, trained, and supported by the current government. In many cases that occurred in Indonesia, we saw the role of government and/or state apparatus to perpetuate and even be directly involved in the torture efforts that occurred. Furthermore, in our monitoring, “bare hands” were the dominant instrument in acts of torture, such as during beatings. We

recorded that there were at least 220 incidents of torture using “bare hands” during the month of May 2017 - May 2021, where in one incident one could use more than one instrument of torture.

Aside from using bare hands, we also recorded that there are several tools which are often used by the law enforcement agencies, including: the use of hard objects, firearms, electric weapons, animals, cigarette butts, hard water, and sharp weapons. Torture practices using torture tools with cruel acts are often used as shortcuts by law enforcement officer in the investigation process, so that the investigation process will be easily carried out or an interrogation method that is often carried out until he victim gives a confession to have committed a crime.

One of our highlighted cases is the torture case that happened Padang, West Sumatra in 2019, victim was named Faisal Akbar and Budri M Zen who died due to the torture acts carried out by the police officer from Sijunjung Sector Police.[205] The torture was related to a theft case that was alleged against Faisal and Budri in an attempt to get a confession that they both stole something. The use of “bare hands” as a tool of torture has often occurred in recent years. Also, there are various other inhumane ways in the interrogation stage. Example, in the Jayawijaya Police Station, Papua, members of the Police forced a suspect in a theft case by scaring him with a snake.[206]

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205 Lihat https://www.jpnn.com/news/keluarga-korban-tahanan-tewas-dianiaya-oknum-polisi-akhirnya-terima-ganti-rugi

206 Tirto.id, Interogasi Pakai Ular, Polisi Papua Langgar Konvensi Anti Penyiksaan,https://tirto.id/interogasi-pakai-ular-polisi-papua-langgar-konvensi-antipenyiksaan-dg1Z

Aside from the case, we have at least saw that many cases of torture tend to be carried out in order to obtain information or confessions as a form of punishment. In some of our records, victims who do not want to confess according to the will of the state apparatus, are beaten continuously even though they are in a helpless state, causing the victim to die as in the example above. In addition, according to the results of the post-mortem or with the naked eye, the method of using torture with various tools tends to cause several types of injuries such as bruises, abrasions, to the heaviest damage to human organs so that they cannot function as before. Injuries are certainly correlated with other impacts, both physical, psychological, social and work, which can arise immediately, in the short or long term.

RECOMMENDATIONS

Based on the elaboration, we would like to recommend efforts for a series of protective procedures that must be developed by the Indonesian Government in protecting the rights of victims, focusing on the pattern of torture that occurred. In addition, efforts to gain information by carrying out acts of torture must be minimized by conducting appropriate training regarding professional responsibilities to state officials in order to prevent such violations from occurring, and in carrying out this must be accompanied by appropriate sanctions. If this is not done, impunity will continue, and patterns of torture will continue to develop along with the times and the tools that will be used later.

National Preventive Mechanism (NPM)-initiative in monitoring places of detention regulated in the OPCAT:

On the 26th of February 2016, five institutions which are the National Commission on Human Rights (Komnas HAM), National Commission on Violence Against Women (Komnas Perempuan), Indonesian Ombudsman (ORI), Indonesian Child Protection Commission (KPAI), and the Witness and Victim Protection Agency (LPSK) have signed an MoU of Joint Team for the Prevention of Torture (KuPP). The purpose of this collaboration is to encourage ratify OPCAT to prevent the practice of torture in Indonesia.[207]

According to KuPP, many torture acts happened in Correctional Institutions (LAPAS). Thus, KuPP itself has programs aimed at prisons such as the training for staff of the Directorate General of Correctional Institutions in Indonesia.[208] Likewise in the immigration detention room, we also found several cases of torture towards immigrants that were not covered by the monitoring agency. In addition, acts of torture also still dominated in the Police detention room during the investigation process. However, we can see that the performance of this KuPP has not been fully maximized. This is due to the KuPP often fails to monitor the performance of law enforcement officers and locations prone to acts of torture. Therefore, OPCAT has the urgency to be

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207 Red, "*Kesepakatan 5 Lembaga Mencegah Praktik Penyiksaan Berlanjut*," *Hukumonline*, 17 April 2021. https://www.hukumonline.com/berita/a/kesepakatan-5-lembaga-mencegah-praktik-penyiksaan-berlanjut-lt607ad48059a1b/

208 *KuPP Perkuat Pencegahan Penyiksaan di Tempat Penahanan*," KOMNAS HAM Indonesia, 16 Februari 2021. "https://www.komnasham.go.id/index.php/news/2021/3/18/1715/ratifikasi-opcat-upaya-strategis-pencegahan-penyiksaan.html

ratified so that KuPP can be reached to risky points such as the detention rooms or prison-like rooms.

In its work, KuPP also does not have a sufficiently strong legal basis. Unfortunately, the Indonesian government has not yet ratified the Optional Protocol Convention Against Torture (OPCAT), which can support the formation and functioning of the NPM, including monitoring for places where a person is deprived of their liberty, such as prisons. Thus, the KuPP has not been able to maximize their work program because they do not have a strong legal basis.

RECOMMENDATIONS

Ratification of OPCAT should be a priority to the Indonesian Government. OPCAT will be a very strong legitimacy for the existence of the KuPP in carrying out its supervisory duties such as visiting detention rooms and similar detention facilities. The process of ratification of international instruments does take a long time, while waiting for the process, it is important for institutions that have the authority to detain someone to carry out their coercive efforts in a transparent and accountable manner. On the other case, Independent state institutions that have mandates to use the supervision, monitoring, protection and recovery functions must strictly use reliable measuring tools (one of which is the vetting mechanism) to narrow the space for perpetrators of the torture crimes. These external institutions have to be ensured to synergize with other state institutions (internal) to make sure that there is a mechanism for prevention, punishment for ongoing torture crimes, protection for witnesses and victims and restoring the rights of victims in

accordance to the International Human Rights Legal Instruments. We also encourage the initiation of the KuPP, five institutions can be more active and able to proactively investigate cases of torture, not only to accept complaints. While the KuPP is carrying out its job, the government should also ratify OPCAT as a legitimacy for the NPM to visit regularly places where a person is deprived of their liberty and where the potential for torture is high.


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