The Silencing of the Freedom of Expression in Jayapura



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By: Regina Wenda*

Introduction

Based on the records of a number of independent organizations in Papua, violations of freedom of expression, specifically the right to public expression of opinion, have worsened in the past two years. One of the pillars of democracy has been silenced by the government, as the people of Papua cannot freely express their opinions publicly. Why is this the case?

From January 2015 to December 2016, there has been an escalation in the silencing of public expression of opinion in Papua in general, and in Jayapura specifically[1]. The peak was on May 2, 2016, when 1,696 Papuans were arrested and detained in the yard of the police mobile brigade corps's headquarters in Jayapura (*Mako Brimob Kotaraja Jayapura)*. The security apparatus not only arrested members of the West Papua National Committee (*Komite Nasional Papua Barat* -KNPB), who have always been targeted, but also students and even children.[2] It was an incident against basic humanity and will be remembered in Papuan history.

A year prior to that, on May 1, 2015, a number of protesters were forcibly dispersed by the Jayapura City Police (*Polresta Jayapura*). During the incident 30 people were arrested.[3] The day after, May 2, 2015, more than one hundred KNPB activists were arrested by Jayapura City Police and Papua Regional Police (*Polda Papua*) in front of Cendrawasih University's archway. At the time they were rallying to support a referendum campaign and the International Parliamentarians for West Papua (IPWP) meeting in London, which was to be held on May 3, 2016, as well as to express support publicly for the inclusion of the United Liberation

[1] Record of the National Committee of West Papua - Numbay region.
[2] Internal data from the database of the National Committee of West Papua Numbay region.
[3] Internal data from the database of the National Committee of West Papua Numbay region.

Movement for West Papua (ULMWP) as a member of the Melanesian Spearhead Group (MSG), a move that was also supported by the government of Vanuatu.[4]

During the incidents, Papuans were often arrested without due process for expressing opinions publicly. In Papua, the Government of Indonesia seems to turn a blind eye to these violations of the right to publicly express opinions. In fact, the Chief of Papua Regional Police issued a notice on July 1, 2016 specifically targeting several Papuan organizations, such as KNPB, the Regional People's Parliament (*Parlemen Rakyat Daerah* -PRD), the Federal Republic of West Papua (*Negara Republik Federal Papua Barat* - NRFPB), the West Papua National Parliament (*Parlemen Nasional West Papua* - PNWP), Free Papua Organization (*Organisasi Papua Merdeka* -OPM), National Liberation Army (*Tentara Pembebasan Nasional* - TPN) and ULMWP. They were labeled as separatist organizations to be handled firmly.

The notice, issued on the day used to commemorate the Police Force of the Republic of Indonesia (*Polisi Republik Indonesia*- Polri), put more restrictions on the freedom to publicly express opinions in Papua, especially for political activists. The notice legitimizes police arrests and detentions of activists, only worsening the already dark situation for freedom of expression in Papua.

It should be underlined that freedom of expression is a right inherent to each citizen of Indonesia, including the people of Papua. The guarantee of the right can be found among others in Law No. 9/1998 on Freedom of Expression, which states in Article 1 paragraph (1):

> *"Freedom of expression is the right of every citizen to convey ideas verbally, in writing, etc., freely and accountably in accordance to the applicable law".*[5]

Furthermore, the 1945 Constitution also firmly guarantees the right.

Given the situation outlined above, it is very important to identify the factors causing the increased trend of silencing public expression of opinion especially in Jayapura. The author examined the factors through visual documentation and interviews with a number of resource persons in Jayapura. The result of the documentation was then processed by the

[4]See http://tabloidjubi.com/16/2016/05/02/aksi-2-mei-178-aktivis-knpb-di-kota-jayapura-diamankan-polisi/
[5] Law No. 9/1998 of the Republic of Indonesia on the Freedom of Expression.

author to produce this short narration as well as a short video which presently is in the editing process.

A Snapshot of the Implementation of Freedom to Public Expression in Jayapura

Freedom of expression is the right of every citizen; may it be in the form of demonstrations (rallies) or otherwise. Expressing opinion publicly is done to criticize the performance and policies of the government or even differing political views, as well as to convey aspirations of the people.

The government should provide as much freedom as possible for citizens to convey their aspirations or opinions publicly, as long as this is done in accordance to the prevailing legal rules and procedures.[6]

However, it is as if the government is allergic to the demonstrations a number of organizations usually do, such as KNPB, PRD, NRFPB, PNWP, OPM, TPN and ULMWP. YLBHI Director Asfinawati, in her opinion piece "*Kebebasan Berekspresi di Papua*" (Freedom of Expression in Papua), states that the limitation to freedom of expression, including rallies in Papua, can only be done by law. Moreover, it can only be done when it is "necessary".[7]

In Jayapura, the restriction against freedom of association and public expression of opinion can be seen from the actions of the police, namely arresting activists distributing pamphlets containing information about a planned demonstration. The police arrested them with the excuse that the activity was obstructing traffic. The police also stated that the organizations who were organizing the rally, such as KNPB, were not registered in the National and Political Unity Department (*Kesatuan Bangsa dan Politik* - *Kesbangpol*) and were accused of being separatist organizations. Thus, the sedition article could always be used by the apparatus to repress KNPB activists and other organizations.

The provisions used to criminalize activists are Articles 106, 110 and 160 of the Criminal Code regarding incitement, use of sharp weapons, etc.

[6] This is guaranteed by Article 15 of Law No. 9/1998.

[7] See http://www.imparsial.org/publikasi/opini/kebebasan-berekespresi-di-papua/

Gustaf Kawer, a public lawyer in Jayapura who has been active in assisting Papuans who fall victim to police repression, is of the view that organization-wise KNPB and its members have very clear objectives. In such cases, according to Gustaf, the apparatus is too hasty in using the sedition article as the grounds for legal action.

Furthermore, Gustaf sees that in this context the government is in the wrong, and has an excessively negative approach to the movements in Papua. These movements, Gustaf interjects, are reminding the government through their criticisms of the history of human rights violations in Papua since the 1963-1969 period until the present, which remain unresolved.

> "I follow and I know them, namely they mediate the people of Papua to demand for the agenda of self-determination. If now they mediate the people of Papua for self-determination, that is in the UDHR (and) is a right that is accommodated in law (in) international regulations, the International Covenant on Civil and Political Rights not including the right to self-determination is also in there. Their role is to mediate how they can bring the demands of the people so that there are (people) who mediate and meet with parties who can accommodate them… I think the government cannot then assume that this is a movement to separate and thus the sedition article is used, I think that is too far."[8]

The freedom of association is guaranteed by Article 28E paragraph 3 of the 1945 Constitution, which states, "Every person shall have the right to the freedom to associate, to assemble and to express opinions."[9]. The freedom of association and organization includes the freedom to choose and attain political beliefs[10].

Indonesia also has ratified the International Covenant on Civil and Political Rights (ICCPR) through Law No. 12/2005. Article 19(2) of the Covenant states that:

> "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The Article also regulates the limitations for freedom of expression. It is stipulated in paragraph (3) that:

[8]Author interview with Gustaf Kawer on 4 March 2017 in Jayapura.
[9] 1945 Constitution of the Republic of Indonesia, Article 28E paragraph (3).
[10]Law No. 39/1999 of the Republic of Indonesia on Human Rights, Article 23 paragraph (1).

> "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

The Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights elaborates how "national security" is construed:[11]

> 29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.
>
> 30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.
>
> 31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.
>
> 32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

Whereas the concept of "public order" include:

> 22. The expression "public order (*ordre public*)" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*).

[11] Annex, UN Doc E/ CN.4/ 1984/4 (1984), Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. The original refers to the Indonesian translation by Asep Mulyana, accessed from pusham.uii.ac.id.

23. Public order (*ordre public*) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order (*ordre public*) shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies

It could be concluded from the events in Papua and especially in Jayapura for the past two years shows that the police have ignored the above regulations. According to Simon Patirajawane, the Director of the Jayapura Legal Aid Institute (LBH Jayapura), the situation in the past two years has differed from previous years.

"It is a stark difference. In the past the police were more persuasive at rallies. (They) would come and talk to the coordinator, then the masses were brought to order. It is not the case now. If the masses just start gathering, the police come immediately and disperse them. If it is like in Papua then it is always close to sedition and brought to, herded to sedition. Whereas not all cases point to sedition. How can the police predict what has not happened? But the police say it has already happened. Actually, it is incorrect for them to predict. The Chief of the Regional Police can predict. But what is called a criminal act should happen first, there should be evidence. But all these are merely predictions made within a regulation that shackles people's freedom of expression."[12]

Simon Patirajawane's statement on the police tendency to always frame the cases related to activists and demonstrators in Papua, especially in Jayapura, as seditious acts is strengthened by the opinion of a criminal law expert Prof. Andi Hamzah, S.H. in his testimony before the Constitutional Court during the hearing for the Judicial Review of Sedition Article in Case No. 28/PUU-XV/ 2017 filed by ELSAM Jakarta together with a number of Non-governmental organizations in Papua:

[12] Author interview with Simon Patirajawane, February 27, 2017 in Jayapura.

The origin of the term *"makar"* (commonly used word for sedition)::

The term "makar" is a translation of a Dutch word aanslag which can be found in the Criminal Code, such as Article 104 of the Criminal Code which was copied from Article 92 of the Dutch Criminal Code. The verb aanslan means "attempted murder". Aanslag in Dutch means striking, 'attack' or attempt on a man's life. There is no uniform translation of the Criminal Code, but the majority of criminal code translations translate aanslag as makar. The Strafecht vor ned indie Criminal Code which later with Law 1/46 is passed as Criminal Code in March 1942 before Japan came. This Criminal Code of the Dutch-Indies was nationalized to become (Indonesian) Criminal Code by Law 1/1946. The word king (konig) in Article 104 of the Criminal Code was replaced by President and Vice President.

Source: trial record of the judicial review on the sedition article, case No. 28/PUU-XV/ 2017



Prof. Dr. Andi Hamzah, S.H
Criminal Law Expert

 # Clarifying Misunderstanding of the Sedition Article

Aanslag must be understood as attempt *(poging attend)*

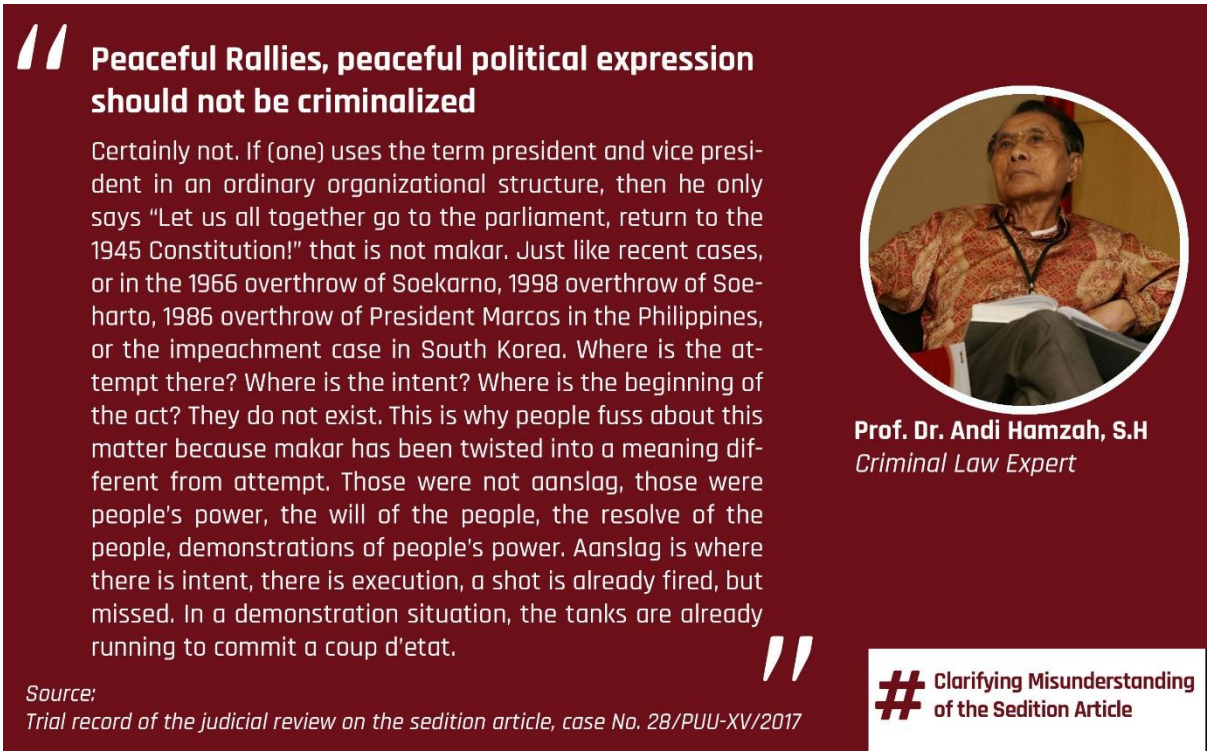
The regulation of aanslag (which is translated as 'makar' or sedition) has to be reviewed in the national Criminal Code and returned to the original stipulation 'attempt (poging attend)'. One must see the original stipulation in the Anti Revolution Law (Anti Revolutie Wet), 28 July 1920 STBLD/LN 619. The content is an attempt on the king's life, replacing the government (coup d'etat), and rebelling against the state. In the 1920 Dutch Anti-Revolution Law it is stated that aanslag (which is translated as makar) is equal to attempt, but without the third element, namely the element 'unfinished outside of his or her own will' which means that (the act) not completed by his or her own volition shall be treated as a criminal offense. For example, there is the intent to kill the president, he or she already fires a shot but in the last seconds he or she changes his or her mind so that he or she (directs) the shot upwards, intentionally not aiming at the president, that is called aanslag. Thus there is the intent, there is the beginning of an attempt. Of course, not an attempt, because there is the third element (namely) not completed despite the perpetrator's will. If there had not been the Anti Revolution Law, someone could not have been criminalized for not fulfilling the third element of attempt. Thus aanslag (makar) is equivalent to attempt without the third element."



Prof. Dr. Andi Hamzah, S.H
Criminal Law Expert

Source:
Trial record of the judicial review on the sedition article, case No. 28/PUU-XV/2017

 # Clarifying Misunderstanding of the Sedition Article



Infographics 1.[13]

The Apparatus' Repressive Acts against People's Expression in Numbers

In Jayapura, the past two years has seen an increase in the silencing of freedom of expression in public. Throughout the period of April-May 2015, approximately 82 people were arrested and questioned by the Jayapura Police. Some were even subjected to violence by the police.[14]

The largest scale arrest committed by the police occurred on May 2, 2016, numbering 1,696 people. That number only represents those who were arrested in Jayapura alone, not including other areas in Papua. A number of women and minors were also arrested and detained in the yard of the Jayapura City Police Mobile Brigade Command Headquarters (*Mako Brimob Kotaraja Jayapura*).

Infographic 2.[15]

[13]Source: ELSAM, see http://multimedia.elsam.or.id/meluruskan-kekeliruan-definisi-makarprof-andi-hamzah-1/;http://multimedia.elsam.or.id/meluruskan-kekeliruan-definisi-makarprof-andi-hamzah-2/;/; http://multimedia.elsam.or.id/meluruskan-kekeliruan-definisi-makarprof-andi-hamzah-3/

[14] Internal Data of the National Committee of West Papua in Numbay Region.

[15]The infographics is developed from raw data resulting from the author's research in the field and processed by ELSAM.

ARBITRARY ARRESTS IN JAYAPURA PAPUA 2015-2016

1696 arrested



Backgrounds of those subject to arbitrary arrests



140 students below university level
485 university-level students
476 members of KNPB mass organizations
684 Simpatisan KNPB
14 Others

Teenagers constitute the majority of the arbitrary arrest victims numbered at 838

Children [0-17] **148**

Teenagers [18-22] **838**

Adults [23-40] **678**

Elderly [41- onwards] **23**

? Unknown Age **9**



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Source: Research reporter " The Silencing of the Freedom of Expression in Jayapura", Regina Wenda; 2017, ELSAM. Infographic Dodi

Repressive arrests and detentions by the police violate human rights. In dispersing rallies and arresting people, the police often times use the term "securing" (*pengamanan*).

The Director of the Democracy Alliance for Papua (*Aliansi Demokrasi untuk Papua* -ALDP), Latifa Anum Siregar SH. MH, criticized the use of this term in an interview with the author.

> *"All actions of the police apparatus should abide to the procedures. The authority given has to have implementing procedures, implementing the authority with such manner is certainly against the law. There is no term "securing" in the Criminal Procedural Code. There is not one (element in) police authority, in any regulation including the Criminal Procedural Code, which gives the police the authority for securing. What is the definition of securing? If a person is brought to the police station, that is detention, not securing."*[16]

The term securing is often used by the police against demonstrators and activists. In securing rallies, the police often employ violent measures. For example, on May 2, 2016, a number of demonstrators were subjected to violent acts by police. The demonstrators were transported with mob-control vehicles a number of meeting spots to the Mako Brimob yard where they were left under the heat of the sun. Some of them were detained in the cells of Mako Brimob.

Zet Gobay is one of the many victims of apparatus' violence. He was also subjected to violence by police apparatus during the May 2, 2016 incident. Zet and his friends were arrested in Lingkarang Abe. During the arrest Zet was put into a mob control vehicle. He was kicked with military boots six times. It did not stop there. Zet was also beaten with a rifle butt on the head and temple twelve times. The twelve beatings have caused Zet vision disruption up to the present day.[17]

Jeck Mote and Edy Aud had a similar experience when they publicly expressed their opinions on December 19, 2016. Police arrested and tortured the pair, breaking Edy Aud's arm and wounding Jeck Mote's head.

Zet, Jack and Edy are just three victims representing what has been experienced by many more. Responding to this continuous situation, the spokesperson of Central KNPB, Bazoka Logo, told the author this is because Papua is indeed colonized.

[16] Author's interview with Latifah Anum Siregar on 4 March 2017 in Jayapura.
[17] Author's interview with Zet Gobay, March 4, 2017 in Jayapura.

"Not an independent region as part of Indonesia. Not at all."[18]

According to Bazoka, if Papua is indeed an independent region as a part of Indonesia, the laws of the Republic of Indonesia should also be applicable for Papuans. The Constitution should also apply for Papuans. However, this has never happened, they never apply for Papuans, especially in relation to mass rallies KNPB organizes to demand a referendum for self-determination as a nation.

> *"(Papua) is never acknowledged by the Republic of Indonesia, that means today I can say that West Papua is not an independent region (that is) a part of the Republic of Indonesia, but rather West Papua is a colonized territory of the Republic Indonesia part II after Holland",* expressed Bazoka Logo.[19]

Blockades, dispersals, and arrests that the police conducted against KNPB activists and the masses of Papuan people who express their political opinions publicly show that the police view them as threats and thus must be firmly responded to. This can be seen from the incident that transpired on December 19, 2016.

In this incident the police engaged in dispersal and arrests at the Central KNPB Secretariat at Kampwolker Street, Tiga Waena National Housing Complex. Aside from that, arrests were also conducted in a number of spots where people were gathering to rally. The dispersal of the demonstrators at Expo Waena was conducted by spraying dirty water at the crowd using water canon vehicles.

Simon Patirajawane is of the opinion that the acts of police violate the prevailing laws and regulations. In order to overcome crowds of demonstrators, the police should abide to the procedures in the Circular Letter of the Chief of Police of the Republic of Indonesia No. 6/2009 and the Regulation of the Chief of Police of the Republic of Indonesia on Rally to Express Opinion, Law No. 9/1999 as well as the Regulation of the Chief of Police of the Republic of Indonesia No. 6/2000 on procedures in crowd management.[20] The police does not implement the regulations in the past two years. It seems that the police have in fact become the trigger of violence against activists and rallying masses.

18 Author's interview with Bazoka Logo, March 7, 2017 in Jayapura.
[19]Author's interview with Bazoka Logo, March 7, 2017 in Jayapura.
[20]Author's interview with Simon Patirajawane, February 27, 2017 in Jayapura.

On the Police of the Republic of Indonesia's commemoration day on July 1, 2016, the Chief of Regional Police, Police Inspector Paulus Waterpau issued the Notice of the Papua Chief of Regional Police. The notice is a type of regulation that restricts the freedom of all Papua residents to express opinions publicly. The notice expressly deems a number of organizations as illegal and separatists which should be dealt with firmly.

After the issuance of the Papua Chief of Regional Police's notice on the freedom of public expression of opinion, the police has refused to issue Police Record Certificates (*Surat Keterangan Catatan Kepolisian* - SKCK) to the organizers of rallies. This is tantamount to a form of human rights violation that the police have committed. The notice has legalized the apparatus' discriminative treatment against a group of persons. The issuance of the Chief of Police Notice adds to the government's dismal record with relation to restricting democratic space in Papua, especially in Jayapura.

The Papua Chief of Regional Police Notice seems to provide legitimacy for the police force personnel assigned to securing rallies to conduct dispersal, arrest, and acts of violence against rally participants.

Gustaf R. Kawer states that the Chief of Regional Police's notice is no more than an announcement, not a legal product. However, it is treated as a legal product.

> "*That's what I say, that it is an error (committed by) the Chief of the Regional Police, who is a law enforcement apparatus'',* Gustaf stated.

Conclusion

It can be concluded that the state of freedom to publicly express opinion in Papua, especially in Jayapura, for the past two years (2015-2016) has been dismal. This is evident from the blockades, dispersals, arrests and event torture subjected to activists who are planning or participating in rallies.

The shackling of freedom of expression is in direct opposition to the idea of democracy in Indonesia and in the 1945 Constitution. The space of democracy in Papua has been terminated. The freedom to express thoughts, opinions, may it be verbally or in writing, has

been shackled. The blockades, dispersals, and arrests of activists in large numbers are considered to be a common occurrence.

This is further aggravated by regulations such as the Papua Chief of Regional Police Notice. It is as if this regulation serves as an open ticket for police to engage in silencing and violence against the freedom to publicly express opinion.

Given this situation, the author recommends:

1. **To the Provincial Government of Papua**

   The Provincial Government of Papua must open democratic space to the widest extent possible, without discriminating against certain persons or groups. The State must guarantee that the people of Papua can live, create and be active in popular movements, as part of the implementation of the rights to freedom of association and expression.
2. **To the Papua Regional Police**

   The Chief of Papua Regional Police should revoke the 1 July 2016 Notice on the Freedom of Public Expression. This notice is discriminative and has clearly restricted the freedom of expression of the people of Papua, especially the organizations that are labeled as separatist.
3. **To all levels of the Papua Regional Police**, to cease engaging in violence, torture, and other repressive acts against activists and the people of Papua.

KURSUS PEMBELA HAM

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