

Acknowledged Rights but Yet Not Protected

Catatan Hak Asasi Manusia dimasa
Pemerintahan Presiden Susilo Bambang Yudhoyono
[2004-2014]

Disusun Oleh:



Introduction

This working paper specifically reviews and provides elaboration on the human rights conditions for the last ten years of President Susilo Bambang Yudhoyono's administration. In the first period, the vice president was Jusuf Kalla (elected Vice President for 2014-2019 with president elect Joko Widodo) while on the second term his vice president was Boediono.

Consistently holding the principle of obligation triage, KontraS believes that the state shall fulfill, protect and promote human rights. This also refers to the 1945 Constitutions, the Human Rights Law, Law on Human Rights Court, and other prevailing laws.

We have recorded that during President SBY's administration, the state's obligation in human rights is not optimally implemented. In general only human rights promotion that is well implemented during SBY's administration, which is reflected in the enactment of laws accommodating human rights principles. However there are also laws that are in contradiction with human rights such as the bill of National Security, Intelligent Law, and so on. The remaining condition does not show any progress instead it even regresses.

There are still some of his promises in law enforcement, either the ones he made during Presidential campaign or in respond to KontraS advocacy for the last ten years that have not been met.

His promises on human rights during presidential campaign period of 2004-2009 with HM Jusuf Kalla was: "To create the society, nation and State that uphold the rule of law, equality and human rights".

Meanwhile during his 2009-2014 period, Dr. H Susilo Bambang Yudhoyono now partnering with Boediono mentioned that they will improve the law enforcement, strengthen performance of police and prosecutor through reform across police and prosecutor's office, and improve the performance of police and prosecutor at the regional level through quick win program or through comprehensive structural improvement.

Furthermore, SBY-BOediono also promised that they will review and revise law enforcement laws including the provisions of police rights, law enforcement officers' reporting and services regulation; support the administration and budgetary reform at the Supreme Court and its subordinate judiciary institutions; consistent prevention and prosecution of corruption cases without being selective.

For two periods of Susilo Bambang Yudhoyono's administration there are four promises on law enforcement and human rights conveyed either to the public or media:

- a. First Promise on March 26, 2006, at the Presidential Palace. The President received victims representatives of Trisakti and Semanggi case, the 1984 Tanjung Priok case, 1989 Talangsari Lampung Case, the May 1998 Tragedy, and the 1997-1998 activists kidnapping cases. In that meeting he promised to prioritize the past gross human rights violation cases. He also promised that he would organize a meeting with the Attorney General as the prosecutor of gross human rights violation cases.
- b. Second promise is related to the murder of Munir Said Thalib. At the end of 2004 the President has stated that this case is a test of our history, and he also conveyed his commitment to support the disclosure of this case.
- c. Third promise is on constructive dialogue for Papua. So far this has not been realized, instead the government issued different policy, which interprets the complexity of Papua problem into merely economic problem. This is reflected in the establishment of Development Acceleration Unit for Papua and West Papua (UP4B).
- d. Fourth promise is related to the land reform. We still vividly remember how the President Susilo Bambang Yudhoyono (SBY) at that time delivered opening speech in 2007 in which he said that the government would implement land reform by redistributing land to poor farmers. His promises as reflected in his 2004-2009 and 2009-2014 visions and missions are far from different because in his second period the administration only continues the programs in first period. There are 5 (five) main pillars in SBY's vision and mission, one of these pillars is the economic development and welfare, which focuses on natural resources issue (environmental) and the objective is to improve the re-planting program, reforestation and carbon emission reduction¹. One of the SBY's promises to distribute 9.25 million hectares of land to farmers. The National Land Agency then named the program as National Land Reform Program [Program Pembaruan Agraria Nasional (PPAN)].²

On March 26, 2008 at the Presidential Palace, the President received representatives of KontraS, the victims of past human rights violations [Trisakti and Semanggi case, 1984 Tanjung Priok, 1989 Talangsari Lampung, May 1998 tragedy, and the 1997-1998 activists kidnapping cases]. In that meeting the President promised to prioritize the handling of past human rights violation cases. The president even promised to organize meeting with the Attorney General as the primary prosecutor of the past human rights violation cases.

¹http://mediacenter.kpu.go.id/images/mediacenter/VISI_VISI_MISI_SBYBoediono_FINAL_ke_KPU_25_Mei_2009_A4_.pdf, accessed On August 20, 2014

² Pidato awal tahun 2007 di TVRI (31/01/2007)

In that meeting, the President promised the victims of Talangsari Lampung to provide electricity and construct road in Talangsari III hamlet of Labuhan Ratu Village, East Lampung, but it is still not clear of the settlement. This situation ignited jokes among victims who often said that it is difficult to provide electricity let alone justice.

The second promise is on the murder of the late Munir Said Thalib. At the end of 2004, the President SBY has said that this case is a test of our history, and he also conveyed his commitment to support the disclosure of this case.

In the beginning of the process the President has established the Fact Finding Team for Munir case, but in the middle of its work the spirit somehow diminished. Muchdi PR the former 5th Deputy of the State Intelligent Agency walked out free; remission of Pollycarpus' sentence continued to increase; the investigation process is stuck; the Attorney General refused to review the case though new evidence is present; the Public Information Commission took BIN's side on information dispute with Suciwati; the legal evidences that emerged in court, which proved the correlation between Pollycarpus and Muchdi (BIN) practically vanished merely because the BIN's legal counsel denied it. The legal evidences were denied without showing solid evidences.

In regards to the third promise, which is on the constructive dialogue on Papua, it seems still far from realization, the government instead issued different policy that translates Papua's complex issues into merely economic issue. This policy is reflected on the establishment of Development Acceleration Unit for Papua and West Papua (UPB4). There is neither dialogue nor peaceful solution to solve any human rights violation case and other problems of the native Papuan people.

The condition is made worst with the fact that the national government continues to show "foolishness" in Papua land by issuing dualism policy. On one hand the national government has promised to develop dialogue and peaceful solution for Papua as well as to stay true in their commitment to stop violence, but on the other hand violence, shooting and criminalization against Papuan people persist.

Fourth promise is on land reform. We still vividly remember how the President Susilo Bambang Yudhoyono (SBY) at that time delivered opening speech in 2007 in which he said that the government would implement land reform by redistributing land to poor farmers. In his previous period of presidency together with his then Vice president Jusuf Kalla, he has also translated the idea into working programs. However in reality, it is not a land reform, instead it is Law on Land Procurement for Development Purpose, which is far from the spirit of the Main Agrarian Law Number 5 of 1960. There is no distribution of land for poor farmers, but seizure and eviction of indigenous land continue to impoverish farmers, which lead to dispute and violence. Lately these efforts are institutionalized on behalf of investment and development, which is the Master Plan for Acceleration and Expansion of Indonesian Development [*Master Plan Percepatan dan Perluasan Pembangunan Indonesia [MP3EI]*].

All of the above notes are taken seriously by the United Nations agencies: the Human Rights Council through 2012 Universal Periodic Review against Indonesia, Human Rights Committee on Civil and Political Rights in Indonesia in 2013, and also the Committee of Economic, Social and Cultural Rights in 2014.

I. Policies and Regulations that Disregard Human Rights

For the two period of Susilo Bambang YUdhoyono’s presidency (2004-2009 and 2009-2014), ideally his political policy should be based on bigger framework that support human rights, which is also a continuation of the previous administration’s policy as a mandate of Reform reflected in Presidential Decree Number 129 of 1998 on the National Human Rights Action Plan [RANHAM] that is followed by the Presidential Decree Number 40 of 2004 on 2004-2009 RANHAM issued during the last period of Megawati Soekarnoputri’s administration, and SBY himself issued a Presidential Regulation Number 23 of 2011 on 2011-2014 RANHAM.

Table 1 National Action Plan

NATIONAL ACTION PLAN ON HUMAN RIGHTS [RANHAM]		
Presidential Decree Number 129 of 1998	Presidential Decree Number 40 of 2004	Presidential Decree Number 23 of 2011
<ul style="list-style-type: none"> a) Preparation of ratification of international human rights instrument b) Information dissemination and education on human rights issues c) Setting priorities of human rights implementation d) Implementation of ratified international human rights instruments 	<ul style="list-style-type: none"> a) Establishment and Strengthening capacity of the RANHAM implementing institutions b) Preparation of ratification of international human rights instruments; c) Preparation of legislation synchronizing; d) Dissemination and education of human rights e) Implementation of human rights norms and standards f) Monitoring, evaluation and reporting 	<ul style="list-style-type: none"> a) Establishment and strengthening of RANHAM implementing institution b) Preparation of ratification of international human rights instruments c) Harmonizing bills and evaluation of legislation d) Human rights education e) Implementation of human rights norms and standards f) Public complaints handling service; and g) Monitoring, evaluation and reporting

KontraS has recorded that in the Presidential Decree Number 23 of 2011 on the 2011-2014 RANHAM, there are 12 human rights international instruments, which will have academic papers prepared and then ratified into national legislations, among others are:

No	Name of Instrument
1	Convention on the Rights of Persons with Disability
2	Optional Protocol to the Convention on the Rights of Persons with Disability
3	Rome Statue of the International Criminal Court
4	Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others
5	Convention on the Protection of Migrant Workers Rights and their Family Members
6	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
7	Optional Protocol to the Elimination of All Forms of Discrimination against Women
8	Optional Protocol on the involvement of Children in Armed Conflict
9	Convention relating to the Status of Refugees
10	1967 Optional Protocol relating to the Status of Refugees
11	Convention on the Prevention and Punishment of the Crime of Genocide
12	Convention on the Protection against Forced Disappearance

For 10 years of SBY presidency, of the 12 international human rights instruments to be ratified into Laws only 4 were passed, which are: 1) Convention on the Rights of Person with Disability; 2) Convention on the Protection of Migrant Workers' Rights and their Family Members; 3) Optional Protocol on the Involvement of Children in armed conflicts; 4) Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Two of the conventions were ratified in the 2004-2009 period, based on the Presidential Decree Number 40 of 2004, which are:

1. International Convention on the Economic, Social and Cultural Rights;
2. International Convention on the Civil and Political Rights

The SBY's administration not only fails to ratify some of the listed conventions, they also fail to implement the International human rights conventions. For the two period of his administration, his policy regime violates the civil liberty rights, among others:

- Based on the KontraS findings, there are 21 discriminatory bylaws³ that violate the freedom of religion and exercising one's faith, and the basis of these bylaws is the Joint Decree of Three Ministers (Minister of Religious Affairs, Minister of Home Affairs, and the Attorney General) on the Ahmadiyah Congregation Number 3 of 2008. Not only that the Joint Ministerial Decrees Number 8 and 9 of 2006 and the Law Number 1/PNPS/1965 on Religious Defamation
- The prevailing policies on capital punishment in the Penal Code are violation of rights of live. The absence of revision on the Law on Military Court and Penal Code remains to be the problem that creates uncertainty in the law and in meeting the sense of justice from the victims of violence perpetrated by the military personnel as well as the practice of abuse and violation of the rights of defendant.
- This law prioritizes the security approach rather than the violation of the citizens' political and social rights as reflected in the Law on Intelligent, Law on Social Conflict Management, Law on Civil Society Organization, and Presidential Instruction on Security Disturbance.

II. Legal Proceeding of Gross Human Rights Violation

Komnas HAM has done some investigations against gross human rights violations. These cases are the 1998 Trisakti Case, 1998 Semanggi Case, 1999 Semanggi Case, 1989 Talang-sari Case, the Kidnapping and Disappearance of Activists in 1997-1998, Wamena and Wasior Case, the Mysterious Sniper Case in 1980s, Mass Murder in 1965-1966, May 1998 Riot Case. However, the prosecutor in this case the Attorney General Office did not follow up the investigations.

- A. Seven times documents are going to and fro, SBY ignores the process
- During the course of 2004-2009, there has been seven times documents are going to and fro from the Attorney General to Komnas HAM;

³ See Chrisbiantoro [ed], Human Rights Violation and Gross Human Rights Violations in the cases of Freedom of Religion and Exercising One's Faith in Indonesia, KontraS and Solidaritas Perempuan [http://kontras.org/buku/Buku%20KBBB%20SP%20dan%20KontraS%20\[final\]2.pdf](http://kontras.org/buku/Buku%20KBBB%20SP%20dan%20KontraS%20[final]2.pdf)

- The reason why the Attorney General returned the dossier of examination to Komnas HAM is because Ad Hoc Human Rights Court was not yet established.⁴

B. Not implementing DPR Recommendations on the Forced Disappearance Cases

- On September 30 2009, the DPR RI has sent 4 (four) recommendations to solve the Force Disappearance Cases that happened in 1997-1998⁵. However, the recommendations are not yet implemented;
- ON April 2012, together with the victims' families, KontraS filed a complaint against the President to the Ombudsman of the Republic of Indonesia (ORI) for suspicion of mal-administration.⁶ Upon receiving KontraS report, ORI stated that "there has been undue delay in the solving of Forced Disappearance Cases of 1997-1998, which clearly constitutes a mal-administration behavior, and it has violated the principles of good governance."⁷
- ORI has sent two letters of clarification on the situation as recommended by the DPR and file a request to meet with the President, but the President did not respond the request and the request was ignored.⁸

⁴ The grounds for the return of document were discovered in a reply from the Attorney General's Office to KontraS, which was delivered by the Head of Legal Information Center as the Official in Charge of Information and Documentation Management B-210/F.2/Fd.1/03/2013 on KontraS' request to obtain document on the follow up from Attorney General Office to Komnas HAM's investigation against gross human rights violations. For the forced disappearance cases in 1997-1998, The May 1998 Riot, Talangsari Lampung Case, the AG said they are still waiting for the establishment of Ad Hoc Human Rights Court. And for the Trisakti, Semanggi I and Semanggi II, the AG said the cases have been tried in the Military Court. On the Wasior Wamena Case, 1965-1966 Case, and Mysterious Sniper Case 1982-1983, the AG said there has not been enough evidence.

⁵ It took a long time to issue DPR's recommendations, which are based on the investigation of the DPR Special Committee (2007-2009). The Special Committee has summoned representatives of Government, Komnas HAM, Victims' family, and other relevant parties, hence they issued four recommendations that the Presiden with his administration shall implement, whcih are as followed: Establish an ad hoc human rights court, conduct a search on 13 missing individuals, provide compensation and rehabilitation to the family of victims, and ratify International Convention on Anti Forced Disappearance

⁶ See KontraS open letter sent to the Ombudsman on April 27, 2014 with the families of victims of forced disappearance 1997-1998 http://www.kontras.org/index.php?hal=siaran_pers&id=1495

⁷ Ombudsman has conveyed their opinions to the President through 0160/KLA/0299-2012/AA-02/Tim.2/V/2012 on the claraification of forced disappearance cases in 1997-1998 as recommended by the DPR RI to the President

⁸ President through the Minister of State Secretariat has responded the letter sent by the Ombudsman to the Coordinating Minister of Political, Law and Defense. The letter B-86/Menko/Polhukam/6/2012 on the respond of Ombudsman's request of clarification did not comprehensively explain about the efforts that have been, are, and will be done by the President in implementing DPR recommendations.

B. Diverting Legal Settlement to Political Settlement

- President has ordered the Coordinating Minister of Political, Law and Defense to establish small team to Solve Gross Human Rights Violations.⁹ However to this end, it remains unclear of the follow up of this small team's work.¹⁰;
- President has ordered the Presidential Advisory Council on Law and Human Rights to compose a draft of solution to gross human rights violation. However upon completion of the draft, no follow up actions are taken.¹¹

C. Court's Verdict on the Recuperation of Victims' Rights is Not Implemented

- The Supreme Court's Verdict in 2012 on the Judicial Review of the Presidential Decree Number 28 of 1975 on the Treatment of People Involved in the Group C of September 30th Movement in 1965, has ordered the President to revoke the Presidential Decree, but yet he has not done it;

D. Forced disbandment of Discussion on 1965-1966 Event

- On February 16, 2014, the victim who was visiting one of the other victim's house in Semarang, Central Java, was forced to dissolve their meeting by the other CSO and the INP, hence they were apprehended and investigated at the Police department.¹²
- In 2012, the Association of Indonesian History Teachers (*Asosiasi Guru Sejarah Indonesia (AGSI)*) that was organizing a workshop or seminar on history was forcedly dissolved by Anti-Communist Front of Indonesia and the Police ignored it. During the

⁹ Tim Kecil Penanganan Pelanggaran HAM berat dibentuk melalui Surat Keputusan Menko-Polhukam dengan Nomor : SKEP-256/SES/POLHUKAM/09/2011. Tugas Tim Kecil tersebut adalah melaksanakan koordinasi dengan kementerian terkait yang berhubungan dengan kasus pelanggaran HAM berat dan konflik sumber daya alam dan hasilnya dilaporkan kepada Menko-Polhukam. Tim Kecil sudah melakukan 6 (enam) kali dengan korban namun tidak ada tindak lanjut yang kongkrit pasca pertemuan dilakukan.

¹⁰ Pada saat peringatan Semanggi I yang ke-14, keluarga korban Trisakti dan Semanggi melakukan aksi dan audiensi dengan Tim Kecil Penanganan Pelanggaran HAM berat Menko-Polhukam dan ditemui oleh Staf Ahli Menko-Polhukam dan Ketua Tim Kecil Menko-Polhukam. Dalam pertemuan tersebut keluarga korban menyampaikan masukan secara langsung agar Menko-Polhukam mengevaluasi kinerja Jaksa Agung yang telah lama mengabaikan hasil penyelidikan Komnas HAM dan meminta Presiden memberikan instruksi kepada Jaksa Agung untuk memulai melakukan penyidikan. Merespon masukan korban Tim Kecil Menko-Polhukam akan menyampaikan masukan tersebut kepada Menko-Polhukam.

¹¹ Berdasarkan Catatan Advokasi KontraS, pertemuan bersama Wantimpres dengan KontraS dan korban sepanjang tahun 2012-2013 telah dilakukan sebanyak 8 (delapan) kali untuk mendiskusikan penyelesaian pelanggaran HAM yang berat.

¹² Lihat siaran pers KontraS dalam merespons pembubaran paksa acara silaturahmi korban http://kontras.org/index.php?hal=siaran_pers&id=1849

period of 2009-2014 any meeting organized by the victims of 1965-1966 was always intimidated and terrorized.

B. Aceh Peace has forgotten the Helsinki's MoU Substances

- KontraS appreciated the SBY and Jusuf Kalla's administration in creating peace in Aceh, which was done through the signing of MoU on August 15, 2014 in Helsinki, Finland. The President also responded the tsunami disaster, which happened on December 26, 2004 very quickly;
- President did not implement the Helsinki's Aceh Peace MoU that has been recommended to the Government of Indonesia to establish human rights court, and truth and reconciliation commission in Aceh;
- DPR Aceh enacted the Aceh *Qanun* on the Truth and Reconciliation Commission on December 27, 2013 but the Minister of Home Affairs rejected the *qanun* with the reason that most of the articles in the *qanun* are in contradiction with the higher laws.¹³
- The victims experience very concerning situation. Based on KontraS visit to the victims community in 14 districts, they experience a lot of problems; insufficient access to health and education, intimidation and threat against the victims; prolonged trauma; uncertainty about the family members who were disappeared during conflict; most of victims' children are not able to get decent job or entrepreneurship trainings; most of them do not have proper shelter because their houses were destroyed during conflict, and they were forced to live with their relatives in makeshift condition.

III. Violation of the Freedom of Religion, Practice His/Her Religion and To be Adherence of His/her belief

A. Violation Against Religious and Faith Minority Groups

The violence and violation against religious and faith minority groups in Indonesia continue to happen

- At least for the last five year, the Ahmadiyah congregation is not the only group who experienced human rights violation, Christian group and Shiah adherences in Sampang Madura also experience similar situation.¹⁴

¹³ Mendagri dalam suratnya kepada Gubernur Aceh dengan Nomor : 188.34/1656/SJ perihal klarifikasi atas Qanun KKR Aceh No 17 Tahun 2013 tentang KKR Aceh menyatakan bahwa beberapa substansi Qanun dimaksud bertentangan dengan kepentingan umum dan peraturan perundang-undangan yang lebih tinggi.

¹⁴ Pernyataan Pers KontraS, *Evaluasi Kinerja Jenderal Pol Timur Pradopo sebagai alat ukur terhadap 12 program prioritas Kapolri Baru, Jenderal Pol Sutarman*. Dapat diakses di

Type of violations that occur:

- Violation against the rights to freedom of religion, be adherence of certain faith and practice religious belief.
- Violation against the right to justice/legal proceeding,
- Extra judicial killing ,
- Forced eviction
- Violation on the rights to education
- Violation on the rights to security
- Rights to justice
- Women's rights ¹⁵

Perpetrators

- Direct Perpetrators

Direct perpetrators are those who directly abuse/violate the minority groups, such as religious-based CSO, intolerant groups of people and etc. In some cases¹⁶ the police officers also abused or ignored the violence/violation perpetrated directly by the people [the intolerant groups of people].

- Indirect Perpetrators

The party who does not perpetrate/commit the violation him/herself but rather issuing discriminatory statements such as the ones made by state officials, and the fatwa issued by the Indonesian Ulama Council, which triggered the violence/violation against minority groups.

The passiveness of SBY administration against the law and human rights violations of the religious minority group in Indonesia

- The state and its institutions often blame the minority groups¹⁷.
- This passiveness is also reflected on the normative measures taken by the state institutions in preventing and handling violation against religious and belief minority groups.¹⁸

http://www.kontras.org/index.php?hal=siaran_pers&id=1792. Lihat juga Berita Media, *Kasus Sampang: Pemerintah Berpotensi lakukan kejahatan genosida*, ABC Radio Australia. Dapat diakses di <http://www.radioaustralia.net.au/indonesian/radio/onairhighlights/kasus-sampang-pemerintah-berpotensi-lakukan-kejahatan-genosida/1183930>

¹⁵ Lihat Chrisbiantoro [Ed], *Pelanggaran HAM dan Pelanggaran HAM Berat: Dalam Kasus-Kasus Kebebasan Beragama, Berkeyakinan dan Beribadah di Indonesia*, KontraS dan Solidaritas Perempuan, h. 65. Dapat diakses di <http://www.kontras.org/buku/kewajiban%20negara%20fix-1%282%29.pdf>

¹⁶ Lihat Laporan HAM Peristiwa Penyerangan Jama'ah Ahmadiyah Cikeusik 6 Februari 2011, KontraS, <http://kontras.org/data/laporan%20cikeusik.pdf>

¹⁷ Lihat "Menteri Agama Salahkan Ahmadiyah", 20 April 2012, Dapat diakses di <http://nasional.kompas.com/read/2012/04/20/19255662/Menteri.Agama.Salahkan.Jemaah.Ahmadiyah>

¹⁸ Dalam kasus Syiah Sampang, upaya rekonsiliasi yang sempat digagas tidak berjalan pada akhirnya karena Pemerintah Pusat dan Daerah saling melempar tanggung jawab sehingga mengakibatkan para pengungsi

- IN the period of 2004-2014, KontraS has received 14 written complaints¹⁹ on freedom of religion cases. Of the situation, KontraS has sent 56 letters to state institutions to urge them or push the state's institutions in settling the freedom of religion cases. However only 19 institutions replied the letters. Most of these responses came from Komnas HAM and INP

B. The Application of Discriminatory Regulations

Discriminatory regulations against minority religious groups at the National level

1. Joint Ministerial Decree [Minister of Religious Affairs, Minister of Home Affairs, and the Attorney General] Number 3 of 2008 on the Ahmadiyah Congregation in Indonesia
2. Law Number 1/PNPS/ 1965 on Religious Defamation
3. Law Number 23 of 2006 on the Population Administration: only acknowledges six religions [article 6]
4. Joint Ministerial Regulation of the Minister of Religious Affairs and the Minister of Home Affairs Number 8 of 2006 on the Guideline for the Head/Deputy Head of Local Government to Empower the Religious Groups Forum, and in the Construction of Religious Facility. This joint ministerial regulation was signed by the Minister of Religious Affairs M. Basyuni and the Minister of Home Affairs H. Moh Ma'ruf on March 21, 2006

The Discriminatory bylaws against religious groups at the local level

- KontraS has recorded and documented that during the period of 2005-2011 there are 21 [twenty one] bylaws issued by the Governor, Mayor and head of District that prohibit the Ahmadiyah congregation activities in their region.²⁰

The protection of religious minority is still very limited

- From legal accountability perspective, only limited number cases religious and belief-based violence proceeds to prosecution, and to those that are prosecuted they are only imposed with minimum charge²¹.

terlunta-lunta di GOR Kab. Sampang yang menjadi tempat pengungsian. Hal yang sama juga terjadi pada Jemaat Ahmadiyah yang sudah lebih dari 8 tahun menghuni tempat pengungsian di Wisma Transito, Ketapang – Nusa Tenggara Barat tanpa adanya kepastian dari Pemerintah, kapan mereka akan direlokasi

¹⁹ Pengaduan dimaksud belum termasuk dengan pengaduan yang bersifat langsung atau responsif

²⁰ Lihat Chrisbiantoro [Ed], *Pelanggaran HAM dan Pelanggaran HAM Berat: Dalam Kasus-Kasus Kebebasan Beragama, Berkeyakinan dan Beribadah di Indonesia*, KontraS dan Solidaritas Perempuan, h. 11-12. Dapat diakses di <http://www.kontras.org/buku/kewajiban%20negara%20fix-1%282%29.pdf>

²¹ Dalam kasus Tragedi Monas tahun 2007, pimpinan FPI [Rizieq Shihab] dan Munarman [Panglima Laskar Pembela Islam] hanya mendapatkan hukuman selama 1 tahun 6 bulan, Kasus Penyerangan dan Penganiayaan

- At the same time, law enforcement officers punish or prosecute the leaders of religious minority groups by using the religious defamation article against them such as what happened to Tajuk Muluk case, attack against Ahmadiyah congregation in ik²² and etc.

Suggestions and Recommendations

- It is important to conduct policy review on SBY's policies that are discriminatory against minority groups. The existence of discriminatory policies against minority groups have the tendency to trigger acts of violence against them
- Elected government has to ensure that the law enforcement officers impose firm sanction against the (direct or indirect) perpetrators who commit violence act, provoke, destroy and other violent acts against the minority groups. The legal sanctions are also applicable to the law enforcement officers who have been found guilty to partake in violent acts or omit the violent acts happening against the minority groups.

IV. Violations of Fundamental Rights

Reading the vision and mission of SBY administration for the period of 2009-2014 one of their priority programs is the Law Enforcement and Corruption Eradication Program, which include:

1. Strengthening Law enforcement;
2. Improve the performance and monitoring on police and prosecutors through reforming the sector;
3. Improve the performance of police officers and prosecutors at the local level through quick win programs or through comprehensive structural improvement in the police and prosecutors office;
4. Review and improve law enforcement regulations including rights of police, reporting requirements, and regulation on the services of law enforcement officers;
5. Support administrative and budget improvement at the Supreme Court and subordinate judiciary institutions; and
6. Consistently taking actions against corruption regardless who did it.

terhadap Komunitas Ahmadiyah di Cikeusik, Banten yang hanya divonis 3-6 bulan penjara terhadap 12 terdakwa, Kasus Penusukan terhadap Pendeta ST Sihombing di HKPB Ciketing yang divonis 5,5 bulan dan sebagainya

²² Dalam kasus Penyerangan terhadap Jemaat Ahmadiyah Cikeusik, Deden Sujana yang merupakan Kepala Keamanan JAI turut divonis selama 6 [enam] bulan penjara dengan tuduhan telah melakukan penghasutan dan penganiayaan terhadap para penyerang. Sementara itu, pelaku penyerangan dari FPI hanya divonis pidana selama 5 [lima] bulan penjara

However KontraS has noted that during 10 years of SBY administration there are still some violations of fundamental rights, such as:

First the implementation of capital punishment in Indonesia. According to KontraS documentation²³, during 2004 until 2009 there were 19 people prosecuted to death penalty by the Indonesian court. After the application of moratorium on capital punishment by the Government of Indonesia from 2008 until 2012, the capital punishment was no longer applicable in Indonesia. Unfortunately the moratorium policy only applied for 4 [four] years because the government revoked the moratorium in 2013. Since then capital punishment becomes one of the possible punishment imposed to defendant such as the one that happened to Ademi Wilson, a Maldives citizen who was executed on March 14, 2013 for narcotic case. Currently there are more than 130 prisoners awaiting death penalty [60 for narcotic case, 68 for murder, and 2 for terrorism case] in Indonesia who have been waiting for their execution for 10 years or more. Therefore considering that there are still some errors in applying capital punishment, the decision to impose capital punishment still needs to be criticized.²⁴

Facts on Capital Punishment in Indonesia

1. More than 200 Indonesian Citizens are facing death penalty in other countries.
2. As of 2012, there are 133 death penalty cases in Indonesia. 71 people for narcotic cases, 60 for murder and 2 for terrorism.
3. There are 41 foreigners from 18 different countries who are awaiting of their death penalty
4. IN 2012 there were 129 convicted people with death penalty. 50 of them from Nigeria, Australia, the Netherlands, England and US.
5. The cost of every death execution is Rp. 100 Million or equals to US\$ 10,310

Secondly the abuse and inhuman treatment continue to occur in Indonesia. In the last 4 (four) years alone, the case of abuse has increased significantly where police officers are still on the number one list of perpetrators of this abuse against civilians²⁵.

²³ Lihat Data Narapidana dengan Vonis Hukuman Mati, <http://kontras.org/data/hukuman%20mati.pdf>

²⁴ Dalam kasus Ruben Pata Sambo, Markus Pata Sambo dan Martinus Pata, ketiganya “divonis” melakukan pembunuhan terhadap pasangan Andarias Pandin, Martina La’biran dan dua orang anggota keluarga lainnya pada 23 November 2005 di Tana Toraja, Sulawesi Selatan. Dari ketiganya, Markus divonis hukuman mati oleh Pengadilan Negeri Makale Tana Toraja. Selama pemeriksaan/penyidikan di Kepolisian, korban diperlakukan sangat buruk; disiksa dipaksa mengakui pembunuhan, ditelanjangi, bahkan tangannya yang sedang patah menjadi sasaran penyiksaan tersebut. Dugaan rekayasa kasus terbukti ketika pada 30 November 2006, Agustinus Sambo dan dua pelaku lainnya memberikan keterangan tertulis bahwa Ruben dan kedua anaknya tidak terlibat dalam pembunuhan terhadap Andarias dan keluarganya. Selengkapnya dapat dilihat di http://kontras.org/index.php?hal=siaran_pers&id=1728, 13 Juni 2013

²⁵ Lihat “Angka Penyiksaan Meningkat, Aktor Semakin Meluas”, Laporan Praktik Penyiksaan dan Perbuatan Tidak Manusiawi Lainnya di Indonesia 2013 – 2014, KontraS, 2014

No.	Year	Police	Military	Correctional Officer
1.	2010 – 2011	21	31	7
2.	2011 – 2012	14	60	12
3.	2012 – 2013	55	10	35
4.	2013 – 2014	80	10	18

Source: KontraS Documentation

So far, KontraS has noted that the abuse and other degrading acts against civilians continue to happen; there is even a tendency to increase every year. Many factors contribute to the situation where among others are:

1. Law enforcement officers still prefer abuse as one of their methods of interrogation at all level of law enforcement process;
2. Punishment imposed to the perpetrators of abuse and cruel treatment is relatively low and tends to be more administrative punishment;
3. Victims or their family never receive any compensation and;
4. There is no regulation at the national level that stipulates punishment against abuse and other cruel treatment²⁶.



The increased abuse shows that government or the perpetrators' official institutions have no good intention to eliminate such practices in their institutions. From the advocacy that Kon-

²⁶ Ibid, hal. 6-7

traS has done on abuse cases, only one case in which the perpetrator was punished with criminal code in 2011 – 2012, 2 cases in 2012 – 2013, and there was no single case prosecuted in 2013-2014 2013 –2014.²⁷

Aside from the failing criminalization mechanism, KontraS also noted that the monitoring mechanism such as the ones performed by Komnas HAM, Ombudsman, Kompolnas, LPSK, and the Parliament is not being implemented. For 2014 alone there were only 11 complaints responded by the oversight institutions,²⁸ while the rest are not yet responded. In regards to the responses, KontraS has noted that the responses were only administrative responses; there were no preventive and further measures to the complaints.

Meanwhile on the institutional accountability, INP [considering that INP is still on the top of the list of perpetrators of abuse] tends to avoid from imposing punishment against their personnel who perpetrate abuse. It is proven by the fact that only four cases reported through internal mechanism in which the perpetrators received administrative sanctions.²⁹

Thirdly, the criminalization and staged case by the police. Criminalization against victims is influenced by many factors; one of the factors is limited skill of substantiation of a case, which leads to misapprehension and criminalization against innocent citizens. Criminalization also happens due to limited impartiality of the police officers hence certain parties with influence and ‘power’ can have their cases handled in expedite by the police. Though the victims may be proven innocent in the court, the police never initiate to recuperate or rehabilitate victims’ rights³⁰.

According to KontraS note³¹, there have been loopholes for staged cases for the last couple of years such as:

1. Civil case turned into criminal case, for example: debt cases turned into fraud, larceny or embezzlement; land dispute case between people versus corporation turned into crime of destruction or forced occupation of land/property.

²⁷ Laporan Penyiksaan KontraS 2013 – 2014 “Angka Penyiksaan Meningkat, Aktor Semakin Meluas” KontraS, 2014.

²⁸ Ibid

²⁹ Ibid

³⁰ Dalam kasus Syamsul Arifin dan Kasus Markus Amtiran, keduanya adalah korban salah tangkap dan penyiksaan oleh anggota Kepolisian. Tidak ada proses hukum terhadap pelaku dan korban juga tidak mendapatkan pemulihan dari institusi kepolisian

³¹ Lihat Siaran Pers KontraS, “POLRI, Hentikan Rekayasa Kasus!”, http://kontras.org/index.php?hal=siaran_pers&id=1836, 12 Januari 2014

2. Drugs-related case, since the police often conduct raids, the situation is prone to staged condition.
3. Murder or larceny case; in such case misidentification of perpetrators affects the whole investigation process because abuse is commonly applied in interrogation and limited access to legal aid for suspect.
4. "imposition" of a crime, for example the freedom of religion case such as the one happened to Priest Palti Pandjaitan in the dispute over the construction of Filadelfia Church, or against Deden Sunjaya who was turned into a suspect of abuse though he was actually defending himself [self defence].

There are three categories of community that is prone to staged cases and/or criminalization, which are:

1. Poor community, which is community that does not have or receive appropriate information
2. Middle class community, which is a community that has the ability to access information [on legal aid] but does not have any support or even in opposition with the network in 'power' hence they are still in risk of being framed in cases, with also risk of being blackmailed³²
3. Upper class community, which is a community that does not necessarily have the capacity to seek for information but have sufficient amount of financial support and access to power, hence they become the class served by law enforcement officers.

In KontraS Human Rights Report of 2012³³, criminalization and case staging practices often happened to farmers, workers, individuals and religious groups as what happened to Ustadz Tajul Muluk the Syiah Group in Sampang. The trend also leads to criminalization and framing of individual cases such as what happened to the case/verdict of Koh Seng Seng (Jakarta, 2012), Aguswandi Tanjung (Jakarta, 2012), Enny Umbas (North Sulawesi, 2012) and Paulus Demon Kotan (NTT, 2012)³⁴. In some cases the criminalization and fabricate cases end with victims' death arbitrarily.³⁵

³² Dalam kasus Sun Ang dan Ang Ho pada 10 Oktober 2012, keduanya dijadikan tersangka atas kasus dugaan pembunuhan pasangan suami istri pada tanggal 29 Maret 2011 di Medan. Selama Sun Ang dan Ang Ho menjalani proses pemeriksaan di Polresta Medan, keduanya diperas, diintimidasi hingga tindakan penyiksaan agar kedua korban mengakui sebagai pelaku dan otak pembunuhan

³³ Lihat Laporan Hak Asasi Manusia Tahun 2012 "Keadilan Macet, Kekerasan Jalan Terus", hal.18.

³⁴ Ibid

³⁵ Sebagaimana yang terjadi pada kasus Yusli, warga Kampung Bojong Keong, Kec. Rumpin, Kabupaten Bogor yang dituduh sebagai residivis pencurian kendaraan bermotor. Yusli tewas ditembak oleh anggota Polsek Cisauk, Kab. Tangerang pada tanggal 26 Desember 2011. Sebelum tewas, korban ditangkap oleh aparat kepolisian tanpa membawa surat penangkapan. Korban juga dianiaya dengan mata ditutup lakban, dipukul dan ditendang hingga tangan, kaki dan rahangnya patah.

In the last 10 years there has never been effective measures to prevent and overcome violations of civil rights such as torture, criminalization and fabricate cases that continue to increase every year³⁶. For example, the police officers that perpetrate crimes/stage up cases are not punished accordingly as reflected in some of INP's statements that tend to protect its members and institutions³⁷. The corrective mechanism done by Kompolnas and Komnas HAM does not function well considering that there are still some complaints from the people that were not responded by them, they only provided accommodative and normative responses.

Not only that very slow response from the State's institution is also another problem. KontraS has recorded that during the period of 2006 to 2014 of 45 documents [on torture cases] and 36 documents [on criminalization and case staging cases] that come in various forms such as urgency letter, the inquiry for Investigation Progress Report [SP2HP] and request made to the state's institutions to urge for the resolution to cases as well as to take preventive measures for torture, criminalization, and fabricate cases, only 17 letters [for torture] and 14 letters [for criminalization and fabricate cases] responded by the relevant institutions.

Of all violation against civil liberty, the perpetrators are mostly dominated by the state personnel who have bigger authority such as police officers and military personnel; these violations are often done in certain locations such as the Police Department, Military institutions, police/military operational vehicles, public spaces, and less accessible places, places of detention/correctional institutions.

It is highly recommended that the government to prioritize law enforcement agenda in regards to the violation of fundamental rights. Law enforcement should also be followed by comprehensive reform on police and military institutions. In regards to regulation, up to today there has never been a revision on Penal Code and Penal Procedural Code especially on articles about the sanction against torture and other cruel treatment. Therefore the subsequent government should think of other strategy by composing a separate draft of Anti-Torture law, which implements all provisions in the Convention Against Torture that covers not only about the definition but also reparation for victims and their families.

V. The Bleak Future of Papua

³⁶ Lihat Laporan Situasi Penyiksaan di Indonesia 2013 – 2014 “Angka Penyiksaan Meningkat, Aktor Semakin Meluas, 2014, Dapat diakses di http://kontras.org/data/Final%20Penyiksaan_OK.pdf

³⁷ Dalam kasus kematian Aslim Zalim di tahanan Polres Baubau, Sulawesi Tenggara setelah sebelumnya direndam oleh aparat kepolisian, pihak Polda Sulawesi Tenggara saat itu lebih memilih untuk bertempur di media untuk menyatakan anggotanya tidak bersalah daripada memaksimalkan usaha untuk menempuh mekanisme koreksi untuk menguji dugaan rekayasa yang ada.

- The SBY administration chose to issue policies on development and economy such as Government Regulation in lieu of the Laws [PERPU] Number 1 of 2008, which was revised from the Law Number 21 of 2001 on Special Autonomy.
- The approach is mainly focused on development, and it has been emphasized to establish the Unit of Development Acceleration for Papua and West Papua [UP4B] as required by the Presidential Regulation Number 66 of 2011 though in implementing their task, they have to prioritize the relevant task and function to Politics³⁸, Law and Human Rights³⁹ as well as Defense⁴⁰, but in reality it is not always like that.
- In KontraS record during SBY administration, there are at least 264 [two hundred and sixty four] violence cases where the victims injured are 863 [eight hundred and sixty three], while 54 [fifty four] people died.⁴¹ Victims are from civilians, military personnel and police officers.
- Meanwhile on the mysterious shooting for the period of 2009-2012, KontraS has noted that there has been at least 43 cases of mysterious shootings in Papua, and no legal proceeding take place especially in Freeport area.⁴² The government and the Military/INP accused OPM as the one behind these shootings in Papua.
- Meanwhile on the freedom of expression during Susilo Bambang Yudhoyono's administration KontraS has noted that there were 55 political prisoners [2004-2012] who were accused of treason while exercising their freedom of expression [Peaceful rally, Papuan People Congress, raising the flags].⁴³
- In terms of peaceful dialogue, he only responded by his speech in 2010 before the Parliamentarians, "the government will continue to build constructive communication in creating better Papua". However, it remains unclear of his definition of communication.

³⁸ Mendorong dan memastikan Peraturan Pemerintah (PP), Perdasus dan Perdasi sebagai jabaran dan instrumen UU No. 21 tahun 2001 dapat diwujudkan dan seluruh kehendak yang telah ditetapkan UU Nomor 21 tahun 2001 diimplementasikan oleh seluruh stake holder, komunikasi konstruktif dengan semua elemen masyarakat dan dialog tentang Papua dapat dilaksanakan.

³⁹ Mendorong dan memastikan penegakan hukum dan penghormatan terhadap HAM dapat dilaksanakan, politisasi kasus-kasus kriminal tidak terjadi dan kasus-kasus korupsi dapat didorong untuk ditangani menurut ketentuan perundangan penanggulangan korupsi secara benar.

⁴⁰ Mendorong dan memastikan bahwa kekerasan tidak terjadi lagi di Papua, penegakan hukum dapat ditegakkan tanpa melampaui batas-batas kepatutan, serta pengelolaan keamanan di Papua dijalankan sesuai dengan sistem perundangan baik yang terkait dengan Polri maupun TNI.

⁴¹ Dokumentasi KontraS

⁴² Lihat Siaran Pers KontraS 12 Juni 2012 http://kontras.org/index.php?hal=siaran_pers&id=1526

⁴³ Dokumentasi KontraS

VI. Natural Resources

- In reality SBY administration did not distribute land to grass root farmers/people (land reform), but they rather rip off people's land and sell them to the investors that are legalized through contradictory policies such as the Law Number 26 of 2007 on Spatial Planning; Law Number 4 of 2009 on Mineral and Coal Mining; Law Number 2 of 2012 on Land Acquisition for the Public Interest Development, MP3EI, and etc.

The policy is very detrimental to the society and farmers, which increases the number of grass root farmers, expands natural resources conflict, and land seizure. The evidences are based on the Land Reform Commission, which documented the land conflict from 2004-2013. There were 987 cases, and there is even a significant increase in 2013 for 369, while in 2012 the cases were increased for 198 cases. The situation in conflict area is also awestruck to us, where the area of conflict in 2012 was 318,248.89 hectares and in 2013 the area expanded to 1,281,660.09 hectares, and between 2004 and 2013 or during SBY administration the total area of conflict is 3,680,974.58 ha.⁴⁴

- The new policy issued during SBY administration, the MP3EI [Master Plan for Accelerated Development of the Indonesia Economy for 2011 to 2025 through Presidential Regulation Number 31 of 2011] by mapping out the 6 corridors/economic development zone, which include the Region of Sumatera, Java, Kalimantan, Sulawesi, Bali-Nusa Tenggara, Papua and Maluku. There are 8 primary programs, which include agriculture, mining, energy, industry, marine, tourism and telematics. Currently the impact of MP3EI policy started to creep in especially with the expansion of Merauke Integrated Food and Energy Estate in Papua by ripping off local lands. Similar situation also happened in Karawang where the private sector acquired public land through partially occupies the land without the locals knowing it. This policy will sustain large corporation domination, which will nurture food liberalization that will increase risk of food scarcity. The MP3EI implementation does not include human rights, hence it is still far from people's welfare especially when complaints mechanism for affected population is absent.
- Bad natural resources management has created illegal land occupation, discriminatory practices perpetrated by law enforcement officers in land conflict situation, omission from bureaucracy especially when the owner wants to apply for land certificate. As of September 2013, BPN has recorded that there were 4,223 cases, which consisted of unresolved cases in 2012 for 1,888 cases and 2,335 new cases. There are 2,014 resolved cases or 47.69% distributed across 33 provinces in Indonesia.⁴⁵

⁴⁴ Laporan akhir tahun KPA, 2013

⁴⁵ <http://www.bpn.go.id/Publikasi/Data-Pertanahan/Kasus-Pertanahan/Nasional>

- The natural resources policy has also triggered human rights violation and poverty gap, difficult economy and social access. The human rights violations comprise of forced land acquisition, criminalization of legal aid providers and the people, violence perpetrated by law enforcement officers, intimidation to murdering people who refuse to give up their land, as well as the absence rehabilitation on their exploited lands. The situation is clearly described in Komnas HAM data; around 4,000 cases of human rights violation reported to the institution since 2009, 62 percent or 3,000 of these cases were land dispute and environmental cases. The number of cases continues to increase every year. There were 35 farmers who were criminalized in the conflict (arrested, detained, convicted and imprisoned for fighting for their rights). 68,472 families were evicted (or 273,888 people), and 18 died of the conflict. Of 144 human rights violation cases against farmers documented in 2011, 103 were actually old unresolved cases. In 2011 there was new 41 cases with the majority of cases is dispute over land and territorial rights (17 cases), rights to determine the market price of their agricultural products (11 cases) and violation of other rights (13 cases).
- In regards to the type of perpetrators, it ranges from Police officers, military personnel, bylaw enforcers (satpol PP), entrepreneurs, employees, thugs, unknown individuals, and private security forces. Police officers come on top of the list as the perpetrators of natural resources conflict. Furthermore the type of activities also varied: criminalization, intimidation, torture, apprehension, destruction, clash and shooting. The most frequent clash according to KontraS record happened in 2013.⁴⁶
- The advocates who defend victims of land conflict or known as the Human Rights defenders also experience human rights violation. The human rights violations comprise of arrest, detention, intimidation, fabricate cases, criminalization, terror, destruction, etc. The most common form of violence is entrepreneurs who gave out order to government/law enforcement officers to violate human rights by arresting and detaining the farmers using reason of provocation with the hope to mitigate the conflict from expanding. Moreover the judiciary is only seeing the normative of a land dispute case and cases involving the people and the advocates hence lead to criminalization
- From the received complaints on human rights violation in natural resources sector, KontraS also advocates to various institutions such as the Komnas HAM, Ombudsman, INP, Kompolnas, and other state's commissions in order to get legal certainty and justice for the victims as well as to seek out restitution of their damage. KontraS has sent letters to 84 institutions since 2006 but only 48 were responded, this substantiate the fact that SBY administration is weak.⁴⁷

⁴⁶ Laporan Akhir Tahun KontraS 2013.

⁴⁷ Data Sekretaris KontraS sejak 2006-2014



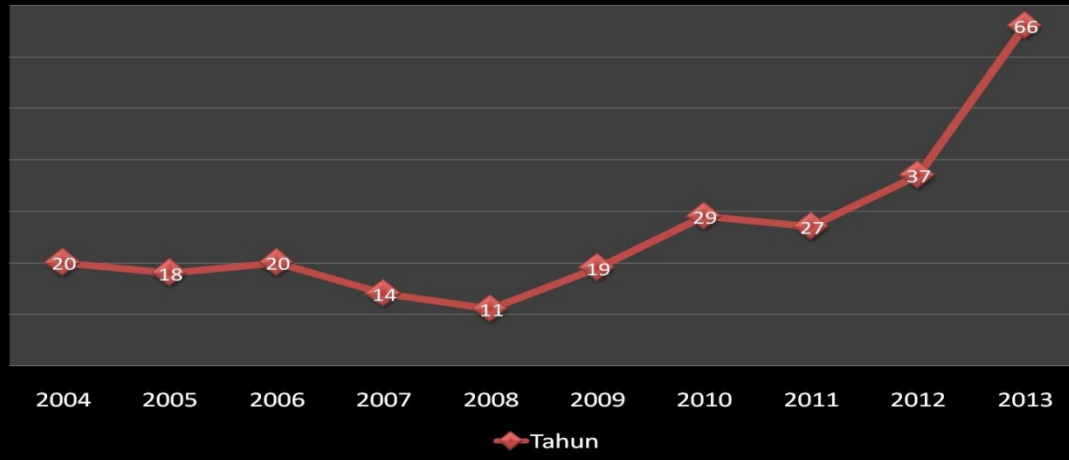
VII. Human Rights Violation in Anti-Terror Operation

Since Special Detachment was established nine years ago, KontraS has recorded in numerous INP operations, this force has allegedly violated laws and human rights where the forms of violations are:

1. Excessive use of force, which killed the accused;
2. Violation on rights of security from the people;
3. Shooting innocent civilians;
4. Torture and other inhuman treatment;
5. Forced apprehension and detention, and also misapprehension of individual

Based on KontraS observation and investigation, there are at least 261 incidents on abuse of power done by the Anti-terror special Detachment of 88. The number of incidents are as followed:

Operasi Pemberantasan Terorisme Oleh Densus 88 Sepanjang Pemerintahan SBY



VI. Conclusion

Based on KontraS working experiences and issues that KontraS has been focusing around, during SBY's 10 years in power, we have noted:

1. There is a positive development during SBY administration such as communication in the effort of justice seeking. Freedom of expression is also somehow more respected during SBY administration.
2. Negative things that occurred during SBY administration;
 - a. Consistent discrimination against minority group. From perpetrators' side, SBY is seen as tolerant on the uncivilized organization that perpetrated violence and spread hatred against minority group.
 - b. Normative firmness (verbally expressed statement) is sometimes expressed in various situation, as the ones mentioned in this report such as on Papua, past human rights violation, and land distribution. But these firm statements are not implementable and/or far from the prevailing legislation in which he enacted.
 - c. Even if there is firmness in security, it will discriminatory, partial and uncontrollable in practice. The state is very firm in handling terrorism issues and they obtained foreign assistance in doing so—they even established the Jakarta Center of Law Enforcement Cooperation and employed very sophisticated technology. However these sophisticated and advancement of technology is not employed to protect the minority. They are applied uncontrollably on behalf of law enforcement. Many actions have been taken but often spiraled out of control, hence cause violation of human rights, and they refuse to be corrected accountably.
 - d. During SBY period there has never been any efforts to enforce laws on human rights violation cases. However SBY repeatedly mentioned that no gross human rights violation occurred during his presidency, denying the facts of systematic human rights violation. Moreover this attitude brings bad implication to past human rights violations as if these problems have been resolved.
 - e. As the consequences of those situation: perpetrator of violence tend to be acquitted, especially the primary perpetrators (such as Prabowo Soebianto, Hendro Priyono, etc), while the field perpetrators are being prosecuted and the prosecution is far from credible such as what happened to the abuse in Jaya Wijaya and Cebongan case; victims are traumatized and lost in court; disappointment continues to emerge.
 - f. No rehabilitation for victims and society. Judiciary and security reform is not well implemented.

Annex: UN Recommendations for the improvement of human rights in Indonesia

1. 2012 UPR Recommendations⁴⁸ and Recommendations of Human Rights Committee in 2013

In 2012 the second round of Universal Periodic Review on Indonesia's performance has been conducted in Geneva, Switzerland on May 23, 2012. In that evaluation hearing, Indonesia was strongly scrutinized as the bad protection of fundamental rights. Of all recommendations, Indonesia rejected 30 recommendations and accepted 150 recommendations. One of the rejected recommendations is on the opening up access for journalists or civilians to Papua. Government rejected this recommendation because the security in this area is still not conducive especially for foreign journalists, and government feels obliged to provide security assurance in that area. The next recommendation to reject is on the annulment of Religious Defamation Law. Government argues that this law is still relevant to Indonesia's constitutions even after the judicial review of the law in 2010.

Meanwhile in 2013 in the concluding observation of the Convention of Civil and Political Rights, which has been ratified by the government of Indonesia in 2005, the UN Committee of Human Rights has stated that the implementation of this convention has not yet been synchronized with the national legislations and show a lot of inconsistency with the convention. Committee also concluded that the law enforcement officers still have limited knowledge about this convention hence the implementation is still far from effective. This UN notes affirmed the fact that SBY has tried hard to develop his international image, but he failed and national human rights political situation strongly influenced his efforts. The UN Human Rights Committee provided 29 recommendations that call Indonesian government to improve the fulfillment of civil and political rights in specific issues such as on past human rights cases that are clouded with impunity. In their final conclusion the UN Human Rights Committee has asked the government to provide sufficient information on the implementation of recommendations of forced disappearance cases in 97/98, the murder of Munir, elimination of capital punishment, and the Law Number 1 of 1965 on religious defamation for one year.

Some of the recommendations from Human Rights Council and Human Rights Committee are:

Papua Case

After the Universal Periodic Review Indonesia Hearing, in their 2012's recommendation, the UN Human Rights Committee has reminded Indonesia to take correct steps in improving the Human Rights Defender protection, especially in Papua, in order to fight against any actions toward stigmas, intimidation, and attacks. And also to guarantee protection for freedom right and peace expression action, including through policies review used to limit freedom of political expression right, and also article 106 and 110 of Criminal Code, and to guarantee accountability of the entire state officials responsible for any human rights violation occurring in Papua.

⁴⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/17/PDF/G1215017.pdf?OpenElement>

UN Human Right Committee added in their conclusion from an observation conducted in 2013 that they regret the government's decision to continue policy on civil freedom right in Papua. The committee has asked the government to take any particular steps to guarantee that the restriction toward the freedom of expression in Papua created by the government, and convention, and also to ensure that freedom of holding peace gathering and peace protest action conducted by protesters will not be responded by violence and intimations from the law enforcer. Government has the obligation to conduct cases investigation and file a suit for anyone involving in the freedom right restrictions.

Convention Ratification

In line with National Action Plan and Human Right (RANHAM), UN Human Right Committee also has recommended Indonesia to consider the Rome Statute ratification or International Criminal Court (ICC), Optional Protocol of the Convention Against Torture (OP-CAT) and The International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

Torture :

In its conclusion in UPR, 2012 and Civil and Political Rights Implementation Hearing on 2013, Human Rights Council and UN Human Right Committee have similar point of view to recommend Indonesian Government to accelerate the Criminal Code revision by including the definition of torture in liaison with article 1 CAT. Furthermore, the government must guarantee the existing law, provide proper investigation and compensation for the victim, and also prosecute the suspect. These may be done by ratifying OP-CAT to define torturing action as a crime than can be legally punished, and also to ensure that the actor can be defined as a criminal who performed human rights violation. To take proper actions in order to ensure that any human rights violation action, which also performed by security actor, is investigated thoroughly, and the one who is considered as taking the responsibility on such action will be legally prosecuted through fair and impartial trial.

Death Sentence:

UN Human Right Committee regrets the Indonesian Government postponing the death sentence (de facto moratorium) issue, and asks the Government to review death sentence abolition by ratifying Second Optional Protocol, or by reviewing illegal drugs criminal considered as serious crime followed by death sentence.

Civil Society Correlation:

UN Human Right Committee has also recommended the government to enhance partnership with National Human Right Commission, and civil society, in order to create better coordination in planning and implementing programs and activities, and National Human Right's programs among the stakeholders.

Violation toward Basic Rights

Regarding to basic rights, UN Human Right Committee has recommended in 2012 to review the existing law and policy, and to amend them if necessary, in order to ensure its compatibility with religious right, in line with Indonesian Constitution and its international obligations. Second, is to ensure that all ministers' regulations concerning on religious life, and all local policy in liaison with international human rights law. Third, to conduct training and awareness campaign for provincial and municipality's officials in order to respect any law concerning on religious defamation and other rights of adherent of the religion. Forth, to ensure freedom for being religious and to respect the minority societies' rights. Fifth, to investigate and to file a suit to all cases related to sexual harassment and minority religion and atheism discrimination. Sixth, to take necessary action in protecting religious groups, including Ahmadiyah, Baha'i, Christian, and Syiah from any interruption and violence actions. This must be started from the accountability of law enforcer in performing their tasks, including effective steps actions in responding those violence actions, and review any law and regulations which are discriminating one person's religious view, direct or indirectly, such as blasphemy law. In 2013, the Human Rights Committee also pushed the Government to take necessary actions to victims who had been violated because of his religious view, and also conduct investigation the suspects attacking such groups, and to ensure that the victims receive proper compensation, and the government is expected to withdraw Law No. 1/ 1965 about blasphemy, because it is not in line with Covenant principles to respect trust and every person's religion. The Commission also recommended the country to provide proper protection for minority religion's adherent.

Impunity Case

UN Human Rights Committee sternly pushed the Indonesian Government to immediately find solutions for Human Right Commission and Attorney General, and by forming Human Rights Court to investigate forced disappearance cases occurring in 1997/1998, in liaison to 4 recommendations issued by The House of Representative, and request a settlement on a murder case of Munir Said Thalib by litigate other suspects to the court, and pay compensation money to the family's victim.

Government must also take concrete steps to avoid excessive force. The committee request cooperation from the National Police Force to work effectively in solving cases related to violation performed by the law enforcer. Government is also asked to eradicate impunities performed by law enforcers, such as non legal murder cases.

Community Organization Law:

UN Human Right encourages the government to review the Community Organization Law approved by the Parliament, because it is not in accordance to civil and politic convention.

2. Ecosoc Committee Recommendation (2013)

In Concluding Observation after economy, social, and culture right implementation hearing review, **Ecosoc** committee has asked Indonesia to improve several sectors which direct and indirectly involved to the **Ecosoc** rights. According to our assessment, as noted be-

low—part of Concluding Observation Komite Ecosoc— is needed to be considered because they are adjustable with the condition in Indonesia. Some of which are:

a. Indonesian Government review the law, regulations, and practices in mining and horticulture sector. Indonesian government needs to provide legal aid to local communities affected by those sectors during extractive projects consultations to ensure the comprehensive information and forceless agreement, and also ensuring that license agreement is in accordance to human rights principles, and to cancel illegal permits.

b. Indonesian Government involve in an intensive dialogue with human rights activists, and protect them from any attempts on violence, intimidations, and molestation..

c. UN Human Rights Committee has asked the government to review landlord's policies with correct supervision and encouraging dispute settlement related to the existence of land certificate, avoiding regulations causing the community prone to land force possession practices, facilitating land certification issuing procedure in low cost, and also ensuring the involvement of national human rights institutions and civil society.

d. Indonesian government to paralleling regulation on force land eviction with the international standards.

e. Indonesian government to define the People's Customary Law and to determine self identity principle, including to ensure their absolute right to posses, to develop, to master, and to use land or their resources, and also provide proper compensation, and effective relieve process related to the occurred human rights violation.

10 Years Ruling for SBY Human Rights is Meaningless, Lesson Learned For Jokowi

Based on Kontras working experiences and issues spreading, during SBY's period the last 10 years, we have recorded that there were positive things occurring such as communication as an effort to search for justice. He also allow the public to express their thought.

Meanwhile, the negative things categorized as follows:

1. Consistency on discrimination toward certain minority groups. SBY gives tolerance to those who perform violence toward minority groups.
2. Normative stern action [Statement, verbal] SBY is sometimes take action in several human rights violence occurring in Papua, some of cases occurring in the past, and some cases related to land distribution. However, the implementation would be different with what he had said earlier.
3. The security action is considered as discriminative, partial, and uncontrolled. He took serious action in eradicating terrorism by cooperating with foreign countries and he established Jakarta Center Law Enforcement Cooperation, using advanced and updated technology, however, this has never been applied for the minority group protection. The security action is also uncontrolled which then cause human rights violation, and he also refused to be criticized.
4. During SBY period, no law enforcement applied for any case related to human right violation. SBY uses this situation-in some circumstances- saying that there was no serious human rights violation occurring in his era. Furthermore, he also tend to forget any cases related to human rights violation occurring in the past.
5. The result is; human rights violation mind masters who live free from punishment (such as Prabowo Soebianto, HendroPriyono, etc.). The one who received the legal sanction is the perpetrators performing the action based on their orders; notwithstanding the fake legal action such as torture cases occurring in Jaya Wijaya and Cebongan.; the victim is currently live in trauma and defeated in demanding justice; disappointment is spreading.
6. The condition of the victim and the community cannot be relieved thoroughly. Justice reformation is not running smoothly.

We, representing Kontras, has asked the new elected President and elected Vice President, JOkowi and Jusuf Kalla to pay serious concern for human rights matter. We also recommend them to handle cases related to human rights violation occurring in the past, murders, land right protection, and professional law enforcement. We suggest the following points for them;

1. Never assign someone who is currently involve in Human Rights violation cases in a team which may affecting the work agenda, and also in his government structure.

2. To establish Human Rights Violation Settlement Committee- we proposed this draft to President SBY through his Presidential Special Staff, Prof. Denny Indrayana in 2010. The objective of this Committee is to encourage legal process for any cases postponed by the Attorney General Office.
3. To establish National Committee for Agrarian Dispute Settlement, in order to settle any disputes related, to freed the environment activists arrested from their advocacy activities, and to compose recommendation of land distribution for long term prosperity and justice, and environment preservation. Also to evaluate MP3EI (Master Plan of Indonesia Acceleration and Expansion Economy Development)
4. To ensure the Politic, Law and Security Minister, Religious Affair Minister, Law and Human Rights Minister, the Attorney General, the Defense Minister, Land Minister, and State Land Agency (BPN); to run a feasible study in human rights issue and concern with humanity, justice, and peace issues. We also suggest the Law and Human Right Ministry to select an official who comprehend human rights issues.
5. To open Final Report of MUNIR Facts Search Team to the public. As being mandated by TPF MUWir Presidential Decree.
6. To ask the Human Rights National Commission and The Indonesian Police Force Head to immediately work together to compose facts regarding to religious defamation, and arrange plans to follow up the matters.
7. To ask the new Law and Human Rights Minister to immediately compose work plans and cancellation process for any regulations violating human rights principles, as regulated in 1945 Constitution.
8. To immediately form security and law enforcer team in Papua, in order to integrate the security actions.
9. To immediately form Human Rights Court in Aceh and Papua.

Demikian,
Jakarta, 23 Agustus 2014
Badan Pekerja KontraS

Haris Azhar
Koordinator