

Study on the Situation of Human Rights Defenders in Indonesia

# **The Absence of Human Rights Protection of Human Rights Defenders in Indonesia**

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## CHAPTER I – INTRODUCTION

Human Rights Defenders is not an alien term in Indonesia. The transition from authoritarian administration of the New Order to democracy witnessed the pivotal role of individuals including Munir Said Talib, a Human Rights activist, Marsinah, advocate for rights of labor, Udin, journalist working to voice truth, and many more.

The list goes on with contemporary names of Human Rights Defenders from various backgrounds fighting for issues related to Human Rights. Among them are Anwar Sadat, advocate for rights of land in South Sumatera, Eva Bande, advocate of rights of farmer in District Banggai, Central Sulawesi and Theys Hiyo Eluay, Papuan customary leader tirelessly working to voice various Human Rights violations in Papua.<sup>1</sup>

Unfortunately, the contribution of Human Rights Defenders has not been recognized. They do not receive protection and legal guarantee that they deserve. In fact, many of them become victim of murder, coerced disappearance, forced detention, and other violations of rights.<sup>2</sup> This writing set forth to describe the situation of Human Rights Defenders in Indonesia by scrutinizing the following:

- a. What are the forms and patterns of Human Rights violations and threats experienced by Human Rights Defenders?
- b. How is the mechanism to protect Human Rights Defenders in the context of Indonesian law and legal system?

This study employs both qualitative and quantitative analysis of data collected from the long journey of KontraS advocating for enforcement of Human Rights in 2014. The findings are organized and analyzed by our monitoring and documentation team to provide indicator in explaining to what extent have the concept of protection for Human Rights

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<sup>1</sup>See KontraS report, *Hak Asasi Diakui, Tapi Tidak Dilindungi: Catatan Hak Asasi Manusia dimasa Pemerintahan Presiden Susilo Bambang Yudhoyono [2004-2014]*/Human Rights: Acknowledged yet Not Protected. Human Rights in Susilo Bambang Yudhoyono Administration (2004-2014), KontraS. The report is available at <http://kontras.org/data/Catatan%20Kondisi%20HAM%20-%202010%20tahun%20SBY.pdf>

<sup>2</sup> See press release, *Hentikan Kriminalisasi dan Berikan Jaminan Perlindungan Terhadap Kerja-Kerja Pembela HAM di Papua/Stop Criminalization against Human Rights Defenders and Protect Their Work in Papua*. The press release is available at [http://www.kontras.org/index.php?hal=siaran\\_pers&id=1945](http://www.kontras.org/index.php?hal=siaran_pers&id=1945), See also, News, *KontraS: Vonis 4 Tahun Eva Ancam Pejuang HAM/KontraS: 4 Years Verdict against Eva Threaten Human Rights Defender*, Gatra News, May 18, 2014. The news is available at <http://www.gatra.com/hukum-1/52923-kontras-vonis-4-tahun-eva-ancam-pejuang-ham.html>

Defenders been realized in Indonesia. Literary study on several International Human Rights documents is provided to frame and analyze the findings.

KontraS expects that this study of violence against Human Rights Defenders analyzed through the framework of International Human Rights Law will be able to provide recommendations to advocate Human Rights in Indonesia both at home and abroad. This study is also expected to be able to enrich insights of the government of Indonesia in implementing policies and promoting protection and fulfillment of principles of Human Rights in the country.

## CHAPTER II – HUMAN RIGHTS DEFENDERS IN FRAMEWORK OF INTERNATIONAL HUMAN RIGHTS LAW

### II. 1 Conceptual Framework of Human Rights Defenders

Since early 21<sup>st</sup> century, principles of Human Rights have been acknowledged as universal norms by the majority of nation-state. Universal Declaration of Human Rights (hereinafter UDHR) 1948 has been adopted as the main paradigm in most of United Nations mechanism. This mainstreaming of Human Rights was immediately followed by ratification of two primary instruments of International Human Rights namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights by many of UN member countries. The ratification carries with it responsibility of the nation-state to advance protection of the Human Rights of its citizen. However, many academic studies show that there are more countries committing excessive violations of rights compare to countries providing protection and acknowledgment of rights.<sup>3</sup>

Several sample cases show the disparity between formal recognition and its realization in policy. There are still many countries failing to comprehensively use Human Rights as coherent medium providing protection of their citizen. In a more specific context, Human Rights violations are not only directed toward the vulnerable and marginal, but also to Human Rights Defenders, those fighting to advance protection and fulfillment of Human Rights.

In situation where principles of Human Rights are reduced into diplomatic agenda of many states, experts on International Human Rights Law proposed to formulate standards of protection of Human Rights Defenders as specific indicators to measure and evaluate advancement of protection of Human Rights in a country.<sup>4</sup>

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<sup>3</sup> Todd Landman, *Measuring Human Rights: Principle, Practice, and Policy*, in *Human Rights Quarterly* 26 (2004), p. 907.

<sup>4</sup> *Ibid*, p. 916. This fact finds confirmation in reports of UN Special Rapporteur on Human Rights Defenders on evaluation of 10 years of adoption of International Declaration on Human Rights Defenders. Mrs Margaret Sekaggya (the United Nations Special Rapporteur on the situation of human rights defenders), Mrs Reine Alapini-Gansou (the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights), Mr Thomas Hammarber (the Commissioner for Human Rights of the Council of Europe), Ambassador Janez Lenarčič [Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)], and Dr Santiago A. Canton (the Executive Secretary of the Inter-American Commission on Human Rights), "Ten years on, human rights defenders continue to pay a high price", Geneva, December 9, 2008 in 10 years anniversary of Declaration on Human Rights Defenders. See:

The availability of both legally binding and non-legally binding Human Rights norms provide acknowledgement to the protection of those specifically working for Human Rights referred to as “Human Rights Defenders.” The definition of Human Rights Defenders (hereinafter HRD) was officially introduced on December 9, 1998 at the 50<sup>th</sup> Anniversary of Universal Declaration of Human Rights, through resolution of UN General Assembly passing the *Declaration on the Right and Responsibility of Individuals and Organs of Society to promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* or more popularly known as Declaration on Human Rights Defenders. The declaration is non-legally binding and explicitly recognizes the role and involvement of non-government actors to support protection and fulfillment of Human Rights. It is specifically asserted in Article 1 of the Declaration as follows:

*“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”*

This article indicates that HRD are those working individually or collectively working to protect Human Rights. Their endeavors shall be performed in peace and are not abused to justify violence. It is explained in Article 12 (1) of the Declaration that:

*“Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.”*

A person may be considered Human Rights Defenders if he/she recognizes the universality of Human Rights and does not discriminate one right to another. A person will not be considered as Human Rights Defenders if he/she only acknowledges a group of rights and deny other rights. The definition of Human Rights Defenders is further established in a Guideline on Human Rights Defenders issued by European Union (EU) as follows:

*“Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of*

*groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.”*

The guideline also explained activities committed by Human Rights defenders including documenting Human Rights violations, seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support, and combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

## **II. 2. Declaration on Human Rights Defenders in the Framework of International Human Rights Law**

### **II.2.1 Universal Declaration of Human Rights**

In general, long before UN General Assembly passes Declaration on Human Rights Defenders, international laws have been promoting the idea of protection for Human Rights Defenders as asserted in Universal Declaration of Human Rights. The document provides normative foundation for protecting Human Rights Defenders, as mentioned in the Preamble of UDHR as follows:

*“...to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction,” (paragraph 8).*

Further, UDHR also introduced normative framework on non-government entities in their role to promote assurance for Human Rights protection as asserted in Article 29 (1):

*“Everyone has duties to the community in which alone the free and full development of his personality is possible.”*

It is important to highlight that according to this article, the “obligation” of non-government entity is measured by the extent of their responsibility to the community and by community’s perspective to them. This concept of obligation/responsibility is missing from other International Human Rights Law instruments as it is considered obsolete to employ the term

obligation/obligatory in International Human Rights Law. UDHR does not assert the “right” of individual to promote protection of Human Rights as explained in Article 1 of Declaration on Human Rights Defenders.

The historical context of the adoption of Declaration on Human Rights Defenders reveals debate on the paradox of the state as duty bearer in enforcing and protecting Human Rights and state as the main actor of Human Rights violations. On the other hand, most endeavors on enforcement and protection of Human Rights are committed by non-government actors. They are working to monitor Human Rights, reveal violations and provide inputs to state institutions in order to advocate for fulfillment and protection of Human Rights by the state including how that state can fulfill the rights of the victims.<sup>5</sup>

Provisions in UDHR serve as main pillars in protection for Human Rights Defenders. The first provision is recognition that every individual has the right to:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>6</sup>*

The second provision is recognition that, “Everyone has the right to freedom of peaceful assembly and association.”<sup>7</sup> Both provisions are described in detail in International Covenant on Civil and Political Rights legally binding upon ratification.

## **II.2.2 International Covenant on Civil and Political Rights**

This International Human Rights Law instrument does not explicitly define Human Rights Defenders. However, it explains in 4 main articles assurance for protection of Human Rights Defenders. First, Article 18 asserted that everyone has the rights of thoughts, science and religion. In this context, personal stand of Human Rights Defenders on Human Rights, peace and humanity shall be recognized the way the state recognize freedom of religion and protect the rights of followers.<sup>8</sup> Furthermore, this stipulation is declared as rights universally

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<sup>5</sup> Human Rights First, *Protecting Human Rights Defenders; Analysis of Newly Adopted Declaration on Human Rights Defenders*, [http://www.humanrightsfirst.org/defenders/hrd\\_un\\_declare/hrd\\_declare\\_1.htm](http://www.humanrightsfirst.org/defenders/hrd_un_declare/hrd_declare_1.htm).

<sup>6</sup> UDHR, Article 19.

<sup>7</sup> UDHR, Article 20. Both clusters of human rights (Article 19 and 20) are acknowledged as pillars of democratic society.

<sup>8</sup> Human Rights Committee that has now become ICCPR monitoring committee exclaimed that the definition of believe, thoughts and religion in this article generally refers to both believe in religion (monotheistic or polytheistic) and believe in other profane/secular values. Article 18 also justifies the right to uphold certain non-religious believe including atheism. See *General Comment HR Committee No. 22*, UN Doc.



binding both in time of peace and war/emergency. In the context of protection for Human Rights Defenders to practice their values (read: committing humanitarian actions) is regarded as equal to the responsibility of the state to protect people of religion to practice their faith. Different from the concept of rights to thoughts, science and religion; freedom to manifest one's religion or belief maybe subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights of freedom of others.<sup>9</sup> Another limitations take into effect in the case when practice of beliefs and values propagate war and advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence.<sup>10</sup>

Article 19 asserted right to freedom of expression, including right to seek, receive and impart information and ideas of all kind and Article 21 explained the right to peaceful assembly. Both articles constitute significant elements in protecting the activities of Human Rights Defenders including investigation, monitoring, campaign, advocacy and litigation at the court. The group of rights assured in Article 19 and 21 come with responsibility to respect rights of others and protect national security or public order and public health or morals as regulated in principles of democracy and social welfare.<sup>11</sup>

The ability of the state to comply with and enact the rights in Article 19 and 21 will be able to portray the extent of protection of the activities of Human Rights Defenders in democracy. Connecting democracy and Human Rights will be able to enforce the availability of spaces for freedom of expression and to seek for information as indicator of protection of spaces for individuals and collectives working for the cause of Human Rights. As the space provided by the states grew, the protection for Human Rights Defenders is strengthened.

### **II.2.3 UN Declaration on Human Rights Defenders 1998**

The actual definition of Human Rights Defenders is first established on December 10, 1998 at the 50<sup>th</sup> anniversary of UDHR. This declaration is non-legally binding, thus, the states ratifying the declaration are not obliged to adopt it into the positive laws in their country. In addition, implementation of Declaration on Human Rights Defenders is highly

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CCPR/C/21/Rev.1/Add.4. Believe in Human Rights and their values can also be included in rights of freedom of thoughts, believe, and religion.

<sup>9</sup> ICCPR Article 18 Paragraph 3.

<sup>10</sup> ICCPR Article 20 Paragraph 1 and 2.

<sup>11</sup> ICCPR Article 19 Paragraph 3 and Article 21

depended on national normative regulation in the country.<sup>12</sup> The absence of protection of Human Rights Defenders in national laws and regulations denies the existence of agenda of Declaration on Human Rights Defenders.

However, the Declaration on Human Rights Defenders resonates with other instruments including ICCPR Article 18, 19, 20 and 21 to create spaces in national law to protect HRD. In the scope of International Human Rights Law, Declaration on HRD serves as main paradigm to advocate for state recognition on the pivotal role of HRD and to encourage the state to fulfill their responsibility to enforce Human Rights through various activities including investigation on Human Rights violations, advocating the completion of cases of Human Rights violations through campaign and awareness raising and facilitation of victims to enforce state accountability.<sup>13</sup> In conclusion, those working directly to create and accelerate spaces for advocacy on Human Rights with various methods are referred to as Human Rights Defenders.

Within the framework of International Human Rights Law, this instrument is the first to provide explicit and official recognition to non-state actors.<sup>14</sup> The recognition is stated in Article 1 of Declaration:

*“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”*

This recognition resonates to the acknowledgement stated in the Article 28 UDHR:

*“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”*

Article 13 of the Declaration on Human Rights Defenders mandated that activities of protecting Human Rights must be committed in peace:

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<sup>12</sup> Human Rights First, *supra note 19*.

<sup>13</sup> Human Rights First, *supra note 19*.

<sup>14</sup> Historically, International Human Rights mechanisms are state-focused. However, in reality, one of the main accelerators of Human Rights enforcement is Human Rights NGOs working to build transnational advocacy network. From the era of WW II until the end of Cold War, the role of NGO had been pivotal and the NGO earned strategic formal position in International Human Rights mechanism. See Kiyuteru Tsutsui and Christine Min Wotipka, *Global Civil Society and the International Human Rights Movement: Citizen Participation in Human Rights International Nongovernmental Organizations*, *Journal Social Forces*, December 2004, 83(2), p. 587-620.

*“Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.”*

Both articles explicitly recognize the rights of individual Human Rights Defenders as well as collective to seek any form of support including financial supports from other institutions including International donor to advance and protect Human Rights. Through this discourse, Declaration on Human Rights Defenders exclaims that the scope of the protection shall overcome the discourse cornering Human Rights Defenders as pro-west, anti-nationalist group working to protect Human Rights. It can also counter the discourse that Human Rights Defenders are working for foreign agenda in opposition to Indonesian particularism.

The birth of Declaration on Human Rights Defenders is also significant to strengthen Human Rights protection through International and Regional mechanism. The UN treaty bodies established as a consequence of enactment of International Human Rights instruments and Human Rights mechanism at the level of UN (UN Human Rights Council) also pay special concern to the agenda of Human Rights protection.<sup>15</sup> The monitoring of implementation of the recommendation of these Treaty Bodies serve as the indicator to measure performance of Human Rights protection in one country. At the level of advocacy, civil society and NGOs also have specific definition to monitor protection of Human Rights Defenders. These groups also help build transnational advocacy network as watchdog of the civil society.

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<sup>15</sup> Human Rights First, *supra note 19*.

## CHAPTER III – PROTECTION FOR HUMAN RIGHTS DEFENDERS IN NATIONAL LEGAL FRAMEWORK

### III. 1 Constitution (UUD) 1945 and Guarantee of Protection of Human Rights Defenders

In Indonesia there is no law or regulation specifically enacted to regulate reward to Human Rights Defenders and guarantee protection. However, if we look into the Constitution, we can see that the large part of the principles and spirit of UDHR, ICCPR, and International Covenant of Economic, Social and Cultural Rights has been included (Bab XA (Pasal 28A-28J) and mainstreamed through the Second Amendment of Constitution 1945.<sup>16</sup>

The document implicitly recognizes categories of Human Rights fundamental to protection of Human Rights Defenders. Furthermore, Second Amendment of Constitution 1945 also adopts several articles in Act Number 39 Year 1999 on Human Rights.

Article 28 C (2) explained:

*“Setiap orang berhak untuk memajukan dirinya dengan memperjuangkan haknya secara kolektif untuk membangun masyarakat, bangsa dan negaranya/Everyone has the right to fight for their rights collectively in building their society, nation and state.”<sup>17</sup>*

The responsibility to promote, protect, and guarantee fulfillment of Human Rights Agenda lies in the hand of the state as mandated by the Second Amendment of Constitution 1945 as also exclaimed in Declaration on Human Rights Defenders.<sup>18</sup> In addition, Article 28E (2) explained that:

*“Setiap orang berhak atas kebebasan meyakini kepercayaan, menyatakan pikiran dan sikap, sesuai dengan hati nuraninya,” sebagaimana yang juga ditegaskan di dalam Pasal 18 ICCPR. Masih di pasal yang sama ayat (3) diterangkan bahwa: “Setiap orang berhak atas kebebasan berserikat, berkumpul, dan mengeluarkan pendapat”/ Everyone has the right to freedom of faith and religion and freedom of expression according to their conscience, as also*

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<sup>16</sup> On a positive note, the Human Rights provisions in Second Amendment of Constitution 1945 are able to be employed to review stipulations in an Act during judicial review at Constitutional Court as guaranteed by the Third Amendment of Constitution 1945 Article 24 (2) Year 2001. Furthermore, to manage the institution, the House of Representative passes Act No. 24/2003 on Constitutional Court. In several of its verdicts on review of laws and regulations related to the issue of Human Rights, the Constitutional Court is not yet accommodating International standards of Human Rights.

<sup>17</sup> The stipulation is similar to Article 15 Act No. 39/1999 on Human Rights.

<sup>18</sup> Article 281 (4) Constitution 1945 Amendment II and Article 8 Act No. 39/1999 on Human Rights

asserted in Article 18 ICCPR. In addition, Article 28E (3) explained that: “Everyone has the right to assemble and express opinions.”<sup>19</sup>

Guarantee of the right of assembly is also reiterated in Act No.39 Year 1999 on Human Rights, specifically in Article 16 on rights to assemble for social and education works; including collecting fund for the cause. In Article 24 Act No. 39 Year 1999 on Human Rights mentioned the form of association namely *Lembaga Swadaya Masyarakat (LSM)/Non-Government Organization*.<sup>20</sup>

The right to information is granted in Constitution 1945 and explained in Article 28F:

*“Setiap orang berhak untuk berkomunikasi dan memperoleh informasi untuk mengembangkan pribadi dan lingkungan sosialnya, serta berhak untuk mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi dengan menggunakan segala jenis saluran yang tersedia”*/ Every person has the right to communicate and gain information for personal development and the development of their social environment and they have the right to seek, earn, own, store, manage, and deliver information through available channels.<sup>21</sup>

Within the framework of national legal instrument, Indonesia recognizes the right to employ mechanisms of International Human Rights Law to promote protection and Human Rights agenda. This recognition is asserted in Article 7 (1) Act No. 39 Year 1999 on Human Rights:

*“Setiap orang berhak untuk menggunakan semua upaya hukum nasional dan forum internasional atas semua pelanggaran hak asasi manusia yang dijamin oleh hukum Indonesia dan hukum internasional mengenai hak asasi manusia yang telah diterima negara Republik Indonesia.”*/Every person has the right to employ all national and international legal frameworks on Human Rights violations granted by national and

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<sup>19</sup> The stipulation is similar to Article 21 ICCPR and Article 24 (1) Act No. 39/1999 on Human Rights and assertion that the right must be exercised in a peaceful manner.

<sup>20</sup> Article 24 (2) Act No. 39/1999 stated that *“Setiap warga negara atau kelompok masyarakat berhak mendirikan partai politik, lembaga swadaya masyarakat atau organisasi lainnya untuk berperan serta dalam jalannya pemerintahan dan penyelenggaraan negara sejalan dengan tuntutan perlindungan, penegakan, dan pemajuan hak asasi manusia dengan ketentuan peraturan perundang-undangan.”* Every citizen or community groups has the right to assemble in political parties, non-government organization or other organizations to participate in managing the government to promote protection, enforcement and advancement of Human Rights using laws and regulations.

<sup>21</sup> Similar to Act No.39/1999 on Human Rights Article 14. The implementation is regulated through Act No. 14 Year 2008 on Freedom of Public Information.

international law on Human Rights that have been ratified by the Republic of Indonesia.

### **III.2 State Commission and Agenda of Protection of Human Rights Defenders**

In order to synchronize the International Human Rights standards with National Legal instruments, Indonesia has established specific institutions to manage issues of Human Rights. The institution is referred to as National Commission on Human Rights (KOMNAS HAM). The institution was established under the Soeharto Administration in June 1993, long before the adoption of Paris Principles relating to the status of national institutions adopted by UN General Assembly in December 1993.<sup>22</sup> At that time, the commission was established as a response toward international pressure upon suspicion that there had been massive Human Rights violations under the New Order administration.

During the 32 years of Soeharto Administration, the international community paid serious concern to the situation of Human Rights in Timor Leste, especially the case of mass murder in Santa Cruz, cemetery, in Dili. The establishment of Komnas HAM (National Commission on Human Rights) was chosen as response to international pressure in order to avoid mechanism of international investigation that would most probably hurt the credibility of Indonesia.<sup>23</sup> Following the establishment of Komnas HAM, similar commissions were also established including National Commission on Violence against Women and National Commission for Child Protection.

The Komnas HAM experienced evolution in their role and mandate over the past decades. Primary change happens following the enactment of Act No. 39/1999 as an implementation of Decree of People Consultative Assembly XVII Year 1998 on Human Rights.<sup>24</sup> Referring to Act Number 39 Year 1999, National Commission of Human Rights has four functions namely study, research, public education, monitoring, and mediation on Human Rights. Despite of the fact, that the four functions do not mention protection of

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<sup>22</sup> **The Paris Principles is adopted by UN General Assembly 48/134 on December 20, 1993. The Paris Principles is a guideline for National Commission on Human Rights at the national level. The National Commission on Human Rights is established through enactment of Presidential Decree No. 50 Year 1993.**

<sup>23</sup> Philip J. Eldridge, *The Politics of Human Rights in Southeast Asia*, Routledge, New York, 2002, p. 145.

<sup>24</sup> Article 4 TAP MPR XVII/1998 stated that: "*Pelaksanaan penyuluhan, pengkajian, pemantauan, penelitian dan mediasi tentang hak asasi manusia, dilakukan oleh suatu komisi nasional hak asasi manusia yang ditetapkan dengan undang-undang.*" "Implementation of education, study, monitoring, research and mediation on the issue of Human Rights are managed by a national commission on human rights established by law."

Human Rights Defenders explicitly, they remain strategic to be utilized based on the interpretation of existing national legal instruments.

Through its function to conduct study and research,<sup>25</sup> Komnas HAM can best apply the function to scrutinize main issues exposing Human Rights Defenders. They can analyze trend and help policy makers in law enforcement sectors to strengthen protection of Human Rights Defenders.

In the scope of public education, National Commission of Human Rights (Komnas HAM) can be involved strategically to raise awareness and mainstream the importance of protection of Human Rights Defenders.<sup>26</sup>

In the scope of monitoring, Komnas HAM is strategic to mainstream mechanism of protection of Human Rights Defenders through their responsibility and authority to accept complaints and reports from victims and to conduct investigation and examination of an incident and to request for information from those suspected to be involved in Human Rights violations and finally to produce strong recommendation for follow up actions through the mechanism of accountability of other state institutions.<sup>27</sup>

These four mechanisms are the main mechanisms for Komnas HAM to enforce mainstreaming of protection of Human Rights Defenders, including strengthening state the mechanism of state accountability on the same issue. Furthermore, the link between one function to another in Komnas HAM mechanism has also been the main focus of the Komnas HAM forums at the level of Asia Pacific (the Asia Pacific Forum of National Human Rights Institutions). One of the main focuses of the regional forum is to strengthen mechanism of protection of Human Rights Defenders.<sup>28</sup> Specifically, the regional forum mentioned that:

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<sup>25</sup> See Article 89 (1) Act No. 39/1999 for responsibility of National Commission on Human Rights to organize research and study

<sup>26</sup> See Article 89 (2) for responsibility of National Commission on Human Rights to organize public education.

<sup>27</sup> See Article 89 (3) Act No. 39/1999 for the authority of National Commission on Human Rights to implement the function of monitoring. In the context of investigation and examination of an act of Human Rights violations, National Commission on Human Rights has the *subpoena* authority or the authority to summon suspect upon issuance of letter from Head of Court (Article 95 Act No. 39/1999).

<sup>28</sup> See <http://www.asiapacificforum.net/issues>. Other issues are people with disability, environment, *internally displaced persons* (IDPs), terrorism and legal supremacy, torture, trafficking, women's rights, sexual orientation and gender identity.

*“NHRI (National Human Rights Institutions) can be strong agents for change at a national level. They can investigate complaints of discrimination and violations of human rights, review laws and make recommendations to government. They can also be instrumental in making issues affecting human rights defenders part of the public debate and raising the profile of human rights defenders in a particular country.”*<sup>29</sup>

Second, affected by Human Rights violations in East Timor, National Commission on Human Rights is bestowed with additional authorities. Massive International pressure due to systemic violence occurring in East Timor in 1999 leaves the Government of Republic of Indonesia to have no choice but to organize national trial of the perpetrator or to hand it to international mechanism. President Abdurrahman Wahid chose the second option as it would affect Indonesian military politics during the transition. As a form of commitment, Gus Dur issued Government Regulation (Perppu No. 1 Year 1999) to establish Human Rights Court. One year later, the Perppu was replaced by Act No. 26 Year 2000 on Human Rights Court mandating National Commission of Human Rights to conduct investigation on serious Human Rights violations.<sup>30</sup>

Another important characteristic of National Commission on Human Rights is independent.<sup>31</sup> NGO activists, civil society and Human Rights Defenders have equal opportunity to be elected as commissioner of National Commission on Human Rights.<sup>32</sup> The incorporation of these individuals as commissioners of Komnas HAM has been proven to contribute significantly to the advocacy work performed by the commission. It also promotes improvement in the relationship between commissioner of National Commission of Human Rights and Human Rights activists (a euphemism for Human Rights Defenders) and it

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<sup>29</sup> See <http://www.asiapacificforum.net/issues/human-rights-defenders>.

<sup>30</sup> Act No. 26/2000 on Human Rights Court, Article 18 (1)

<sup>31</sup> Komnas HAM independence from political intervention is acknowledged by certain International Accreditation System—working based on Paris Principles—on Human Rights Commission (*The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights*) in the world. Komnas HAM is accredited A which is the best accreditation a Human Rights Commission can earn. See [http://www.nhri.net/2009/Chart%20of%20the%20Status%20of%20NIs%20\\_2%20June%202009\\_final.pdf](http://www.nhri.net/2009/Chart%20of%20the%20Status%20of%20NIs%20_2%20June%202009_final.pdf).

<sup>32</sup> Article 84 Act 39/1999 mentioned that those eligible to become member of National Commission on Human Rights shall “*be experienced in advancing of protecting community experiencing Human Rights violations; be experienced as judge, attorney, police, lawyer, or other legal professions; and/or be experienced as parliament member, NGO workers, or academics.*”



subsidizes to the design of strategic agenda on promoting protection of Human Rights Defenders.<sup>33</sup>

One of the newly established state institutions relevant to the issue of protection of Human Rights Defenders is Lembaga Perlindungan Saksi dan Korban/LPSK (Victim and Witness Protection Agency) formed in August 2008. LPSK was established as a mandate of Act No. 13/2006. The institution has the authority to “*provide protection of Witness and Victim at every stage of trial for criminal cases*”<sup>34</sup> and for crime at “*specific cases.*”<sup>35</sup> However, in the explanation of Article 5 (2) it is mentioned that “*specific cases*” may include “*corruption, drug abuse and drug dealing, terrorism and other crimes locating Witness and Victims at life-threatening position and situation.*”

As a relatively new institution, commissioners are still working to locate opportunity and breakthrough in their work based on creative interpretation on Act 13/2006.

Meanwhile, referring to UN Declaration mandating the state to take responsibility to protect Human Rights Defenders, all state and government institutions shall promote protection of Human Rights Defenders. In National Action Plan on Human Rights (NAP-HR) 2004 – 2009, the government began to prepare to synchronize laws and regulations which include study, research and formulation of draft of revision of several regulations, among others is *Kitab Undang-Undang Hukum Pidana (KUHP)/Criminal Code*.<sup>36</sup> Unfortunately, the follow-up and realization of the Action Plan have not been significant. In addition, the synchronization overlooked the importance of incorporating International Human Rights instruments including Declaration on Human Rights Defenders, into positive laws and regulations in Indonesia

### **III.3 Indonesian Commitment and Compliance to International Human Rights Law**

Integration between Human Rights and Legal Mechanism and the International Human Rights is the primary agenda of promotion and protection of Human Rights Defenders in Indonesia. Until this study is launched, Indonesia has ratified 7 key

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<sup>33</sup> One of the instances is the signing of MoU between Komnas HAM and *Human Rights Support Facilities* (working group consisting of several NGOs such as Tifa, KontraS, Jakarta Legal Aid, HRWG, and Yayasan Pulih/Pulih Foundation) on September 14, 2009 in order to plan a strategic agenda to promote and protect Human Rights Defenders in Indonesia.

<sup>34</sup> Article 2 Act 13/2006 on Protection for Witness and Victim

<sup>35</sup> Article 5 (2) Act 13/2006

<sup>36</sup> *National Action Plan on Human Rights 2004 – 2009, Presidential Decree 40/2004.*

International Human Rights Law namely: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), International Conventional on Eradication of All Forms of Racial Discrimination (ICERD), Conventional of Eradication of Discrimination against Women (CEDAW), UN Convention Against Torture (CAT), Convention Rights of the Child (CRC), International Convention on Protection of the Rights of Migrant Workers and Their Family.<sup>37</sup>

It is important for the public to understand the 7 primary International Human Rights Law instruments that have been ratified by the Government of Indonesia are automatically acknowledged as a part of Indonesian positive law as explained in Act 39/1999 on Human Rights Article 7 (2) as follows:

*“International Law on Human Rights ratified by Republic of Indonesia become national law.”*

However, there is an impression that ratification of International Human Rights legal instruments is mere lip service as the government is not fully committed to implement them comprehensively.

In addition, Government of Indonesia has been actively involved as members of UN Human Rights Council.<sup>38</sup> Under the mechanism on UN HR Council, Indonesia invited UN Special Representative of Secretary General on the Situation of Human Rights Defenders, Ms. Hina Jilani to visit several areas in Indonesia to provide inputs and suggestions on the situation of protection of Human Rights Defenders in Indonesia. This effort implies acknowledgement to the importance of HRD in Indonesia.

#### **CHAPTER IV – THE REALITY OF PROTECTION OF HUMAN RIGHTS DEFENDERS IN INDONESIA**

The following is the record from monitoring conducted by KontraS in 2013 related to the reality of protection of HRD in Indonesia. The monitoring is conducted based on media coverage and report of cases to KontraS throughout 2013.

##### **Cases of Violations of Human Rights against Human Rights Defenders in 2013**

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<sup>37</sup> Status of ratification is available at:

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=80&Lang=EN). Note: Indonesia does not acknowledge any individual complaints mechanism to certain treaty body.

<sup>38</sup> See: ANtara News: Indonesia re-elected as UN Human Rights Council Member:

<http://www.antaraneews.com/en/news/96195/indonesia-re-elected-as-un-human-rights-council-member>.

<b>Violation</b>	<b>Journalist</b>	<b>HRD</b>	<b>Number</b>
Detention	-	6	6
Shooting	2	-	2
Collision (Riot)	-	1	1
Persecution	33	5	38
Torture	1	-	1
Attack	3	-	3
Destruction	5	1	6
Intimidation	38	1	39
Seizure	16	-	16
Forced Dismissal	-	3	3
Criminalization	-	3	3
	<b>98</b>	<b>20</b>	118

  

<b>Time of the Incident</b>	<b>Journalist</b>	<b>HRD</b>	<b>Number</b>
January	8	2	10
February	9	1	10
March	4	1	5
April	6	1	7
May	9	1	10
June	6	1	7
July	2	-	2
August	5	-	5
September	2	-	2
October	7	1	8
November	6	-	6
December	8	1	9
	72	9	81

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#### **IV.1 Hitting and Forced Detention**

Lorens Weling is a lawyer and coordinator of Nusa Tenggara Legal Aid. He is working to support an *ojek* (motorcycle taxi) driver who is a victim of violence committed by member of District Police of Sikka-East Nusa Tenggara. At the time of the incidence, the driver was thrown to Bronjong River (depth: 20 meters). The driver and his lawyer Lorens Welling together with one member of Regional House of Representative of the District of Sikka met Head of District Police demanding justice for the driver and investigation of the case committed by his staff. However, police officials hit Lorens Welling because he was accused to commit provocation and he was held at the office for about an hour before he was finally released. Lorens Welling reported the case to KontraS, but the case was concluded finally with peaceful agreement between the victim and the police officers hitting him and an apology from the Head of District Police of Sikka.

#### **IV.2 Terror and Intimidation**

- **Nora**

Nora is an activist working for Child Protection Agency in City of Padang, West Sumatera. During her work facilitating victim of sexual violence, she was denied her right to facilitate and represent the victim during Berita Acara Pemeriksaan [BAP]/Interview and Investigation. Nora questioned the policy and suspected the police to have changed the content of the Interview record and forced the victim to sign. Following the protest, the house of the victim received frequent visit from members of the police without justified reasons. Members of the police also watched Nora's house for days from morning to evening.

There are also threats and extortions committed by members of the police of District 50 Kota. In response to this situation, KontraS has sent letter to the Head of Province Police of West Sumatera on May 16, 2014. In this letter, KontraS encouraged the Head of Province Police to continue the investigation toward the case of sexual violence against an under-age girl. The letter was replied with commitment of Head of Province Police of West Sumatera to establish back-up team to investigate cases of sexual violence against children.

- **Olga Hamadi**

Olga Hamadi is activists of KontraS Papua and she is working to support 5 murder suspects. During the investigation, they are suspected to experience torture by Head of

District Police and members of Police of District of Jayawijaya causing trauma and psychiatric disturbance to one of the suspects. Olga then filed this case through Pre-Trial litigation (Pre-Trial Nomor 02/Pid.Pra/2012/PN) against Head of National Police c.q. Head of Province Police of Papua cq. Police of District Jayawijaya, to the District Court of Wamena, Papua. Following the filing of the case, Olga experienced threats and intimidations from unknown individuals and from the members of the police warning her that they might kill her if she does not withdrew the report.

### **IV.3 Criminalization**

- **Ulin Yusron**

Ulin Yusron is a journalist committed to reporting cases of Human Rights violations in the past and one of his stories was published during the last Presidential Election in 2014. At that time, Ulin published Surat Rekomendasi Pemecatan Prabowo/Recommendation Letter on the Dismissal of Prabowo [one of the candidates running in the election] through his social media (twitter) account. As a consequence, Gerindra (Political Party supporting the candidacy of Prabowo) reported Ulin to the police for defamation. Following the conclusion of the Presidential Election there is no follow up to the case. However, the prosecution against Ulin is one of the acts of criminalization of journalist and violation of the right of freedom of expression.

- **Eva Bande**

Criminalization to Eva Bande is inseparable from land conflict between farmers in Sub District Toili and West Toili with PT. PT. Berkat Hutan Pusaka (PT BHP) which stocks are entirely owned by PT KLS. The process of accumulation of land on behalf of palm plantation includes acquisition of some state properties overlooking the land crisis at hand. There is no partnership or other collaboration schemes applied in the plantation. The company single-handedly acquires land and took customary land without any control from the government.

Eva Bande was then arrested by Province Police of Central Sulawesi, District Police of Luwuk Banggai and District Police of Toili and was accused of violating Article 160 Criminal Code, by committing crime against authority. She was tried at the District Court of Luwuk and sentenced to 4 years imprisonment through Verdict Number

178/PID.B/2010/PN.LWK. On the other hand, law enforcers denied Article 66 Act 32/2009 on Protection and Management of Environment which guaranteed the right for every person to fight for right on environment and that the person may not be prosecuted for doing so. The prosecution of Eva Bande is therefore, rises questions on conspiracy to eradicate rights to earn justice and legal certainty.

Several measures have been taken to support Eva Bande including facilitation at the court, report to state commissions, media campaign, and mass demonstration. The legal process has reached the stage of Review of Court Decision upon cassation by the Supreme Court. Eva Bande as a party proposing for the appeal was convicted guilty to violate Article 160 jo Article 55 (1.1) Criminal Code and was sentenced to 4 years of imprisonment by the Supreme Court through Cassation of Supreme Court Number 1573/K/Pid/2011, dated April 2, 2013 jo. Verdict of Province Court of Central Sulawesi Number 01/PID/2011 /PT.PALU dated 10 Februari 2011 jo Verdict of District Court Luwuk Number 178/PID.B/2010 /PN.Lwk dated November 12, 2010

- **Anwar Sadat and Dede Chaniago**

Criminalization against Anwar Sadat and Dede Chaniago, environment activist from WALHI South Sumatera happened in January 29, 2014. Both HRD were arrested and imprisoned following torture against them during mass demonstration in front of the Province Police Head Quarter of South Sumatera with regards to massive land acquisition committed by PTPN (National Plantation Company) VII Cinta Manis in South Sumatera. The peaceful demonstration went violent as the gate in front of the Province Police Head Quarter fell and the two activists were targeted. The police force attacked the farmers and people were running away dismissing themselves from the demonstration. The incidence injured 26 activists and 3 of them (Anwar Sadat, Dede Chaniago and Kamaludin, a farmer) were arrested and prosecuted. They were tried at Municipality Court of Palembang and were accused of violating Article 170 of the Criminal Code. The legal process has now reached the stage of cassation at Supreme Court.

Advocacy toward the two Human Rights Defenders include facilitation at the police, report to state commissions (National Commission on Human Rights, Judicial Commission, National Police Commission, Victims and Witness Protection Agency, etc.) and special report to the committee of UN Rapporteur, media campaign and demonstration.

- **Rozak, chairman of STI**

The plan to develop Bubur Gadung Dam includes acquisition of people's land. Hundreds of hectares of farm land in Loyang Village, Sub District Terisi, District of Indramayu are affected by the plan to develop the dam as are hundreds of families living in the area including 30 Households (HH) member of STI. The process of acquiring the land happened too fast as it is supported by gangsters, street criminals and police officials from the District Police of Indramayu.

August 25, 2013 at around 09:00 a.m. farmers stood up against gangsters and street criminals beating them and bulldozer trying to destroy their land. Farmers were beaten with wooden blocks and they were being abused by the street criminals hired to help with the acquisition.

Hundreds of farmers, members of Indramayu Farmers Union (STI), were provoked. At 10:15 a.m. they burnt down the bulldozer. Police officers started to hit farmers, drag them, shoot tear gas to them, and shoot rubber bullet to farmers including those surrendering. Hundreds of farmers were wounded. This repression against farmer was also supported by the Army.

The total number of immediate victims of the riot was 30 persons (farmers, students, and the secretary general of farmer union, Muhammad Rozak). They were arrested and detained at local police station. In addition, farmers' vehicles were also destroyed by police officers and street criminals.

The District Police of Indramayu responded to farmers appeal but not all detainees were released. Some of them remained imprisoned and they were even transferred to Province Police of West Java jail. They are

- **M. Rojak (Secretary General of Farmers Union and member of National Board of KPA/Konsorsium Pembaruan Agraria (Land Reform Consortium) West Java – Banten)**
  - Watno (Member of union /Leader of Suka Slamet Group)
  - Wajo (Member of union /Leader of Bojong Raong Group)
  - Hamzah Fansuri (Deputy Secretary General of Farmers Union)
  - Rohman (Member of union)
- 
- **I Wayan Tirta (Environment activist from Bali)**

I Wayan Tirta is one of the activists working in Jaringan Aksi Tolak Reklamasi (JALAK) Teluk Benoa/Action Network Against Reclamation of Benoa Bay was arrested on March 1, 2014 at around 05:30 p.m. Central Indonesia Time. The arrest was committed following the *telu bulanin* ceremony of his child. The arrest was committed in the absence of court order.

The arrest is closely related to the activities of I Wayan Tirta in the campaign against reclamation of Benoa Bay. The reclamation of Benoa Bay will marginalize people living in the coastal area of the Benoa Bay including Sidakarta Village and Sesetan Village. Reclamation is process of creating new land on land that had been covered by water, such as river banks or coastal. In the case of Benoa Bay, the plan is to make new land on 838 hectares of bay area and it will destroy the environment and the ecology of the Benoa Bay. It also exposes Bali to risk of flooding. The project was implemented based on Governor Decree No. 1727/01-B/HK/2013 on License on granting Permission to Conduct Feasibility Studies assessing the Use, Development, and Management of Benoa Bay Waters. The advocacy is conducted through report to Province Police of Bali, media campaign, facilitation to National Police. The case was finally postponed by Province Police of Bali.

- **Rabu Alam (FRB/Forum Rakyat Bersatu/People United Forum Medan)**

In April 2014, hundreds of male and female farmers assembled for peaceful demonstration related to land illicit land acquisition by PTPN II and a private company in North Sumatera;

At around 10:30 a.m., when farmers arrived at Muspika Street, Village of Bakaran Batu, Sun District Batang Kuis, they were blocked and attacked by police officers from District Police of Deli Serdang. They were kicked and beaten and tens of them were severely wounded and they were bleeding;

The police have crossed the line of professionalism in handling the demonstration of farmers from FRB-SU. The can even be considered as committing abuse of power. It is suspected that the Province Police of North Sumatera has been bribed by the plantation to secure their work and silence the farmers that have been very persistent and militant in fighting for the right to their land.

Following the incidence, Rabu Alam as facilitator and organizer of FRB was declared as suspect by Province Police of North Sumatera for provoking the farmers to do



demonstration. There has not been any legal certainty to the case until today. The advocacy includes report of Police Head Quarter, report to state commissions (National Commission on HR, State Land Agency, Coordinating Minister of Politics, Law, and HR, Witness and Victims Protection Agency, etc.)

- **Sunarji, Sarjimin, Suparno (Leader of Forum Peduli Kebenaran dan Keadilan Sambirejo (FPKKS)/Forum for Truth and Justice Sambirejo)**

Land conflict involving 425 hectares of land in 8 villages in sub district Sambirejo, District of Srange, Central Java with PTPN IX has been rolling since 1965. 8 villages affected are; Sukorejo, Jambeyan, Sambu, Dawung, Sambirejo, Kadipiro, Musuk and Jetis. The conflict has not been able to be concluded and injustice continues. In addition, Police officers are getting more and more repressive and violent. They have been violating the civil, political and social-economic rights of the people.

The latest development on the case is the arrest of 3 farmers, leader of Forum for Truth and Justice Sambirejo. Sunarji, Sarjimin and Suparno were arrested in March 22, 2014. They were arrested by the Province Police of Central Java during mediation in March 18, 2014.

Immediately following the mediation facilitated by the Government of Sragen, the PTPN IX drove more than 5,000 of its employees to occupy the farm land of the people. The clash between people and plantation security was unavoidable. At that time, Sunarji and his friends tried to settle the conflict to prevent further fight. However, the effort was responded with the arrest of the three activists by the District Police of Sragen upon conviction of violating Article 170 and Article 406 Criminal Code. They have been unjustly tried ever since.

The advocacy includes report of Police Head Quarter, report to state commissions and media campaign.

#### **IV.3.2 Unpleasant Action**

- **Haida Sutami (Chairwoman Association of Apartment Owners), ITC Mangga Dua, Jakarta**

The conflict between dwellers/owners of shops at ITC Mangga Dua and Association of Dwellers and Owners (PPRS), developer, and management of ITC Mangga Dua at block 1 A began in 1994. The dwellers and shop owners perceive the policy of PPRS as abusive.

They accused PPPRS for taking every decision without proper consultation to the dwellers/owners of shops at ITC Mangga Dua.

Current members PPPRS ITC Mangga Dua are selected by developer PT. Duta Pertiwi, a subsidiary of Sinar Mas Group. The developer then appointed PT. Jakarta Sinar Intertrade, one of their subsidiaries, to manage ITC Mangga Dua. In the field, PT. Jakarta Sinar Intertrade established PPPRS and assigned their employees to manage the organization. Their task includes maintenance of shared land and facilities.

The peak of the conflict between PPPRS and dwellers/owners of shops at ITC Mangga Dua 1 A happens when PPPRS raised service charge without consulting dwellers. The rejection led to electricity cut to a number of kiosks refusing to pay the new price. The cut happened 3 times in July 18, July 19, and September 2, 2013.

The management was offended when later in July 30, 2013 the dwellers established new administration consisting of representation of dwellers and kiosk owners. Through their employee by the name of Benediktus Keban, the company criminalizes the dwellers and reporting Mardianta Pek and Haida Sutami for violating Article 335, 372 and 378 Criminal Code and Suresh Karnani for violating Article 167 Criminal Code, to Municipality Police of North Jakarta. The three are leaders of the new PPPRS ITC Mangga Dua Block 1A established by the dwellers and owners of kiosks. They are now declared as suspect and will face several legal consequences.

The advocacy include legal assistance at the Municipality Attorney Office of North Jakarta, monitoring of trial processes, mediation to House of Representative, report to National Commission of Human Rights, National Police Commission, Ombudsman, etc., and media campaign.

#### **IV.3.3 Defamation**

In July 12, 2013, Lami (Federation of Inter-Factory Labor, KBN Cakung) was having a dispute with Harry Kim, Director of PT Myung Sung Indonesia (MSI). At that time, Lami was trying to pray at the detector room as the break time is very short (30 minutes) and the prayer room (Musholla) was too small to contain all labors. Harry Kim saw that and prevented Lami from praying at the detector room. July 20, 2013 Lami realized that she had not received her salary and in July 24, 2013 she came to personnel demanding her salary. The next day she was denied entrance to the factory and received a letter stating that she was released from her duty at the factory until the dismissal is finalized. In August 2, 2013, Lami came to PT MSI to collect her salary, and Holiday Allowance. She only received her salary.

One month later, September 2, 2013, she received letter from PT MSI ordering her to withdraw her statement on the internet. Lami refused to do so, and she was reported under criminal act of defamation to Metro Police of Jakarta. The advocacy includes legal assistance during the investigation process at Metro Police, report to House of Representative, Office of Manpower and Transmigration of Jakarta Province, report to National Commission on Human Rights, and media campaign.

#### **IV.4 Findings and State Response in Cases of Violence against Human Rights**

##### **Defenders in the issue of Economic, Social, Cultural Rights**

Human Rights violations against Human Rights Defenders include violations of the right to freedom of expression, right to legal protection, right to non-discriminative treatment, etc. Advocacy conducted includes legal assistance to state institutions both law enforcement institutions and state commissions. Throughout the process, we discover that the state response has been quite slow in addressing these issues proven from the fact that the mandate to conduct investigation and pro-justice efforts is at the National Commission on Human Rights instead of other authoritative state institutions. The state usually waits for pressure from victims in order to take action while the conditions of the victims continue to deteriorate.

The state response is also very slow when it comes to convicting perpetrators of Human Rights violations as in the case of HRD at ITC Mangga Dua. Law enforcers are very repressive toward HRD. They commit torture, arrest, detention, and intimidation to defenders of right to land. In addition, they also work for the interest of local government as in the case of Anwar Sadat in South Sumatera and Rozak in Indramayu. It is also quite difficult for HRD to access information and legal protection as LPSK (Victims and Witness Protection Agency) has not been very responsive in protecting Human Rights Defenders and they are still discriminative as seen in the case of Rabu Alam as the chairperson of FRB in South Sumatera.

#### **IV.5 Condition of Political Detainees and Prisoners in Conflict Area**

The condition in Papua never recovers, although the government acknowledges the policy of military operation in Papua.<sup>39</sup> The following is KontraS record related to protection for Human Rights Defenders in Papua:

- **Political Prisoner in Abepura Prison**

Filep Jacob Samuel Karma alias Filep Karma (50) was sentenced to 15 years in prison in May 26, 2005 following his arrest in December 1, 2004 for raising the flag of Bintang Kejora. 1 citizen involved in peaceful demonstration in December 16, 2008, Y.M Buchtar Tabuni a.k.a. Buchtar (31) was arrested in December 3, 2008 and was sentenced to 3 years in prison. Other prisoners are those involved in March 16 incidents in University of Cendrawasih. They are Aris Mandowen (24), sentenced to 5 year in prison and Ferdinand Pakage (23) and Luis Gedy (34), sentenced to 15 years of detention.

- **Political Prisoners in Biak Prison**

There are three prisoners detained in Biak Prison following conviction of weapon search at District Military Command of Wamena in April 4, 2003. They are Apotnalogolik Enos Lokobal (38) who was sentenced to 20 years in prison and Jefray Murip and Numbungga Telenggen who were sentenced to life.

- **Political Prisoners at Wamena Prison**

Several persons detained at Wamena Prison are Kanius Murip (65) who was sentenced to life for his involvement in weapon search incident at District Military Command of Wamena, Manase Telenggen (55), sentenced to 20 years for an attack to elementary school building in Karubaga and Lewanus Wenda (42), Yoimin Weya (34), Yowan Hiluka (33), Yus Wenda (32), Timiles Tabuni (23) who are all sentenced to 7 years in prison for an attack to elementary school in Karubaga and Nipenus Wenda (42) sentenced to 4 years in prison for similar case.

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<sup>39</sup> See news *KASAD: Tidak Ada Operasi Militer di Papua*/Head of Army: There is no Military Operation in Papua, Antara News, August 4, 2011. The news is available at <http://www.antarajatim.com/lihat/berita/68475/kasad-tidak-ada-operasi-militer-di-papua>. See news, *TNI: tak ada operasi militer di Papua*/Indonesian National Army: There is no Military Operation in Papua, July, 12 2011, BBC. The news is available at [http://www.bbc.co.uk/indonesia/berita\\_indonesia/2011/07/110712\\_papua.shtml](http://www.bbc.co.uk/indonesia/berita_indonesia/2011/07/110712_papua.shtml)

- **Political Prisoners at Nabire Prison**

There are two persons detained at Nabire Prison namely Linus Hiel Hiluka (39) and Kimanus Wenda (41). They were both sentenced to 20 years in prison because they were involved in weapon search at District Military Command in Wamena

- **Political Prisoner at Fak-Fak Prison**

Simon Tuturop (59), Tadeus Weripang (53), Viktor Tuturop (43), Benediktus Tuturop (36), Tomas Nimbitkendik (20), and Teles Piahar (21) are all sentenced with 4 years in prison for raising Bintang Kejora flag in front of Pepera Building in July 19, 2008.

- **Political Prisoners in Serui Prison**

Logos Ambokari (31) and Polikarpus Ambokari (31) were convicted for violating Article 106 Criminal Code and they were sentenced to 11 months in prison.

- **Political Prisoners in Timika Prison**

Soniem Magai (21), Melki Magai (22) and Polce Magai (22) was convicted of violating Article 106 Criminal Code and each was sentenced to 5 and 3 years in prison respectively.

- **Political Prisoners in Abepura Prison**

There are three political prisoners detained at Abepura Prison namely Victor Vederik Yeimo a.k.a. Vicki (26), Samuel Yaru a.k.a. Sem Yaru (53) and Luther Wrait (53). They were convicted of violating Article 110 (1) jo Article 106 Criminal Code subsidiary Article 160 Criminal Code.

In addition, to the political prisoners detained in several prisons mentioned above, there are several persons currently waiting for pardon, parole, or Supreme Court ruling. They are:

- Yusak Pakage (31) is currently waiting for pardon. He was arrested in December 1, 2004 upon his act of raising Bintang Kejora in December 1, 2004. He was convicted of violating Article 106, 108, and 110 Criminal Code in May 26, 2005 and was sentenced to 10 years in prison.
- Chosmos Yual (29) was arrested with regards to March 16 incident in University of Cendrawasih. In June 2007, he was sentenced to 6 years in prison because he was proven guilty of violating Article 160 jo. 55 Criminal Code. At the same incident, Selfius Bobii (29) and Elias Tamaka (23) were arrested in March 16, 2006 and convicted of violating Article 160 jo 55 Criminal Code. Selfius and Elias were sentenced to 6 and 5 years in prison respectively. In addition, the March 16, 2006 incident also led to the arrest of Matias Dimara (25), Nelson rumbiak (24), Ricky Jitmau (23) and Patris Aronggear (28). Nelson Rumbiak was sentenced to 6 years in prison, while the rest were sentenced to 5 years in prison. They are all currently on parole.
- Five political prisoners are currently waiting for Supreme Court verdict. Four of them involved in peaceful demonstration in March 10, 2009 and they are Sebby Sambom (33), Musa Tabuni (31), Serafin Diaz (33) and Yance Mote (25). Four of them were convicted of violating Article 106,110, 160 Criminal Code. Sebby Sambom was arrested in December 17, 2008 and was sentenced to 2 years in prison and the remaining three were arrested in April 3, 2009 and received various punishment as follows: Musa Tabuni (1 year 6 months), Serafin Diaz (2 years 6 months) and Yance Mote (1 year 10 months). Additional 1 person, Septinus Rumere (62) was arrested as he was accused to be involved in raising Bintang Kejora flag in December 1, 2009 at Orwer Kampong, East Biak District, Papua. He was arrested in December 1, 2008 and was sentenced to 2 years in prison for violating Article 106 of Criminal Code.
- Four persons are sentenced free and released from all charges. They are Nataniel Runggamusi (28), Yance Mambuai (35), Jeret Ronawery (60) and Yusuf Aninam (28). They were accused of being involved in the incidence of Kapeso Memberamo Airport in May 4, 2009. Nataniel, Yance, Jeret, and Yusuf were arrested in July 3, July 4, and July 6, 2009 respectively. Before they were released from all charges, they were sentenced to 2 years and 6 months for violating Article 106, 108, and 55 of Criminal Code.

## CHAPTER V – PROTECTION OF HUMAN RIGHTS DEFENDERS AND REPORT TO UN MECHANISM

### V.1 Report to UN Mechanism

KontraS was actively involved in reporting cases of Human Rights violations to UN Human Rights Mechanism. KontraS submits shadow report on implementation of rights granted by covenants and conventions ratified by the Government of Indonesia including ICCPR and ICESCR. In addition, KontraS also utilizes specific procedure by sending individual complaint in a form of *urgent appeal* or *allegation letter*. The following table is the data of individual complaint filed by KontraS on the issue of Human Rights Defenders;

No.	Title	Date	Addressed to
1.	<i>Letter of Allegation concerning failure of the Government of the Republic of Indonesia to investigate the murder of</i>	May 3 2013	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>

	Fuad Muhammad Syafruddin (“Udin”)		
2.	<i>Submission: The Contradictive of Development Project in Indonesia; Its Relevance on the Safe Environment of Human Rights Defender</i>	June 24, 2013	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>
3.	<i>Allegation Letter Concerning the Repressive Action by The Police Towards Labour Strike in Karawang and Bekasi, Indonesia.</i>	October 30, 2013	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>
4..	<i>Allegation Letter regarding The Impunity and Justice Violations towards The Last Trial of Munir Murder Case Perpetrator</i>	November 4, 2013	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>
5.	<i>The Needs of Urgent Actions against Mrs. Eva Bande, an Indonesian Human Rights Defender. Submission to Special Rapporteur on the Situation of Human Rights Defender</i>	February 6, 2014	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>
6.	<i>Criminalization against 4 [four] Human Right Defenders by the Regional Police of Bali Province of</i>	March 2014	Mrs. Margaret Sekarggya, <b>Special Rapporteur on the situation of human rights defenders</b>



	<i>Indonesian on the Case of Development Project of Benoa Bay</i>		
7	<i>The Insistence of Investigation on Violence and Persecution against Human Rights Defenders: Anum Siregar</i>	August 8, 2014	Mr. Michel Forst  <b>Special Rapporteur on the situation of human rights defenders</b>
8	<i>Calling for Intervention and Official Clarification to Government of Indonesia concerning Criminalization against Papuan's Indigenous Human Right Defender, Mr. Gustaf Rudolf Kawer</i>	September 25, 2014	Mr. Michel Forst  <b>Special Rapporteur on the situation of human rights defenders</b>
9	<i>The Government of Indonesia has failed to Bring Justice on the Assassination of Human Right Defender, Munir Said Thalib</i>	December 2, 2014	Mr. Michel Forst  <b>Special Rapporteur on the situation of human rights defenders</b>
10	<i>Information Regarding Paragraph 32 of the Concluding Observation of Human Rights Committee; Indonesian Government has Failed to Follow Up</i>	December 4, 2014	Treaty Bodies of the ICCPR

## **V.2 Statement of UN Special Rapporteur on Human Rights Defenders**

Up until December 2013, Special Rapporteur request to conduct visit to several countries, including Indonesia has not been responded.<sup>40</sup> The visit is aimed to enable the special rapporteur to understand the situation of Human Rights Defenders in Indonesia. Unfortunately, the Government of Indonesia has not been giving positive response toward this request of visit of special procedure.

At the annual report of UN Special Rapporteur for Human Defenders 2013 containing information and report on specific cases handled by the Special Rapporteur to the respective country, there are information sent by the Special Rapporteur to the Government of Indonesia explaining the allegation of forced dismissal and illicit detention to 71 activists involved in peaceful demonstration in Papua in September 2013. Unfortunately, there remains no proper response from the Government of Indonesia to this report until today.<sup>41</sup>

In their annual report, the Special Rapporteur also express their regret on the enactment of Act on Mass Organization as the Act may serve as major hindrance in Human Rights related work committed by civil society in Indonesia specifically foreign civil society organization. In the report, the Special Rapporteur reaffirms the responsibility of the state to protect and provide safe and secure environment for those working to defend Human Rights.

## **V.3 Record on the Situation of Human Rights Defenders from UN Agencies**

Protection to Human Rights Defenders in Indonesia has not been properly provided by the Government of Indonesia. This is evident in the recurring discussion on HRD in Indonesia in every review on Indonesia in UN Mechanism, among others are during *Universal Periodic Review* (UPR) 2012, the assembly on review of implementation of ICCPR 2013, and the assembly on review of implementation of ICESCR last May 2014. The recommendations conclude pivotal steps to be conducted by the Government of Indonesia to strengthen protection of Human Rights Defenders in Indonesia.

First, *Working Group on Universal Periodic Review* in 2012 concluded several recommendations to strengthen protection to Human Rights Defenders in Indonesia to several countries namely South Korea, Greek, Norway, French, Canada, Spain and Hungary. The

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<sup>40</sup> *Country Visit*. Available on website of OHCHR:

<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/CountryVisits.aspx>

<sup>41</sup> Laporan tahunan Pelapor Khusus untuk Pembela HAM 2013. Nomor A/HRC/22/47 . Dapat diakses di : <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/115/29/PDF/G1311529.pdf?OpenElement>

recommendations include; a) adopting regulation recognizing legal protection to Human Rights Defenders in Indonesia; b) continue efforts to guarantee protection, independence, and secure and enabling environment for Human Rights Defenders in Indonesia; c) Government of Indonesia to take action, especially in Papua, to enhance protection for Human Rights Defenders against stigmatization, intimidation, and attack, and to guarantee respect to freedom of expression, peaceful demonstration and protests, by taking measures including reviewing regulations that has been limiting political expressions such as Article 106 and 110 Criminal Code that have been used to convict people for their peaceful political activities.

Second, during the first evaluation meeting on the performance of Indonesia in Human Rights Committee in July 2013, the committee emphasized the importance of Government of Indonesia to protect and resolve cases of Human Rights violations against Human Rights Defenders. Among the recommendations are: first, Indonesia as State Party shall perform effectively in resolving the case of murder of Human Rights Defenders, Munir Said Thalib in September 7, 2004 and provide sufficient compensation to the victims and their family. The second recommendation is Indonesia as State Party shall take immediate and practical steps to end impunity by law enforcers with regards to extrajudicial killing and Indonesia shall take proper action to protect the rights of people with different political views and Human Rights Defenders in Papua considering the escalating violence in the province.

In compliance with UN Human Rights Committee, in May 2014, the Economic, Social and Cultural Committee proposed in the conclusion of their observation that it is important for state party to commit intensive dialogue with Human Rights Defenders and protect them from violence, intimidation, and assault specifically to those working on the issue of exploitation of natural resources (plantation and mining). This is important considering the significant number of HR violations in natural resource sector and the fact that HRD have been facing serious challenges in working on the issue due to the complexity of violations of Human Rights as they involve both state and non-state actors.

## **CHAPTER VI – CONCLUSION AND RECOMMENDATION**

Considering advocacy records above and discussion on the standard of International Human Rights mechanism in providing protection for Human Rights Defenders in Indonesia,

below are some of the recommendations that KontraS would like to contribute through the study:

- Government of Indonesia regard protection of Human Rights Defenders is something less important, evident in the tardiness of law enforcers in concluding cases of Human Rights Defenders
- Government tends to ignore cases of torture and abuse committed by law enforcers against Human Rights Defenders especially when the case in dispute involve private sector.
- Perpetrators of violence against Human Rights Defenders are dominated by police, government, local government, corporation, company, criminals, mass organization, military-based mass organizations and military institutions.
- Most targeted Human Rights Defenders include those working to advocate religious freedom, environment, right to freedom of expression, right of customary community, and protection of the rights of minorities and marginal.
- Types of cases of violence and Human Rights violations against HRD are including hitting, abuse, terror, intimidation, criminalization, defamation, murder, and forced dismissal.
- There has not been any significant progress in the mechanism provided by the government to address issue of protection of HRD. There has been almost no advancement in Draft of Act on HRD, HRD Desk at National Commission on Human Rights, amendment of Criminal Code, and the absence of regulation to protect HRD.

KontraS encourages state institutions to claim strategic roles in:

- Using the agenda of protection to Human Rights Defenders through the implementation of National Action Plan on Human Rights 2015-2020. The action plan serves as strategic medium to put forward issue of Human Rights Defenders as one the most important agenda with regards to the state commitment and responsibility to enforce Human Rights. The agenda is expected to also include

ratification of International Convention against Enforced Disappearances (CED) and the Rome Statute of International Criminal Court.

- Encourage National Commission on Human Rights to initiate breakthrough in synchronizing state responses to the issue of HRD through the mandates of state commission and law enforcement institutions.
- Clarifying map of conflict resolution in economic, social, and cultural sector by giving priority to HRD through cross-state institutions coordination.
- Encourage law enforcers to develop paradigm for protection to individuals working in humanitarian and Human Rights. By revising Criminal Code, it is expected that law enforcers, including police and attorney will be able to provide protection in a non-discriminative manner while performing their responsibility to enforce the law.