



Submission for the UN 3rd Cycle of Universal
Periodic Review Indonesia

HUMAN RIGHTS DEFENDERS

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Komisi untuk Orang Hilang dan Korban Tindak Kekerasan
The Commission for The Disappeared and Victims of Violence



Indonesia
Submission to Universal Periodic Review of United Nations (Third Cycle)
Criminalization Against Human Rights Defenders

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

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(Updates highlighted bold)

1. The Government of Indonesia already have several development related with the policy in the protection of human rights defenders. The legal foundation on human rights defenders stated on 1945 Constitution article 28C. Furthermore, exclusively mentioned in Law No. 39/1999 article 100 regarding human rights defenders which define human rights defenders as *“Anyone, groups, political organisation, community organisation, non-governmental organisation, or other community organisation, have a rights to participated in the protection, enforcing and mainstreaming human rights.”* However, both of the legal foundation only providing freedom of speech and protection human rights actions meanwhile, there are no guarantee of the security for the human rights defenders itself.

I. Implementation on the 2nd Cycle of Universal Periodic Review on the recommendation of the human rights defenders protection

Government commitment on the protection of human rights defenders

2. National Commission on Human Rights (Komnas HAM) already established the Human Rights Defenders Desk. This desk was established to received complaints of the human rights defenders cases, such as threat, and other human rights violations against the human rights defenders. The Human Rights Defenders Desk also have a plan to put protection materials for the human rights defenders on the amandment of Law No. 39/1999 because it is very difficult to submitting the Bill on Human Rights Defenders Protection in the National Legislation Program (Prolegnas) 2015-2019, however, actually in the previous periode the Bill on Human Rights Defenders Protection already appeared on the Prolegnas 2010-2014. There was an amandment on the Law on the Witness and Victims Protection Agency which regulated the protection of human rights defenders, however the amandment is not spesifically regulated the protection on human rights defenders works.

3. The criminal case handling that culminated to criminalization along with the unfulfilled of criminal law procedures that should be conducted by the law enforcement apparatus. The criminal law procedures being violated which actually it is the fundamental rights of a suspects and neglected by the law enforcement apparatus. The case of criminalisation are increased in the sector of human rights defenders in economic, social and cultural sectors. Furthermore, the criminalization is not only as the only problem, the other human rights violations such as torture, murders, limitation on freedom of expression and freedom of assembly and threats still suffered by the human rights defenders in Indonesia. Thus, the human rights defenders protection regulations utility being questioned.

Attacks against human rights defenders in the sector of economic, social and cultural rights

4. Human rights defenders the sector of economic, social and cultural rights criminalization increased since the government open the widest opportunity to the business corporations in Indonesia. Criminalization against the person that defending economic social and cultural rights also frequently perpetrated by the police to break the defending efforts of the human rights defenders. They frequently facing criminalization such as activist, labor, fishermen, indigenous people, anti-corruption activist until journalists that conducted a news report on the allegation of human rights violation on economic, social and cultural rights. in the recent four years, civil society organisation recorded at least already 898 criminalization cases against land's rights defenders, 23 criminalisation cases against labors, 40 criminalization cases against fishermen, 220 criminalisation cases against indigenous people and 207 criminalization cases against journalists and anti-corruption activists.¹ In the case of Indra Pelani and Salim Kancil, farmer activists in a different area in Indonesia that being tortured and murder by the security apparatus that also works for the corporations in their area (Jambi province and Lumajang, East Java).

5. The attack occurred against the lawyer of Lani Jaya Tribe Council Figure, Anum Siregar that actively assisting Areki Wanimbo that arrested on August 6, 2014 of assault allegation. As the legal assistant, Anum submitted Pretrial towards the Chief of Jaya Wijaya Police Resort in Wamena District Court, Papua Province on arbitrary arrest against Areki Wanimbo. However on September 16, 2014, after the Pretrial process in Wamena District Court he was stabbed by knife on his shoulder by unkwon person and took Anum's bag filled with the court process documents and identities. This stabbing incident not being followed up by the police after being reported.²

6. The Coordinator of Consortium for Agricultural Reform organisation (KPA) in East Java region, Ubed Anom arrested by Sambirejo Police Sector, Sragen, Central Java on May 28, 2016. The police stated that Ubed Anom was arrested because he conducted training to the farmers without any letter of notification to the local police; conducted mapping without official letter by the attorney; and according to the report by PTPN IX Sambirejo (PT. Perkebunan Nusantara). However, the location of training basically a headquarter of the farmers activists in Sambirejo, which is the location is actually the agricultural conflict area of 425 hectare between the 8 villages in Sambirejo and PTPN IX Sambirejo. This conflict already occurred since 1965.³ Nevertheless, Ubed Anom and two other farmer activist after being released by the police they were forcely made and signed an Agreement Letter that they will not conduct any other Agricultural Reform in the land of Sambirejo. The action by police of arbitrary arrest is an intimidation and terror that systematically and frequently conducted against the agricultural activists and farmers.⁴

Limitation on the freedom of expression against human rights defenders

7. According to the data of Southeast Asia Freedom of Expression Network (SAFENET) while the 30 percent of Indonesian population is very active to use the internet and particularly social media for their

¹ According to KontraS Human Rights Monitoring Data. 2016.

² See more: KontraS et al. 2016. Kriminalisasi: Modus dan Kasus-Kasusnya. The source can be accessed at: http://www.kontras.org/data/20160722_Kriminalisasi_Modus_dan_Kasus_Kasusnya_098j3598j3u5n.pdf

³ See more: Karebamaqbi. 2016. Kriminalisasi Terjadi Lagi, Aktivis dan Petani Ditahan. The source can be accessed at: <http://www.karebamaqbi.com/kriminalisasi-terjadi-lagi-aktivis-kpa-dan-petani-ditahan/>

⁴ See more: Konsorsium Pembaruan Agraria. 2016. KPA Mengutuk Tindakan Kepolisian yang Bertentangan Dengan Rencana Strategis Nasional Reforma Agraria. The source can be accessed at: <http://www.kpa.or.id/news/blog/kpa-mengutuk-tindakan-kepolisian-yang-bertentangan-dengan-rencana-strategis-nasional-reforma-agraria/>

living and also for works, this reality also contradict with the fact of 11 activists reported to the police because the allegation of Law on Electronic Transaction and Information (UU ITE) article 27 clause (3), article 28 clause (2) and article 29 that frequently used and twisted to silencing the democracy and works of digital activism of human rights defenders.

8. Adlun Fikri is a student activist in North Maluku Province. He was being arrested by the police because he posted a voice recording and also video evidence that the police conducted blackmail towards the citizen who did not brought a license and other documents while they are riding a vehicle. Adlun was caught by the police on riding without any vehicle and motorcycle driving license, Adlun recorded all the process while the police blackmailing him and posted it into the social media. After that moment, Adlun was arrested on September 26, 2015 by the police without any legal assistant. The investigation report letter did not delivered to him by the police. He was being prosecuted because of the spreading of blackmail video by the police against the citizen without driving license that very common in Indonesia. Adlun was being reported under the Law No. 11/2008 regarding Electronic Transaction and Information (UU ITE).

9. Coordinator of the Commission for the Disappeared and Victims of Violence (KontraS) was being reported of defamation under the Law No. 11/2008 regarding Electronic Transaction and Information (UU ITE) after the publication of “Rotten Story from the Bandit” from his direct conversation with Freddy Budiman – an executed drug convict from Indonesia – in 2014 in the social media and other viral media which in Freddy Budiman testimony, he mentioned several state security and law enforcement institutions that have a spesific mandates to eradicate drugs are actually involved in drug smuggling cycle in Indonesia. After the spreading of the testimony, Indonesian National Police (Polri), National Military Forces (TNI) and National Narcotics Agency (BNN) acussed Haris of defamation.⁵

Prohibition on Papuan activists assembly and association

10. The prohibition of Papuan people assembly still occurred. Instead of making several protection measures, it were appeared the efforts on arresting against the freedom of expression with the Chief of Papua Police District Decree⁶ “*According to Chief of Papua, demonstation conducted by the separatism groups such as KNPB (National Committee of West Papua), OPM (Free Papua Movement) and ULMWP (United Liberation Movement for West Papua) are unlawful because already disturbing the citizen activities flow that located in the demonstration areas.... Therefore, Papua Police District will immediately issued a decree related with the right to speech in front of public*”. By this decree and the assault article in the Penal Code article 104-129 against Papuan people, particularly the activists are very limited to conduct any peaceful mass act.

11. Arbitrary detention to the several pro-democracy activists conducted by the National Police in Papua and West Papua on April 30th – May 1st 2015, at least there were 178 people arrested by the security apparatus, 162 people arrested in Manokwari (West Papua) and 16 other persons arrested in Merauke

⁵ KontraS already submitted the complaint by the mechanism of Individual Complaint to the Special Rapporteur on the protection of human rights defenders by the letter No: 308/SK-KontraS/VIII/2016.

⁶ See more: Harian Papua. 2016. Kapolda: Kelompok Separatis Tidak Diiijinkan di Papua. The source can be accessed at: <http://www.harianpapua.com/20160626/7467-kapolda-kelompok-separatis-tidak-diiijinkan-di-papua.html>

(Papua), this incident occurred not long before the visit of President Joko Widodo on May 8th 2015 to give clemencies to five political prisoners in Papua. On the other hand, President Joko Widodo visited Papua on May 8th-10th 2015 to give clemency to the five political prisoners in Papua which is involved to the case of the piercing of Military District Command's weapon warehouse in Wamena April 4th 2003, however Joko Widodo should give the 60 more others political prisoners an amnesty and abolishment even in Papua nor Maluku.⁷

On July 15, 2016, the police apparatus conducted a prohibition related with the long march action that will be held by Peoples for West Papua Freedom which will conducted from the dormitory of Papuan students in Jalan Kusumanegara, Yogyakarta towards the 0 KM of Yogyakarta province. The rejection was because the mass action considered as assault act and very dangerous. Beside conducted prohibition on mass action, the police apparatus also conducted blockade towards the enter access of the dormitory. The blockade of Papuan dormitory conducted by the police apparatus and other intolerant mass organisations since early morning, that causing the Papuan students in the dormitory could not do the activities outside the dormitory. On that incident at least 8 Papuan people were arrested by the police apparatus.

Up until now, there are no specific protection on the women human rights defenders, while the cases of violations against human rights defenders keep increasing in Indonesia.

The case of criminalization against Eva Bande, environment activist that frequently conducted advocacy and assistancy towards the farmers while facing the land disputes between the farmers in Toili regent, Southeast Sulawesi with corporation PT. Berkas Hutan Pusaka (PT. BHP). Eva was arrested by the members of Southeast Sulawesi Police District, Luwuk Banggai Police Resort and Toili Police Resort with the allegation of violating the article 160 of the Penal Code regarding provocation. Eva was sentenced 4 years imprisonment in 2014, after eventually released after received clemency from President Joko Widodo at the end of 2014.⁸

The criminalization also occurred to Olga Hamadi, the Coordinator of KontraS Papua while she conducted lawsuit in Wamena District Court, Papua of the arbitrary arrests and detention against five suspects of murder case against Martin Kurisi, which the defedant is Chief of Jayawijaya Police Resort. On September 2012, while she wanted to enter Wamena District Court, Olga was intercepted by 7 persons lead by Tribe Chief Naligi Kurisi. It was found a day before that an unkown person from the inquiry members of the Jaya Wijaya Police Resort request the tribe chief to threaten Olga Hamadi to cancel and revoke the lawsuit. Because of the threat and the non-existence of security guarantee, Olga Hamadi then revoked the lawsuit.

⁷ KontraS already submitted the complaint by the mechanism of Individual Complaint to the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on the right to freedom of peaceful assembly and association by the letter No: 236/SK-KontraS/V/2015.

⁸ Opcit. Para 5.

II. Recommendations

The Government of Indonesia should:

- The government should establish and accelerate the process of Bill on Protection of Human Rights Defenders;
- The government should give clear explanation and wider definition to several articles that essentially provide a protection for human rights defenders
- The government should make sure the authorities management in the criminal legal process in Indonesia. According to the cases, there has been no follow ups on the cases occurred to the human rights defenders in Indonesia. Therefore, the authorities should be re-arrange to ensure the reports and investigations could be verified by the other institution besides National Police such as the Court;
- The government should conduct a proper control and accountability of the professional works supervision towards the law enforcement and security institutions. President should be responsible to the works of supervision towards the law enforcement in this context is the National Police. The President should ensure those insitutions conducted their works and protection towards the human rights defenders properly according to the international and national law standards.
- The government should provide remedies for the victims of criminalizations as a correction to the state. Up until now, the remedies opportunity towards the victims that being criminalized is not exist. The law enforcement eventually ended up with an administration mechanisms, meanwhile there are actually a specific laws regulated to protect the human rights defenders.
- The government should make an amandment on several laws that could not provide the cases of criminalization, such as Government Regulation No. 92/2015 regarding Criminal Procedure Codes (KUHAP) regarding the compensation of imposed punishment; Law on Electronic Transaction and Information that frequently limiting the works of human rights defenders in delivering the information to the public; articles 104-129 regarding assault act in the Penal Code that frequently used by the law enforcement and security apparatus to limiting the fundamental freedoms of Papuan people.
- The government should make a Presidential Team to assess the cases of criminalization. President could make a Presidential Decree on making this independent team to investigate and arranging the advocacy to end the criminalization against the human rights defenders in Indonesia.