

REPORT OF TORTURE 2014-2015: DELEGITIMIZING THE PRACTICE OF TORTURE
IN INDONESIA

PART I – INTRODUCTION

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Annually, on 26th of June, the global communities and organizations working on human rights issues commemorates the International Day against Torture; and as always, the The Commission for Disappeared and Victims of Violence (KontraS) would use this moment to conduct a thorough evaluation on the situation and practice of torture and other treatment or punishment that are cruel, inhuman, including punitive actions which are degrading, that are still regularly perpetrated. The practice of torture and other inhuman treatment is outlawed by the international human rights legal system. This stance against torture rose as an aftermath of the World War II, where war's casualty was not counted only in the number of lost lives but also in the trauma and suffering that called for rehabilitation. However, the practice of torture and other inhuman treatment didn't stop with the World War II. Authoritarian regimes and belligerent groups often reproduce the practice of torture and other inhuman treatment, perpetuating the pattern. In places such as Rwanda, Yugoslavia, Cambodia, and many others, a strong correlation is found between the practice of torture and the effort to perpetuate authoritarian regimes. It is noticeable that the United States, as a symbol of human rights and democratic power, has regularly used torture and other inhuman treatment; justifying the use of violence and human rights violations by state apparatus.¹

Grounded on the international human rights instruments and norms, KontraS tries to be as far as possible in providing analysis, support and contribution to the government; in order to encourage the use of international standards already enacted by other democratic

¹ At the end of 2014, the US Committee on Intelligence issued an accountability report from the Central Intelligence Agency, uncovering black ops involving torture in the war against terror. The 500-page report sheds light on seven main investigative topics: (i) torture techniques concurrent with the latest interrogation techniques used by CIA agents, (ii) CIA interrogation techniques are not conducted under strict supervision, (iii) CIA has twisted the directive from the Senates and White House on the use of effective techniques to suppress terrorism, (iv) field interrogators often work under directive of CIA public senior officer to justify their use of torture, (v) CIA often falsified reports on the number of prisoners subjected to the brutal interrogation techniques, (vi) there are at least 26 people detained under conditions incompatible with standards that respect human rights, (vii) CIA often collaborates with the media to gain public support for brutal interrogation techniques. For further information, see The New York Times, 2014, 7 key points from the CIA torture report.http://www.nytimes.com/interactive/2014/12/09/world/cia-torture-report-key-points.html?_r=0. Accessed on 22 June 2015.

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governments.² Both the norms and instruments are taken from international conventions that are binding to the state parties—countries that have ratified the concerned international human rights instruments. KontraS' first reference is the Universal Human Rights Declaration that underlines in the Article 5:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Moreover, the Article 7 of the International Covenant on Civil and Political Rights also expounds:³

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Furthermore, Indonesia has become a State Party to the Convention against Torture and other Inhuman Treatment via the Law no 5/1998. The Article 1 of the Convention describes the definition of torture:

The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is

² There are several human rights instruments on the prohibition of torture: Convention on the Rights of the Child, UN Standard Minimum Rules on Treatment of Prisoners, Protection against Arbitrary Arrest and Detention, UN Principles on the Use of Force and Firearms, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights. See: KontraS. 2014. "Angka penyiksaan meningkat, aktor semakin meluas: Laporan praktik penyiksaan dan perbuatan tidak manusiawi lainnya di Indonesia 2013-2014." http://kontras.org/lampiran/Final%20Penyiksaan_OK.pdf. Accessed on 22 June 2015, p. 29.

³ Indonesia has ratified the International Covenant on Civil and Political Rights via the Law no 12/2005 on the Ratification of the International Covenant on Civil and Political Rights. http://kontras.org/uu_ri_ham/UU%20No.%2012%20Tahun%202005.pdf. Accessed on 22 June 2015.

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inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The same instrument, in the Article 16, describes the cruel, inhuman and degrading treatment or punishment. This article is of utmost importance because the “cruel, inhuman and degrading treatment or punishment” is a practice often perpetrated by state apparatus or vested interest groups to preserve their monopoly on state’s authority:

- 1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
 - 2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.
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Another thing that needs to come to attention, especially by Indonesian policy makers, is that the international and national human rights legal instruments come with certain legal norms; these norms must be held in regard in order to prevent the practice of torture. It is the jus cogens norm that provides us with strong foundation for the argument on why the state must oppose the practice of torture.⁴

⁴ For information regarding the jus cogens norm, see Van Schaack & Slye, *supra* note 13, at 496 A jus cogens norm is “[a] mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted. Black’s Law Dictionary 876 (8th ed. 2004). In short, jus cogen is a preemptory norm of the international human rights law, it lays the foundation that prevention and

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Historically, the political will of the Indonesian government to ratify international human rights laws, adopt it as a part of national legislature and, in effect, compel all the state apparatus to abide by the provisions of such laws is effected by the strong intention of the post New Order democratic government to put a stop to vicious circle of torture and other inhuman and cruel treatment. The ratification of the Convention against Torture in 1998 is so significant, considering the brutal, inhuman treatment amounting to torture regularly perpetrated by the New Order regime. A question, however, remains: how far have we succeeded in unravelling the vicious circle of violence and practice of torture, and other inhuman treatment in Indonesia today?

In 2014, KontraS has a different approach to evaluation compared to previous years, in which KontraS made a comprehensive report in commemoration of the 30th anniversary of the International Day against Torture.⁵ Starting from the the anti-torture report of 2014, KontraS sees several tendencies that would be tested in the anti-torture report of 2015, namely: *First*, the fact that the security forces repeatedly fall back to the practice of torture in all levels of legal proceedings;⁶ *secondly*, the low accountability held against perpetrators of torture and other cruel and inhuman treatment; *thirdly*, the lack of opportunity for rehabilitation for the victims of torture and other cruel and inhuman treatment and their families; *fourthly*, the limitation to the space to demand accountability is put in place by the lack of national

persecution against the practice of torture is an absolute must and there shall be no excuse to the contrary under any condition. The Article 38 of the Statute of the International Court of Justice clearly expounds that the international customary law consists of two elements: state practice and *opinio juris*.

⁵See: KontraS. 2014. “Angka penyiksaan meningkat, aktor semakin meluas.” http://kontras.org/lampiran/Final%20Penyiksaan_OK.pdf. Accessed on 7 June 2015.

⁶In KontraS’ perspective, the legal proceedings begin at the event of arrest, to detainment, investigation, interrogation, sentencing and incarceration. In special circumstances such as the one in Aceh, the law enforcement forces are not limited to the Police Force for the province has a *Syar’i* Police Force—the *Wilayah Hisbah*—with an authority to enforce *Syar’i* law (though from the human rights perspective some of the provisions are against international human rights standards, such as the implementation of whipping). In different situations, different legal standards are being implemented—especially when the situation involves revenge, steps are taken to expedite the confession and information extraction process.

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regulation pertaining to the matter, lack of access to decent legal aid and its immediate availability; it is also of utmost importance to provide space for effective and immediate rehabilitation and protection against the practice of torture and other cruel and inhuman treatment.⁷

Furthermore, this report will examine several main points pertaining to the fundamental problem of the perpetuation of torture in Indonesia, namely: *First*, the absence of transparent, accountable, honest and fair law enforcement against perpetrators of torture or other cruel treatment, especially from the law enforcement agencies. *Second*, the regular use of internal ethic mechanism as the accountability mechanism for perpetrators of torture and other cruel treatment, with predominantly administrative sanctions thereby perpetuating the vicious circle of torture. *Third*, limited understanding in the part of law enforcement officers, especially in the investigation stage, regarding the fulfilment of victims' rights and the capacity of law enforcement agency to affect a deterrent upon the perpetrators so as to put a halt on the torture and other cruel treatment, preventing its perpetuation. *Fourth*, the lack of State capacity to expedite the process of revision to the Penal Code (KUHP) and Penal Proceedings (KUHP) pertaining to the articles that condone torture and other cruel treatment. KontraS would also like to highlight the lack of political will to revise the Law no

⁷ In this context, KontraS sees that the victims are put in disadvantage by having to report to the precinct where the torture is alledged to have taken place. There should be an independent, accountable referrer through which the victims can submit their report on torture and other cruel and inhuman treatment; where this referrer should have direct access to the Witness and Victim Protection Agency (LPSK) to comprehensively protect and rehabilitate victims' rights (referring to the Law no 31/2014 on the Amandement of the Law no 12/2006 on the Witness and Victim Protection, describing that the victims of gross human rights violation, of terrorism, of human trafficking, of torture, of sexual violence and of cruel abuse should have access to media, psychosocial and psychological rehabilitation given at the discretion of the LPSK). Other consideration is the availability, or lack thereof, of legal aid to the public. KontraS is of the view that the government must act more proactively to disseminate the Law no 16/2011 on Legal Aid and enlarge the public space for evaluation to its implementation; especially regarding torture and other inhuman treatment. As a comparison, based on KontraS' annual monitoring shows a trend of torture and other inhuman treatment related to unfair trial during the June 2013 to May 2014 period. Based on the monitoring, there are 34 incidents where toture is used to force confession to crime, 40 incidents of cruel punishment, 2 incidents where suspects were forced to sign fabricated confessions, 11 incidents of death in custody and only 3 incidents pertaining to actually extract information. See KontraS. 2015. "Legal Review Mendorong UU Bantuan Hukum Polri dan Kejaksaan Agung RI." Unpublished

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31/1997 on the Military Court; it seems that the State turns a blind eye upon the claim that that military personnels never include torture in their operation in conflict areas such as Poso and Papua. Despite the fact known to KontraS that the Indonesian Military Chief has issued the Military Chief Decree (Perpang) no 73/IX/2010 forbidding military personnels to perpetrate torture and other cruel treatment, its implementation level is still low. *Fifth*, KontraS also perceive State's lack of political will to expedite the legislative process for the Anti-Torture Bill; a decade has passed since the government ratified the Convention against Torture, yet there has been no steps taken to expedite the Bill into a Law.

I.1 Goals and Scope of the Report

The report has two main goals, namely:

- a. To publish KontraS' findings pertaining to the forms, patterns and state's response to the persistent reproduction of the practice of torture and other inhuman treatment
- b. To provide materials for advocacy to push for state accountability in order to close the cases of torture, followed by enforcement of the law against perpetrators, fulfilment of victims' rights, and passing the laws that guarantee the availability of space for accountability so as to sever the vicious circle of torture and other inhuman treatment

I.2 Data Collecting Method

This 2015 report will use two approaches, qualitative and quantitative, to collect data and information on the practice of torture and other cruel treatment during the period of July 2014 to June 2015. The methods used are not greatly different from the ones used in many of the KontraS' reports, namely:

- a. *Monitoring or case investigation report.* KontraS routinely investigates and/or monitors cases of torture and other inhuman treatment in many regions of Indonesia, especially in conflict prone areas such as Aceh, Poso, Maluku and Papua from 2014-2015.

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- b. *Legal aid for victims and their families.* KontraS has provided legal aid in several cases, with the following standard procedure: either the victims or their families submit a complaint in writing or via electronic mail to KontraS. During the legal assistance, KontraS conducts case investigation by fact finding effort regarding the incidents against the victims. An example case: the torture perpetrated against suspects of organized bike-jacking in several cities in Indonesia (Division of Civil and Political Rights Monitoring), torture and other inhuman treatment during conflict over natural resources (Division of Social and Economic Rights Monitoring).
- c. Sumber dokumen sekunder lainnya. KontraS telah melakukan pemantauan media secara berkala untuk mengikuti informasi yang berkembang di tengah masyarakat terkait dengan praktik penyiksaan dan tindakan tidak manusiawi lainnya yang masih terjadi pada ranah sipil dan politik serta ekonomi dan sosial. Selain itu, pada tahun 2015 ini, evaluasi KontraS terhadap situasi praktik penyiksaan dan tindakan kejam
- d. *Other secondary documents.* KontraS conducts regular media monitoring to keep track on the information spreading among the people regarding the existing practice of torture and other inhuman treatment, either in the sphere of civil and political rights or social and economic rights. Moreover, in 2015, KontraS conducts the evaluation against the practice of torture and other cruel treatment using the standard used by the UN Committee against Torture⁸ and the mechanism under the UN Human Rights Council (including the UN Special Rapporteur on Torture of 2015⁹ and

⁸It is known that the Indonesian Government never responds or follows up on the list of questions given by the Committee against Torture in 2011 (CAT/C/IDN/Q/3). The list can be accessed at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIDN%2fQ%2f3&Lang=en. KontraS also regrets that the 2008 agenda on the concluding observation from the UN Committee against Torture (CAT/C/IDN/CO/2) is halted, and a number of recommendations are not followed up by the Indonesian government. The document can be accessed at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIDN%2fQ%2f3&Lang=en. Accessed on 8 June 2015.

⁹ See The United Nations. 2015. Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez (A/HRC/28/68). The Document can be accessed at:

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recommendations conveyed in the Universal Periodic Review session of 2012 for Cycle II,¹⁰ while Indonesia is facing the Cycle III in 2016).

I.3 Early Findings

The report has some early findings which can be used as talking points in order to strengthen the advocacy against the crime of torture, and to provide new interpretation regarding its prevention and the protection and rehabilitation for the victims, in accord to the principles of human rights and accountability.

Firstly, there are some progress made by the Indonesian government by ratifying a number of international human rights instruments pertaining to the accountability against perpetrators of torture, for example the International Covenant on Civil and Political Rights (in 2005) and the Convention against Torture (in 1998). Ideally, this could be the key to greater accountability in the national legal system.¹¹

<http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>. Accessed on 8 June 2015.

¹⁰ See: The United Nations. 2012. Compilation prepared by the office of the high commissioner for human rights in accordance with paragraph 5 of the annex to human rights council resolution 16/21 (Indonesia). Document can be accessed at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/119/37/PDF/G1211937.pdf?OpenElement>. Accessed on 8 June 2015.

¹¹ In 2011, the Committee against Torture issued several questions to be answered by the Indonesian government in June 2012 at the latest; however the government has yet to give any response. In the List of Issues issued in 2011, the Committee against Torture inquired on several matters regarding the practice and legal system pertaining to torture, summarized into 44 points to be replied to by the Indonesian government. Among the issues that came into attention of the Committee against Torture are: firstly, the Indonesian government has not adopted the Convention's definition of torture; secondly, there are still reports on the impunity of the security forces perpetrating gross violation of human rights, including torture, especially in Papua, Aceh, Maluku and Kalimantan; thirdly, the Committee asked for information on the implementation of the punishment by whipping in Aceh; fourthly, the Committee inquired on the situation of Human Rights Defender, especially in West Papua, who are vulnerable to being subjected to torture. In line with the Committee against Torture, in 2013 the UN Human Rights Council issued recommendation pertaining to the practice of torture. Among others, it is recommended to revise KUHP by adopting the CAT's definition of torture, cruel, inhuman or degrading punishment or treatment, so as to make the penal

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Secondly, there are several legal products that have changed the nature of the national legal system into one that is more sensitive to human rights, such as the Second Amendment to the 1945 Constitution which adopts the universalism of human rights (especially Article 28g paragraph 2 which forbids torture), the Law no 39/1999 on human rights which also provides protection against torture (Article 33 para 1 and Article 66 para 1), Law no 26/2000 on Human Rights Court, providing the accountability framework on gross human rights violation—crime against humanity and genocide, including torture. Some of the accountability references, internal to the security sector, such as the Decree of the National Police Chief no 8/2009 on the Implementation of the Principles and Standards of Human Rights in the Duty of Police Force of the Republic of Indonesia and the Decree of the Military Chief no 73/IX/2010 on the Prohibition of Torture and Other Cruel Treatment in Law Enforcement among the Indonesian National Armed Forces, are examples of progress made by the post-New Order government.

Thirdly, there is no domestic accountability reference and prevention mechanism that can act as the foundation towards bringing the perpetrators of torture to justice, as guaranteed by the Article 1 of the Convention against Torture. Year in, year out, the Indonesian law enforcement bumps into the lack of measurable mechanism in the national penal code (the KHUP and KUHAP, which are yet to be included in the legal system reform agenda). Any legal proceeding pursued would be by using internal mechanism, administering only a slap on the hands providing no incentive for the development of human rights enforcement culture.

Fourthly, the monitoring mechanism is the key to progress for any administration, including the security forces which have much to do with human rights issues. Therefore, KontraS also use international advocacy mechanism, by correspondence directly with the UN Special Rapporteur on Torture Juan Mendez, by submitting annually updated case notes. There are at least eight correspondence made in order to communicate on the situation of human rights

code complies with international standards and to make these acts punishable under the law. Furthermore, the Human Rights Council encourages the Indonesian government to ratify the Optional Protocol to the CAT.

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and accountability on torture in Indonesia.¹² Aside from building communication through an international advocacy mechanism, KontraS regularly uses domestic accountability mechanism to ensure that recommendations made by the anti-torture advocacy are implemented effectively. To prove the effectiveness of a human rights advocacy, the state must be involved at a certain level for it is the state that bears responsibility on the protection of human rights.

Fifth, there are still state institutions that refuse to give priority to the crime of torture. As an example, KontraS, using the mechanism provided in the Law no 14/2008 on the Public Information Openness (KIP), tried to access the information collected by the National Human Rights Commission (Komnas HAM) to enrich the 2015 report on torture and other inhuman treatment.¹³ However, Komnas HAM doesn't even bother to reply to the letter sent through the KIP mechanism. KontraS has sent a complaint letter to Komnas HAM, but again there is no reply.¹⁴ The increasing intransparency of state institutions, including Komnas HAM lately, is a bad sign to the effort to effect an independent and trustworthy monitoring mechanism.

Sixth, KontraS makes similar critique to the internal monitoring mechanism used by the National Police Force, called Profession and Security (Propam) attached to the National and Regional headquarters. This mechanism is yet to prove itself responsive to complaints of victims of bad treatment by security personnels. Despite the existence of the Law no 25/2014 on Military Discipline, underlining the professionalism of the armed forces personnels in order to achieve the main functions and duties in a transparent manner, and to raise the discipline level of soldiers, and the Decree of the Chief of the Armed Forces no 73/IX/2010 on Prohibition of Torture and Other Cruel Treatment in the Law Enforcement among the Indonesian Armed Forces, the culture of impunity will stay strong as long as the Law no

¹² Working note of the international advocacy through the individual complaint mechanism—KontraS international desk, 2014-2015.

¹³ See: KontraS. 2015. "Permohonan informasi terkait tindakan Komnas HAM terhadap kasus penyiksaan periode Januari 2014-Mei 2015", No. 353/SK-KontraS/V/2015. Unpublished.

¹⁴ See: KontraS. 2015. "Keberatan atas tidak dibalasnya permohonan informasi terkait tindakan Komnas HAM terhadap kasus penyiksaan periode Januari 2014-Mei 2015". No. 382/SK-KontraS/VI/2015. Unpublished.

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31/1997 on Military Court has not been amended. The selfsame mechanism will always be used repeatedly to punish perpetrators of torture from among the armed forces personnels.

Seven, it takes commitment and cooperation from each institution to advance the state accountability on the human rights issues, through a number of amendments, or inter-institutional cooperation to increase political will and capacity to steer clear of the practice of torture and other inhuman treatment.

Eight, considering that there is a predisposition to torture those without sufficient economic access, the victims clearly lacks access to justice and information. Despite passing the Law no 16/2011 on Legal Aid, many people still lack adequate legal aid—for example in the cases of Yusman Telaumbanua and JIS.

Ninth, lately there's an overlapping between cases of torture and the development issues. Both state and non-state actors are actively involved in human rights crime, including torture and other inhuman treatment; with justification that development takes precedence over human rights issues. Non-state actors often use the justification that they are untouchables. On the other hand, the state's increasing ignorance, by failing to provide quick response to crimes involving non-state actors, contributes to reproduction of those crimes. Impunity is no longer a mere discourse, it is institutionalized; in turn this has incapacitated state institutions to provide guarantee to non-discriminative human rights protection. In this context, we may learn from the handling of the cases of Indra Pelani, peasants in Rembang and Talakar. KontraS underlines that the continuing practice of torture during interrogation and in law enforcement will not put an end to crime, because whatever information extracted through such method is cannot be trusted as to its accuracy.¹⁵

¹⁵ Lots of studies by international legal researchers have proven that many survivors of torture gave incomplete confessions, often mixed with misleading information. The goal is to instantly give “satisfaction” to the perpetrators, not to give correct information, to ease or stop the pain they suffer from torture. The victims' priority is to stop the pain immediately, thus fabrication of witness, information and confession is commonplace. See the following: Costanzo & Gerrity. 2009. *The effects and effectiveness of using torture as an interrogation device: Using research to inform the policy debate*. pp. 187-188. Dokumen dapat diakses di: http://www.cgu.edu/pdf/files/sbos/costanzo_effects_of_interrogation.pdf Diakses pada 21 Juni 2015.

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Tenth, the crime of torture is not something that stands on its own; the elements of unfair trial, case fabrication, and the bizarre circumstances around the death row execution during the early administration of President Joko Widodo are indications that the crime of torture is but a dot in a more serious mesh of human rights violation. For instance, KontraS' experience in providing legal aid to death row inmates, it is clear that the state apparatus are nowhere near effecting a compliance of national legal system with the global human rights trend, which is now moving away from death penalty and torture.

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PART II – RETRACING THE ACCOUNTABILITY AGAINST TORTURE IN
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II. 1 The Absence of Accountability over Torture

An old critique that KontraS annually, in every commemoration of International Day against Torture, raises is the absence of accountability mechanism to appropriately punish the perpetrators of the crime of torture in Indonesia. The usual reply to this critique is that the government is waiting for a suitable moment to amend the Penal Code (KUHP). Despite the fact that the initial effort for amendment started more than 20 years ago, the state has not shown any political will to prioritize this legal reformation. This fact will always be the obstacle for the human rights advocacy against impunity and the crime of torture in Indonesia.¹⁶ Examples are easy to find in the KontraS' advocacy notes below, such as the phenomenal executions of 14 death row inmates at early 2015; these executions are justified by the state as a means of stern law enforcement, based on data and statistics produced by dubious and intransparent method.

The Bill of Amendment to the Penal Code (KUHP) and Penal Proceeding (KUHAP) has entered the National Legislation Program 2015; however, there is yet to be any concrete deliberation on criminalization against the perpetrators of the crime of torture. The slow process of amendment of KUHP and KUHAP is affecting the state's capacity to guarantee the impartiality of the law regarding the crime of torture. The synchronization of KUHP and KUHAP has entered the National Mid-term Development Plan (RPJMN) for 2014-2019 in order to achieve the policy goals and development strategies regarding the legal system and human rights. This opportunity must be advanced further so as to bring reformation to the Indonesian legal mechanism administration.¹⁷

¹⁶The main excuse used by the Indonesian government in many international forum is the existence of a mechanism to punish perpetrators of torture (Article 351-358 of Penal Code). The reference, however, does not comply with the international human rights instruments agreed to by the Committee against Torture regarding criminalization of torture. The only mechanism completely covers the crime of torture is provided by the Article 9(f) of the Law no 26/2000 on Human Rights Court. However, this provision is only for "systematic or widespread" torture; which is only applicable in the crime against humanity category. For more information, see: Concluding observations of the Committee against Torture, Indonesia, 2 Juli 2008, UN Doc. CAT/C/IDN/CO/2, Para. 13.

¹⁷It is known that the draft to the Bill on Amendment of Penal Code still hasn't left the Office of the State Secretariate, thus making it impossible for the parliament to start deliberation of the Bill—which has been put into the Prolegnas 2015. See: CNN Indonesia.

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Furthermore, new initiative and strategy are needed in expedite the operationalization of the provisions of the Convention against Torture; which not only provides for the terminology of torture and accountability models available for their perpetrators of the crime of torture, but also the legal review on the prevention taken by the state to encourage law enforcement agencies to move away from the practice of torture,¹⁸ illegality of the evidence, witness statements or confessions gained through torture, to the rehabilitation of victims' rights as guaranteed by the Indonesian legal system.¹⁹ As a comparison in the South East Asia region, the Philippines is the most advanced country in regard of the availability of an accountability mechanism for torture via *Anti Torture Act of 2009 (Republic Act No. 9745, 10 November 2009)* as the legal norm to implement the international human rights instruments provided in the Convention against Torture.²⁰ It is regrettable that there is an obstacle regarding the priorities set on the Anti-Torture Bill, for it seems that the government lends little support on

2015. DPR masih tunggu draf RUU KUHP dari pemerintah.

<http://www.cnnindonesia.com/nasional/20150604162400-12-57736/dpr-masih-tunggu-draf-ruu-kuhp-dari-pemerintah/>. Accessed on 22 June 2015.

¹⁸Included is the effort to encourage the independent monitoring bodies, such as Komnas HAM (National HR Commission), Komnas Perempuan (National Commission for Eradication of VAW), Kompolnas (National Police Commission) to routinely visit detainment and interrogation centers, where torture is allegedly a routine.

¹⁹From the existing legislation, it is known that in order to get official protection and rehabilitation, victims must submit a complaint to relevant police units and the LPSK. KontraS is of the opinion, considering that many of the victims are allegedly tortured by personnels of the Police Force, that it will be difficult for the victims to submit complaints to their alledged torturers—this mechanism adds to the trauma and reluctance of the victims to submit any complaint, and in effect lessen the space available for them to get the fulfilment of their rights to protection and rehabilitation.

²⁰An interesting consideration from the legal system of the Philippines is that they not only adopt a definition of torture that complies with the Article 1 of the Convention against Torture, but also enumerates a number of prohibition on various forms and methods of torture. Pertaining to the punishment appropriate to the committed crime of torture, there is a guarantee of impartial and expedited investigation (by an external institution), and the availability of space for rehabilitation of the victims' rights.

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it, as is shown by the fact that the Bill is not prioritized in the 2015 National Legislation Program (Prolegnas 2015) and the RPJMN 2015-2019.²¹

Moreover, regarding the acceleration of the synchronization of the national legal system to the international human rights instruments, the Indonesian government is yet to prioritize the ratification of the Optional Protocol to the Convention against Torture and the International Convention on the Protection of All Persons against Forced Disappearance.²² The agenda of ratification has repeatedly entered the National Human Rights Plan (RANHAM), first in the period of 2011-2014 with the target of ratification in 2013. Ideally, this ratification process should not be put into a pause, for Indonesia is a member of the UN Human Rights Council

²¹Despite not being a priority in the Prolegnas 2015, the National Agency for Legal Development (BPHN) is pushing for the Bill against Torture to be included in the mid-term priority in 2016.

²²Especially important for the International Convention on the Protection of All Persons against Forced Disappearance, for the convention explains the relationship between disappearance and torture suffered by the victims, and also by their families. This is apparent in the Article 2 of the said convention and Article 1 of CAT; both are closely related in their interpretation. Furthermore, the close relationship between the two Conventions is supported by some major studies conducted by the United Nations Working Group on Enforced or Involuntary Disappearances (1980), The Inter-American Court of Human Rights (1988), The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), The United Nations Human Rights Committee (untuk studi kasus Celis Laureano v. Peru, Tshishimbi v. Zaire, Megreisi V. Libya, Mojica v. Dominican Republic). A summary of analysis can be perused in: Fiacat. 2013. Link between torture and enforced disappearances. <http://www.fiacat.org/links-between-torture-and-enforced-disappearances>. Accessed on 20 June 2015. Additionally, the convention has been adopted by the UN General Assembly Resolution (A/RES/61/177) on 20 December 2006, and entered into force on 223 December 2010 after ratification from 20 states parties. Until April 2012, the Convention has 32 State Parties and 91 Signatories. Indonesia, as per the statement of the Minister of Foreign Affairs Marty Natalegawa before the 19th Session of the High Level Segment in the UN Human Rights Council on 28 February 2012 in Geneva, Switzerland, states that the country has a strong commitment to ratify at the earliest opportunity the Convention against Forced Disappearance. It is important to watch for the follow ups by the Joko Widodo administration, considering the effort to ratify this convention has had a long history, pioneered during the time which Hamid Awaluddin held the office of Ministry of Justice and Human Rights, expounded by his speech before the 4th Session of the High Level Segment in the UN Human Rights Council on 12 March 2007. See: Jakarta Post. 2010. Ratifying convention of the disappearances. <http://www.thejakartapost.com/news/2010/01/11/ratifying-convention-disappearances.html>. Accessed on 21 June 2015

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until 2017, and is morally bound to set an example of advances in human rights, not only for show and international reputation, but as a real reflection of advances gained regarding legal accountability at the nasional level.

II.2 Actual Practice of Torture in Indonesia

Aside from the the absence of accountability mechanism on the crime of torture, annually KontraS issues data and analysis pertaining to the trend of torture and other cruel and inhuman treatment, as a part of control and accountability mechanism on the Indonesian security actors. During July 2014 to June 2015, KontraS has received 15 direct complaints from the victims and their families regarding torture and other cruel treatment perpetrated by state apparatus such as personnels of Police and Armed Forces. The 15 cases are assisted by KontraS' two special divisions: Civil and Political Rights Monitoring and Economic and Social Monitoring. Furthermore, KontraS also monitors media pertaining information published on the practice of torture in Indonesia. There are at least 84 cases of torture during July 2014 to May 2015. Despite a decrease in number compared to what was reported in 2014, we should also watch for external factors influencing the decrease of number.²³

During that year, KontraS sees that the tortures perpetrated by the law enforcement officers should make the evidence gained dubious (gained under duress), and further undermines the quality of the legal process. For example, in the cases under threat of death penalty, the law enforcement officers used procedures that resulted in unfair trials; and in turn cast a fatal doubt over the sentencing of those cases.

II.2 .1 Torture and Continuation of the Practice of Death Penalty²⁴

Another crucial human rights issue overlapping the crime of torture in Indonesia is the continuation of death penalty. KontraS is a human rights organization fully in support of abolition of death penalty from Indonesian national legal system. Indonesia has de facto practiced a moratorium of death penalty from 2008 to 2012; this is a positive modality for the Indonesian government. However, since the 2013 execution of 5 death row inmates under the

²³ Further analysis will be given in subsequent chapters.

²⁴ Summary of the work of advocacy and monitoring; KontraS' Division of Fulfilment of Civil and Political Rights (2014-2015).

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administration of Susilo Bambang Yudhoyono, and the record breaking number of execution during the early administration of Joko Widodo when 14 inmates have been executed (6 in January 2015 and 8 in April 2015).

There is a drastic diminish in the appreciation and the guarantee to the rights to life, with an excuse that mandatory death penalty is necessary to combat the national crisis of drug trafficking. Since February 2015, KontraS has monitored and provided legal aid to a death row inmate in a drug case, the Brazilian Rodrigo Gualarte (42 y.o.). The case attracted KontraS considering the legal process against Rodrigo has violated much of legal conditions for a fair trial; from not being granted a sworn translator in his native tongue,²⁵ dallying in informing the Brazilian Embassy in Jakarta, so that the information of Gualarte's mental illness since 1982 is not included in the consideration by the Attorney General—who insisted that Gualarte is included in the list of execution, which has been carried out after the first wave of executions in January 2015.

In April 2015, KontraS and the defence team for Gualarte²⁶ has submitted a petition of bail under the name of Angelita Aparecida Muxfeldt, Gualarte's in-law. She intended to post a bail for Gualarte, who suffered from mental illness; asked the Cilacap Judge of the First Court to move Gualarte, at that time was incarcerated in the Class II A Correctional of Pasir Putih, Nusa Kambangan, Central Java, to the Sanatorium of Dr. Amino Gondohutomo in Semarang to obtain adequate mental treatment. Another legal option pursued were to submit a second appeal for Judicial Review through the Tangerang First Court, and also to submit a lawsuit against the Presidential Decision to reject all the clemency appeal for Rodrigo Gualarte to the Jakarta State Administrative Court. The legal options were halted halfway for the Attorney General insisted on executing Rodrigo Gualarte and other death row inmates in the Stage II List at the dawn of 29 April 2015.

The execution of Rodrigo Gualarte, a patient with paranoid schizophrenia and depressive bipolar disorder, characterized by psychosis, is a violation to the Article 44 para 1 of the

²⁵During the legal process, Rodrigo Gualarte was granted an English translator; whereas he was fluent only in Portuguese, the national language of his native country Brazil.

²⁶The appeal for bail under the guardianship of Angelita Aparecida Muxfeldt, an in-law for Rodrigo Gualarte, has been submitted on 23 April 2015 by the Advocacy Team for People with Mental Illness (TAP-ODGJ) consisted of LBH Masyarakat, KontraS, LAPDI dan Perhimpunan Jiwa Sehat (PJS).

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Penal Code, providing that “Anyone committing a crime that he or she cannot be held accountable because of his or her mental capacity (*zijner verstandelijke vermogens*), defect during childhood or disorder caused by a disease, cannot be tried under a penal code.” Furthermore, the Indonesian government has ignored the ongoing legal process, considering that on 28 April 2015 the Cilacap First Court has issued a notification that a Clemency Hearing for Rodrigo Gualarte would be held on 6 May 2015. Thus the Indonesian government has committed an illegal action and a violation against human rights, by committing an ill treatment against a mental patient.

In many of the international human rights instruments, there are provisions against executing individuals with mental illness.²⁷ Furthermore, the UN Special Rapporteur for Extrajudicial, Summary and Arbitrary Executions has conducted an in-depth study on the relationship of death penalty and mental disorder; in which the UN Special Rapporteur strongly objects the use of any information or confession from inmates with mental illness as justification for a death penalty, much less for an execution.²⁸

Another inmate in the above mentioned Stage II List, Zainal Abidin, also suffered from torture and other inhuman treatment, and lack of access to justice. It is known that the process of replying to the first appeal for Judicial Review went on for over a decade (2005-2015), involving carelessness by the judiciary officials—namely the neglect of Palembang First Court to follow up on the first appeal files. When it became known that the file had been misplaced, a rejection was issued in just several days after the document was found.²⁹

²⁷ See: The United Nations. 1984. Safeguards guaranteeing protection of the rights of those facing the death penalty. <http://www.unrol.org/files/SAFEGU~1.PDF>. Accessed on 20 June 2015.

²⁸ See: U.N. Commission on Human Rights. 1998. Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur. E/CN.4/1998/68/Add.3, para. 145. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/102/37/PDF/G9810237.pdf?OpenElement>. Accessed on 20 June 2015.

²⁹ See: KontraS. 2015. “Fakta dan kegagalan-kegagalan kasus pada gelombang II eksekusi mati 29 April 2015”. http://kontras.org/index.php?hal=siaran_pers&id=2040. Accessed 19 June 2015.

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The General Comment issued by the Committee against Torture in 2008 clearly states that the inmates have rights to be guaranteed such as the rights to legal aid, medical treatment, gratis calls to the family, not to be subjected to torture or cruel treatment by the court, and to gain access to resources to enable them to challenge the legality of their arrest (see:CAT/C/GC/2, Para. 13).³⁰

The practice of torture and case fabrication has also put two of Nias, North Sumatra, residents under death penalty despite unfair trial. Yusman Telaumbanua and Rasula Hia was sentenced to death by the preceding judges from Gunungsitoli First Court regarding a premeditated murder of three gecko buyers from North Sumatra in 2013. Both were initially interviewed as witnesses to the crime but then the Resort Police of Gunungsitoli arrested them as suspects. There are many dubious incidents during interrogation; especially that the crime has no witness. The only information on the crime was obtained from Yusman Telaumbanua and Rasula Hia under duress.

³⁰ See: Committee Against Torture. 2008. General comment No. 2 on implementation of Article 2 by State Party.
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en. Accessed 20 June 2015

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Picture: Yusman Telaumbanua

Source: Divisi Pemenuhan Hak-Hak Sipil dan Politik KontraS

Furthermore, the two suspects didn't have any access to legal aid and translators—showing that the case investigation is full with fabrication. Moreover, the two victims complained that during detainment they were tortured to extract confession to the crime. The torture is apparent from the marks on their body and their story on how they were forced to confess to the murder under duress, culminating in a death sentence from Gunungsitoli First Court.³¹

³¹ See: KontraS. 2015. "Rekayasa Kasus Yang Berujung Pada Vonis Hukuman Mati Terhadap Yusman Telaumbanua dan Rasula Hia." http://kontras.org/index.php?hal=siaran_pers&id=2013 and "Update Temuan Terkait Dugaan Rekayasa Kasus Yang Berujung Vonis Mati Terhadap Yusman Telaumbanua dan Rasula Hia." http://kontras.org/index.php?hal=siaran_pers&id=2020. Accessed on 22 June 2015.

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The latest report from the UN Special Rapporteur on Torture Juan E. Mendez expounded that children victims of torture would have different response compared to adults, both physically and mentally. The damage from practice of torture and other inhuman treatment would be amplified on children compared to adults (see A/HRC/28/68, Para. 33).³²

The UN Special Rapporteur also stresses that death penalty has been forbidden in many international human rights instruments regarding its mandatory application to children, such as the provision of Article 37(a) of the Convention on the Rights of the Child. The Committee on Rights of the Child, in the General Comment no 10 (CRC/C/GC/10) and the UN Human Rights Committee in the General Comment no 21 explain that a life sentence without parole is also inappropriate for juvenile offenders (see: Ibid, Para 37).

Execution, by whatever method, including firing squad or other methods, is explicitly a violation against prohibition of torture and other inhuman treatment; which is provided in many international human rights instruments and national judicial mechanism, including in those countries where death penalty still exist but is put under a moratorium³³ In the case of Zainal Abidin, KontraS is of the opinion that the elements of death-row phenomenon, where the situation is causing mental and physical suffering for the death row inmates, are met—including the unduly long process of appeal, in which the inmate must wait in uncertainty. This situation arguably concurs with the contemporary argument that torture and other cruel and inhuman treatment are suffered by death row inmates.³⁴

³² See: Juan Ernesto Mendez. 2015. Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. A/HRC/28/68. <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>. Accessed on 22 June 2015

³³ See: Juan. E. Mendez. The death penalty and absolute prohibition of torture and cruel, inhuman, and degrading treatment of punishment. <https://www.wcl.american.edu/hrbrief/20/1mendez.pdf>. See also: OHCHR. 2012. Death penalty increasingly viewed as torture, UN special rapporteur says. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12685&LangID=E>. Accessed 19 Juni 2015.

³⁴ Death row phenomenon is a series of methods and situation applicable to death row inmates, from the condition they suffer during the trial to the time of their execution. The studies on death row phenomenon have been conducted by international human rights

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The return to pro-death penalty policy will result in negative sentiment towards the government's effort to provide maximal protection to Indonesian migrant workers, who are often put in discriminatory legal situation in the receiving countries—as is apparent from the recent case of Siti Zaenab in the Saudi Arabia. Strengthening pro-human rights diplomacy will grant positive incentive for the Indonesian government; so as to advance the death penalty moratorium into a full abolition of death penalty, and to provide a capacity building support for law enforcement officers to synchronize their operation with a pro-human rights legal policy.

experts, one of them being the UN Special Rapporteur on Torture Juan Mendez, in order to show the relationship between death penalty and the crime of torture and other cruel and inhuman treatment in using a more contemporary approach. For more information, see: <https://www.wcl.american.edu/hrbrief/20/1mendez.pdf>. p.3. Accessed 20 June 2015.

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II.2.2 Torture Resulting in Grave Wound³⁵

Torture, a methode frequently used by the security forces, often results in great pain, even results in grave and permanent wound. For instance is what happened to Kuswanto, from Kudus, Central Java, who was wrongly arrested and tortured by the personnels of Police Resort of Kudus in the case of robbery against PT Walls. In the process of arrest, Kuswanto and his three friends were tortured so as to confess to the crime. The investigators did not bring Kuswanto to the Precint, instead to the Driving Licence Test Field, on Jalan Lingkar Universitas Muria, Kudus. At the field, Kuswanto was again forced to confess to the robbery; and because he doggedly refused to confess, while he was handcuffed, legs bound and eyes taped shut, he was set on fire. This incident left him with burns on his face, neck, right breast and stomach. After setting the victim on fire, the police personnels brought him to the Resort, where the torture with repeated with waterboarding method. The torture left the victim unconscious and in critical condition. He was then brought to Kudus General Hospital on 02.30 and had to undergo an intensive care for two weeks.



Picture: Kuswanto

Source: KontraS' Division of Fulfilment of Civil and Political Rights

³⁵Summary of the advocacy and monitoring works of the KontraS' Division of Fulfilment of Civil and Political Rights (2014-2015)

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Several legal options have been pursued, starting from submitting a complaint against the perpetrators of torture both through criminal procedures and ethical commissions in the National and Regional Police Headquarters. With Kuswanto, KontraS has also submitted a complaint to the National Police Commission (Kopolnas), Ombudsman of the Republic of Indonesia (ORI) and the Witness and Victims Protection Agency (LPSK). LPSK even granted protection and procedural assistance during the interrogation. On 12 December 2014, KontraS provided legal aid during the investigation pertaining to the crime of torture against Kuswanto at the Regional Police HQ in Semarang; the suspect being LR, personnel of Kudus Police Resort. It is regrettable that the suspect only got six month of imprisonment from the Kudus First Court. Currently the State Attorney is compiling an appeal to the Kudus High Court to aggravate the sentencing.

Torture also happened in the case of Alvares and Yali Wenda; both are students at the University of Cendrawasih. The two victims were tortured; before they were able to negotiate with the police, the security forces arrested them by pulling them by the hair and dragged them to a police truck. During the transport, they were tortured by some police personnels: their whole body beaten with bare hands, rattan sticks and rifle butt, kicked, electrocuted at their back, intimidated with derogatory intjections (dogs, stupid students, you will never be free, monkey's sons, godless) for an hour and half. They were transported to Jayapura Police Resort, detained for a day and interrogated; they were forced to sign a pledge that they would never participate in another demonstration. At the police HQ, they received elementary medical treatment, such as stitch on the head wounds, without proper care by medical personnel.

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Picture: Alvares

Source: KontraS' Division of Fulfilment of Civil and Political Right



Picture: Yali Wenda

Source: KontraS' Division of Fulfilment of Civil and Political Rights

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Another case of torture was suffered by Rudi Sitorus (29 y.o.), accused of embezzling a motorbike belonging to a friend of his. The embezzlement was reported to the Medan Sunggal Precint, North Sumatra. Based on that report, Sitorus was arrested by police personnel from his home. Two days after the arrest, his family found him in critical situation in the Police Bhayangkara Hospital; with head bleeding and gun shot wound in the legs. The incident prompted the family to submit a complaint to the Profession and Security (Propam) of North Sumatra Regional Police HQ on 10 September 2014. The case of this alleged post-arrest torture is yet pending any follow up.

The General Comment of the Committee against Torture expounds that the access to judicial remedies must be fully accessible to the victims of torture, in sync with the access of victims to their other rights. This access must also enable participation for the victims. Each State Party must provide access to justice for victims and a transparent complaint mechanism. The State Party must also provide evidence to support allegation of torture at the behest of victims, through their legal counsels, or of the presiding judges. The failure of the State Party to provide evidence and information, such as the health record and evaluation after a torture is perpetrated will hinder the process of complaint and responsive redress—this includes encouraging the state to provide a process of rehabilitation and compensation (see: General Comment CAT No. 3: CAT/C/GC/3 – 2012, Para. 30). Furthermore, the Committee also expounds that a decent redress, both judicial and non-judicial, must guarantee an effective effort including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition and refers to the process of redress of victims' rights under the Convention (see: General Comment CAT No. 3: CAT/C/GC/3 – 2012, Para. 2).³⁶

³⁶See: Committee Against Torture. General comment no. 3 (2012), implementation of article 14 by state parties.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=en. Accessed 19 June 2015

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II.2 .3 Fatal Torture³⁷

Fatal torture was conducted, for example, to one of the suspects on the case of sexual violence against minors in Jakarta International School (JIS). The suspect, AZ, a janitor at the school, died while in custody of Jakarta Metro Police. According to Jakarta Metro Police, the suspect died by suicide but, according to the witness, another suspect in the same case, before his death the victim was brutally beaten and forced to confess to the alledged crime.³⁸

Another death by torture happened in the case of Ramadhan Suhuddin (16 y.o.), perpetrated by the Major Crime Division personnel of Samarinda Police Resort. Ramadhan, a minor, was alledgedly involved in a bike-jacking. He was tortured by nine personnel of Samarinda Police Resort in the interrogation room of the said Resort. He was beaten until vomitted, passed out and finally died.

Although a criminal proceeding has been conducted in 2013 on the case of Ramadhan's death, only one personnel went to jail for 7 years (the convict is still imprisoned at the Samarinda Correctional Class I). The other eight perpetrators were only been given administrative sanctions; despite a clear statement by the Samarinda First Court and the Appeal Court that the victim died under torture by nine personnel of Samarinda Police Resort Major Crime Division. On 12 May 2015, KontraS and the family of the victim have submitted a new criminal report against the eight other perpetrators that haven't been brought to justice. KontraS has also met key witnesses to prepare them for a fresh round of investigation.

In yet another case, five residents of East Lampung, Abdul Wahab, Ali Husin, Ali Iro, Ahmad Safei, and Ibrahim also died while in custody of Serpong Precint in Tangerang, Banten, on 8 February 2015. Their death is suspected to have been caused by torture related to the investigation of the daredevil bike-jacking cases. They were previously apprehended

³⁷Summary of the work of advocacy and monitoring; KontraS' Division of Fulfilment of Civil and Political Rights (2014-2015).

³⁸Regarding the alleged suicide, KontraS is of the opinion that the victim was constantly tortured. The statement that the victim committed suicide is questionable considering contusion around his mouth and eyes. Did the victim committed suicide, or was it just a cover up by the interrogators? It is known that during interrogation the victim was heavily tortured.

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on 1 February 2015, with 14 other suspects, in their respective rent-rooms in Tangerang and Bogor. After four days of detainment and torture, 14 of the detainees were released while the five stayed in custody. On 8 February 2015, the victims' families received text messages from unidentified sender, confirming that the five died during a shoot out and their bodies were interred in the Tangerang General Hospital. The joint statement from Jakarta Metro Police and Tangerang Precinct says that the five suspects died during shoot-outs with personnel of Serpong Precinct in Merak Harbor and in one of the rent-rooms of the suspects.

In response to the incident, KontraS conducted investigations to the locations where the 19 people were arrested, in Tangerang and Bogor. The investigations show dubious facts pertaining to the death of the five victims, compared to the statement of the Police.³⁹

KontraS' Investigation for the Daredevil Bike-Jacking Case

First, the arrest and detainment against the 19 East Lampung residents were conducted in random because the Precinct personnels did not have any definite suspect, and the arrests were not conducted with any legitimate warrant.

Second, during detainment, the victims were never officially interrogated; they were just tortured to confess to the alleged crime and forced to sign a statement that they didn't get a chance to read.

Third, after detainment and torture for four days at the Melati Mas Police Post by personnels of Serpong Precinct, 14 people were released while five others stayed in custody.

Fourth, at the location of the professed shootout in Cikupa, Tangerang, only 17 shells have been found; and they are all indicate shootings towards the roof. This fact casts doubt on the Police's statement that there has been a shootout at the location.

Fifth, the location of the professed shootouts was rented for just two days before the shooting begun. This is a direct refute to the Police's statement that the rented-room was the hideout of the bike-jacking gang.

³⁹See KontraS Press Release, "Fakta-Fakta Kekerasan Dibalik Tewasnya 5 Warga Lampung Timur Pasca Ditangkap Anggota Polsek Serpong", http://www.kontras.org/index.php?hal=siaran_pers&id=2070, accessed 15 Juni 2015.

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Sixth, one of the victims, Ahmad Safei, died because his neck was broken and with a gun shot wound on his chest. This fact casts doubt on the Police's statement that the victim made an armed resistance before he was shot.

Source: KontraS' Division of Civil and Political Rights Monitoring, 2015

Based on the findings of the investigationsm KontraS' has submitted a complaint on that case to Kompolnas, and provided legal aid for the victims of torture to the Jakarta Metro Police. KontraS strongly encourage an official announcement of the case, and to follow up the findings; Jakarta Metro Police promised to investigate the case in a near future and interviewed the survivors of the torture.

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Investigation of the professed location of shootout in Cikupa, Tangerang (28 May 2015)
Documentation: KontraS' Monitoring Bureau



The victims' blood spattered on wall, at the location of arrest of the 16 people in Warung
Mangga, Serpong, Tangerang.
Documentation: KontraS' Monitoring Bureau

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Another case of fatal torture also happened in the detention center of Sukodono Precinct, East Java. On 30 October 2014, Imron, a resident of Sukodono, was involved in a brawl during a live music show in one of the district's parks. At that time, a precinct's personnel by the name of Aman, tried to stop the brawl but he was hit by Imron. Afterwards, Imron was arrested and taken to the precinct, charged with wanton attack against a police officer. Imron was interrogated and his parents came to visit him in prison. Imron stayed in custody for the night. The next morning, at 9.00 a.m. he was found dead with contusions on his abdomen and lips. The people thought he died by torture. Enraged, the residents of Sukodono demanded that the perpetrators brought to justice. The Chief of the Sidoarjo Police Resort put nine personnels of Sukodono Precinct to suspension during the legal proceedings. At the end, the prosecution was cancelled because the case allegedly lacks evidence.

In KontraS' record, police precincts or posts are the locations of most cases of torture and other inhuman treatment. Torture and inhuman treatment that happen in police precincts or posts are usually conducted during investigation/interrogation of the victims. On a number of cases, the victims are forced to divulge information, or to confess to the charged crimes.

Just as happened in the cases of JIS, Yusman Telaumbanua and Rasula Hia, torture was conducted during interrogation in the police posts. Torture is usually perpetrated using electric shock, beating and kicking. In the cases of Alfares and Yali Wenda, torture is accompanied by degrading treatment—especially with racist slander. The practice of torture in the police offices is related to the effort to force suspects' confessions to the crime. The majority of perpetrators of torture are still the police officers.

The General Comments of the Committee against Torture expounds that the redress, both judicial and non-judicial, must guarantee effective remedy, which entails restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition and referring to redress provided in the Convention (see: General Comment CAT No. 3: CAT/C/GC/3 – 2012, Para. 2).⁴⁰

⁴⁰ See: Committee Against Torture. General comment no. 3 (2012), implementation of article 14 by state parties. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f3&Lang=en. Accessed 19 June 2015

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The Committee recognizes that most States Parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment differs in the severity of pain and suffering and may not require proof of impermissible purposes. The Committee emphasizes that it would be a violation of the Convention to prosecute conduct solely as ill-treatment where the elements of torture, as provided in the Convention, are also present (see: General Comment CAT No. 2: CAT/C/GC/2 – 2008, Para. 10).⁴¹

Another consideration is the duty of the State Party to Naming and Defining of this crime by public announcement. Codifying this crime will also emphasize the need for a) appropriate punishment that takes into account the gravity of the offence, b) strengthening the deterrent effect of the prohibition itself and c) enhancing the ability of responsible officials to track the specific crime of torture and d) enabling and empowering the public to monitor and, when required, to challenge state action as well as state inaction that violates the Convention (Ibid. Para 11).⁴²

II.2 .4 Torture and False Charges⁴³

Torture is a method frequently employed by law enforcement officers in order to make false charges stick. Further investigation to the cases of Yusman Telaumbanua (death penalty) and Kuswanto (torture causing grave wounds) shows that both contain indications of false charges. KontraS' investigation on the case of sexual violence in the Jakarta International School, is another example; where the police arrested six suspects: Agun Iskandar, Zainal Abidin, Afrisca Setyani, Virgiawan, Azwar and AZ who died in custody. The statements from witnesses, their family members, and the suspects, state that they endured torture by interrogators in order to force them to confess having sexually assaulted children.

⁴¹ See: Committee Against Torture. General comment no. 2 (1998), implementation of article 2 by state parties. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2&Lang=en. Accessed 19 June 2015

⁴² Ibid.

⁴³ Summary of the work of advocacy and monitoring; KontraS' Division of Fulfilment of Civil and Political Rights (2014-2015).

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On the other hand, the evidence produced on the case of sexual violence by the investigators through the process of *visum et repertum*, is still inconclusive according to experts; for the evidence do not show beyond doubt that sexual assault has been perpetrated as charged.⁴⁴ This case shows that the law enforcement officers still rely on torture to obtain the evidence, instead of legally obtained evidence as provided by Article 184 of the Penal Proceeding. According to the article, confession taken under duress should not be presented as legally obtained evidence.

The General Comment of the Committee against Torture emphasizes the obligations in articles 2 (whereby "no exceptional circumstances whatsoever.. may be invoked as a justification of torture"), 15 (prohibiting confessions extorted by torture being admitted in evidence, except against the torturer), and 16 (prohibiting cruel, inhuman or degrading treatment or punishment) are three such provisions that "must be observed in all circumstances". The Committee considers that these three provisions are paramount in the investigation of allegation of torture (see: CAT/C/GC/2 – 2008, Para. 6).⁴⁵

II.2.5 Torture as a Method to “Exact Revenge”

Torture is often employed in order to exact revenge, as happened in a case in Batam. Eleven civilians (“the victims”) were blindfolded and transported in a car. Along the way, all of them were beaten and whipped. Afterwards, they were dumped in separate locations, only wearing their underwear.⁴⁶ One of the victims, Taufik, were gravely wounded and to date is still in hospital, another one is still unknown as to his whereabouts, while another one is found dead. The kidnapping and torture are allegedly related to the death of First Sergeant Purwinanto, a personnel of Indonesian Navy from Marine Batalyon 10; he was stabbed to death in Sagulung, Batam, on Friday, 13 February 2015.

⁴⁴See: South Jakarta First Court. 2014. Verdict: 840/Pid.Sus/2014/PN/Jaksel, dr.Feryal Basbeth, Sp.F. pp.70-76.

⁴⁵ Op.cit.

⁴⁶ See: KontraS. 2015. Laporan Investigasi Batam. Unpublished.

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II.2.6 Torture and Other Inhuman Treatment in the Business and Natural Resources Sectors⁴⁷

From several logged complaints and investigation reported by KontraS' Division of Civil and Political Rights Monitoring, there are some interesting findings pertaining to the practice of torture and other inhuman treatment in the business and natural resources sector. It must be stated that the increasing presence of personnels of the Indonesia military, police force and other non-state actors, in safeguarding developmental projects run by corporations, is an indication of growing justification of the use of torture and other inhuman treatment to defend the interests of the economic elites. Furthermore, considering the nature and culture of Indonesian law enforcement, which still relies on violence to suppress popular rejection of elitist development, torture and inhuman treatment are increasingly prominent in the period of July 2014 to June 2015.

II.2.6.1 The Death of Indra Pelani, a peasant activist from Jambi

In the death of Indra Pelani, a peasant activist, on 27 February 2015, it is known that the victim was actively involved in advocacy and legal aid for the Jambi peasants against the corporate practices of PT Wirakarya Sakti. The corporation is notorious for its criminalization, terror and intimidation against the residents living around their illegal business premises. After the death of Mr Pelani, KontraS with Wahana Lingkungan Hidup (Walhi) and Konsorsium Pembaharuan Agraria (KPA) investigated the case and found evidence of possible inhuman treatment by the security service personnel under employment of PT Wirakarya Sakti, a unit known as Quick Response Unit.⁴⁸ The victim was found dead with contusions all over his body, marks of stabbing and blunt weapon wounds, legs and hands bound, and mouth gagged with his own shirt. The stabbing wound on his neck is the cause of death. It is known that the investigation on this incident is being carried out by the Regional Police HQ of Jambi.⁴⁹ Komnas HAM (Indonesian NHRI) has also send a team to

⁴⁷Summary of the work of advocacy and monitoring; KontraS' Division of Fulfilment of Civil and Political Rights (2014-2015).

⁴⁸See: KontraS, Walhi, et.al. 2015. Laporan investigasi kematian Indra Pelani. Unpublished.

⁴⁹KontraS and the Coalition for Investigation on Indra Pelani case find that the Police Regional HQ of Jambi only charged five suspects for the torture and murder of Mr Pelani. Those five come from the Quick Response Unit of PT Wirakarya Sakti. KontraS strongly

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the field to further monitor the case, and several witnesses have obtained protection from LPSK. However, KontraS is of the opinion that the involvement of non-state actors in the inhuman treatment against Mr Pelani has not been responded with swift law enforcement by the police, who fails to uncover the individuals behind the incidents, and fails to bring to justice the corporation which gains from the brutal conduct of the hired security personnels. This amounts to a human rights violation by omission.



Rekonstruksi kematian Indra Pelani

Sumber: Dokumentasi Divisi Pemenuhan Hak-Hak Ekonomi dan Sosial KontraS, 2015

II.2 6.2 Torture and Modern Slavery in Benjina, Maluku

There is also a case of modern slavery, found among the sailors in Benjina, Maluku. The case was uncovered by an investigative journalist from the Associated Press on 25 March 2015 under the headline “Are Slaves Catching the Fish You Buy?” The case had public attention,

suspect that the investigation and interrogation carried out by the Regional HQ of Jambi are fabricated. KontraS also finds evidence of the involvement of non-state actors such as the security service hired by PT Wirakarya Sakti no longer has a licence to operate past 15 April 2015. It is also known that the security service has hired some individuals from the Army. This practice is in contradiction to the Directive of the Indonesian Police Chief (Perkap) no 24/2007 on Security Management System.

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including KontraS, which then proceed to investigate further on the possible human rights violation—especially on the practice of torture and other cruel and inhuman treatment.

It is known that PT Pusaka Benjina Resource (PBR) has operated for quite a long time in Benjina since mid-1990. It is also known that PT PBR has hired at least 85 illegal migrant workers. Most of these migrant workers come from Thailand, Laos, Myanmar and Cambodia, and work under constant stress, bad working environment, and other inhuman treatment. KontraS' monitoring shows evidence of possible practice of torture by non-state actors, namely personnels of PT PBR, who must be held accountable. The methods of torture have been disclosed in the mass media such as whipping with sting ray tail, electrocuting, etc. From media monitoring, KontraS also finds that the stitch marks on the chin of some migrant workers are apparent. Psychological torture was also committed against the migrant workers in order to force them to work overtime without pay.



Source: Documentation of KontraS' Division of Economic and Social Rights Monitoring,
2015

Regarding the modern slavery in Benjina, KontraS and the Indonesian Union of Traditional Fisherfolk (KNTI) held a joint investigation, resulted in a report titled “Mafia Perikanan

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versus HAM: Membongkar praktik pelanggaran HAM dalam dunia maritim Indonesia” (Mafia in Fishing Industry: Uncovering Human Rights Violation in Indonesian Maritime Industry, 2015). KontraS and KNTI also followed up this advocacy agenda by building intensive communication with Komnas HAM to formulate a strategy for the human rights issues in the business and development sectors. Pertaining the legal proceedings on the Benjina case, there are intensive efforts by related agencies such as the Police (especially the Detective Unit of the National Police HQ). Seven suspects have been charged with conducting slavery and human trafficking in Benjina.⁵⁰ Furthermore, the Maluku High Prosecutor Office regarding the bribery by PT PBR: a follow up to the results of the police investigation in the second week of April 2015. The fishery licence granted to PT PBR has been officially revoked by the Ministry of Maritime Affairs and Fisheries (KKP); there are also efforts to revoke the corporate licence of PT PBR. KontraS and KNTI also encourage Komnas HAM to investigate further on the human rights violation in Benjina. To date, Komnas HAM has begun the process of authoring a report of investigation; and has invited KontraS and KNTI to submit organizational inputs to Komnas HAM on 2 July 2015.

II.2.6.3 Inhuman Treatment against the Peasants of Ramunia, North Sumatera

The land dispute in the village of Ramunia takes place between the Army—Army Cooperatives (Puskopad) Kartika A, Bukit Barisan—and the residents of the villages around the Ramunia plantation in the District of Pantai Labu, Regency of Deli Serdang, North Sumatra. The dispute begun in March 2015 when Army personnels perpetrated intimidation, terror and violence against the residents; paddy fields belonging to the residents were bulldozed, government’s irrigation canals were destroyed, and a 2.5 m wall is build to cordon the area claimed by the Army as belonging to the Army Cooperatives. On 31 March 2015, 17 peasants were tortured by Army personnels when they tried to break through the cordon, in order to cultivate their land. A number of peasants were gravely wounded by the beating and kicking from the Army personnels. A peasant by the name of Herman was detained for 5 hours in the military post inside the claimed area.

⁵⁰From the seven suspects, four are Thailand nationals. The charges against them are from the Article 2 and/or 3 of the Law no 21/2007 on Trafficking in Person. Furthermore, two of the PT PBR employees are charged with the violation against the Article 55 Para 1 Point 1 of the Penal Code. The police also confiscated five large fishing boats related allegedly used in the modern slavery, and as a place of confinement and torture of the sailors in Benjina.

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Source: Documentation of KontraS' Division of Economic and Social Rights Monitoring,
2015

The inhuman treatment against the residents has been documented by KontraS. The summary arrest and inhuman treatment were perpetrated by a number of Army personnels in the Bukit Barrisan Region I Military Command HQ, against four Ramunia peasants by the name of Ronggur, Sabar Manalu Rasman Nadeak (52 y.o.) and Ellen Marbun (33 y.o.) on 7 May 2015. The interrogation was conducted in regard to the demonstration protesting the land grabbing by the Bukit Barisan Army Cooperatives. The four victims were released to the Military Police Detachment, then transported to Medan City Resort Police HQ at 20.00 with contusions all over their faces and bodies.

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The advocacy strategies, either by Ramunia residents alone or with KontraS, are the following:

1. Submitting a complaint to the Army Military Police regarding the land grabbing and violence perpetrated by personnels of Bukit Barisan Regional Army HQ on 29 April 2015. The complaint was delivered by several representatives from the Ramunia peasants and local community assistants, and received by the Chief of Complaint Admittance and a staff for Vice-Chief of Army Military Police. The result was an order to the Commander of Bukit Barisan Military Police (Order no R/89V/2015) to investigate the facts submitted by KontraS and the victims pertaining to the alleged inhuman and cruel treatment by personnels of Bukit Barisan Regional Army HQ personnels to the residents of Ramunia, and to report the result of this investigation as soon as possible;
2. Submitting a report to Komnas HAM regarding the human rights violation by personnels of Bukit Barisan Army HQ on 28 April 2015; this was received by a Commissioner of Komnas HAM. Afterwards, Komnas HAM issued a letter of recommendation requesting the Chief of Bukit Barisan Regional Military Command to cease the land grabbing and investigate a number of violations by personnels under his command;
3. Conducting a press conference regarding the land grabbing and other inhuman and cruel treatment against Ramunia peasants, with a number of representatives from Ramunia peasants and the local community assistants, at KontraS' office on 10 May 2015.

II.2.6 4 Inhuman Treatments in Rembang, Takalar and Wawonii

From the monitoring conducted by the KontraS' Division of Economic and Social Rights Monitoring, inhuman and cruel treatment happen in regions believed to be rich in natural resources; where most of the corporation and economic-business actors engage the involvement of state's security apparatus (in addition to civilian security contractors) to secure vital objects they have acquired unilaterally. Rembang is an interesting example where the police brutality has all the aspects of inhuman and cruel treatment. This happened when peasants of Rembang, Central Java, the majority of which are women, blockaded the road to

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the factory location on 26-27 November 2014. Personnels of Rembang Police Resort brutally broke up the blockade by throwing the women into shrubs, beat them, chase them away and destroyed their tents.⁵¹ Terror and intimidation were integral to the inhuman treatment that was growing, apparent from the prohibition against the protesters lighting the lamp, and a counter blockade against food supply for the peace protesters.

Similar incidents occur in Takalar (South Sulawesi), where the peasants fighting against land grabbing by PTPN (State Plantation) XIV were blockaded by military units (Infantry Battalion 726), Mobile Brigade Unit from South Sulawesi Regional Police Command, Public Order Task Force and a bunch of thugs; on 27 October 2014 this conflict blew into excessive violence and resulted in inhuman treatment. In Wawonii, South East Sulawesi, inhuman treatment was conducted against local residents in relation to 10.070 hectare land dispute between the residents and PT Derawan Berjaya Mining. The incident begun with a resident's demonstration protesting land grabbing against their ancestors' land. This demonstration was countered by deployment of joint forces from South East Sulawesi Mobile Brigade and Kendari Police Resort to the villages of Batulu and Tekonea to arrest "provocateurs" by the name of Muamar and Hasim Lasao on 3 May 2015.

⁵¹Two women collapsed: Suparmi (40 y.o.) dan Murtini (30 y.o.). Arrest of seven: Susilo (29 y.o.), Ngatiban (33 y.o.), Nurwanto (21 y.o.), Supion (25 y.o.), Suwater (23 y.o.), Sulijan (33 y.o.), Yani (25 y.o.) by personnels of Rembang Police Resort. See also: Geotimes. 2015. "Ibu-ibu Rembang laporkan aparat kepolisian Rembang ke Polda Jawa Tengah." <http://geotimes.co.id/ibu-ibu-rembang-laporkan-aparat-kepolisian-rembang-ke-polda-jawa-tengah/>. Accessed 18 Juni 2015

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Source: Documentation of KontraS' Division of Economic and Social Rights Monitoring, 2015

Muamar, who didn't resist the arrest was forcibly taken, and was subjected to inhuman treatment to finally confess that he was one of the intellectual actors behind the people's protest. During the incident, three other residents were also arrested: Hasrudin, Firman, and Hardiansyah; however somewhere along the return trip to detainment, Firman and Hardiansyah were released. There is yet to be a quick response from the police HQ against this brutal action by security personnels. Muamar has been officially charged because he was active in agrarian reform movement in Wawonii. When he was allowed a visit, it is clear that his body is full with contusions from the torture by police personnels.

From the description of several cases above, there is apparently an unfinished debate among the experts of international law pertaining the accountability against non-state actors, especially those involved in torture and other inhuman treatment. Nevertheless, considering the nature of the international human rights law which doesn't separate one right from another, there is still an opportunity to create space for accountability for non-state actors in bad practices—one of them being the crime of torture and other inhuman treatment; in a

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special circumstance where corporations have unique relationship with the powers that be, or where corporate practices are supported by intervention of state apparatus (security sector actors such as the police and military, or support for private security services).

There are a number of international instruments, though not legally binding (soft instruments) but still with authority on accountability—such as the *Voluntary Principles on Security and Human Rights* (2000) and *UN Guiding Principles on Business and Human Rights* (2011) which is more widely known as the Ruggie Principles—that provide opportunity to force non-state actors to submit to the universalism of human rights.⁵² In Indonesia, there already are initiatives to push the agenda to hold accountable the non-state actors on the issue of business and human rights. This opportunity, however, will be practicable if the state would support with commitment, cooperation and effort to hold corporation, both national and transnasional, to abide by the existing laws.

Furthermore, to respond to the potential of a state committing an act by omission (by ignoring human rights violation by non-state actors) and act by commission (state apparatus directly responsible for the crime of torture and other inhuman treatment), the state has a duty to enforce all the provisions of national and international human rights law pertaining to the accountability for the crime of torture—as provided in the Universal Declaration of Human Rights (Articles 6 and 9), International Covenant of Civil and Political Rights (Articles 9, 10, 21 and 25) and the Convention against Torture and Inhuman and Degrading Treatment (Article 2).

II.2.7 The Implementation of Qanun Jinayat in Aceh

Based on KontraS monitoring during June 2014 to May 2015, there are at least 25 incidents of flogging, applied to 183 convicts; 21 of which are violation of Qanun No.13/2003 on *Maisir* (gambling), 3 of Qanun No. 14/2003 on *khalwat* (indecent acts) and 1 of Qanun No. 12/2003 on *Khamar* (hard liquor). A number of executions by flogging are notable, such as

⁵²See: Monash University/ (2008). Human rights translated: A business reference guide. https://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf (hal. 13-16). Accessed 20 June 2015.

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the one inflicted upon Syukri (41 y.o.) who raged against his executioner after the sixth lashes, because he couldn't bear the pain. The crowd watching the execution at Al Falah Mosque, Sigli, jeered on as the rage continued. Syukri was sentenced on 26 February 2015 to nine lashes on the case of gambling.⁵³ A woman convict suffered shock and had to be hurried to the mushalla (prayer house) after undergoing her execution on 11 May 2015 in Subulusallam. She was convicted, along with her partner, for violation against *khalwat* law; and both were sentenced for seven lashes each after being incarcerated for 36 days.⁵⁴

An active police officer has also been whipped, along with nine residents of Central Aceh, related to violation of Qanun on gambling. They got 3-6 lashes after their incarceration of 65 days.⁵⁵ On 22 May 2015, two out of ten convicts are civil servants arrested for violation on *khalwat* and gambling.⁵⁶ Aside from the practice of flogging in Aceh, on 27 September 2014 the Local Parliament of Aceh has passed the Aceh Qanun no 6/2014, popularly named Qanun Jinayat.⁵⁷ Three Qanuns (*khamar*, *maisir*, and *khalwat*) containing the threat of flogging will be in force until 28 September 2015 when Qanun Jinayat will enter into force throughout Aceh, according to Article 74 of the said Qanun.

⁵³See: Berita Tribunnews (2015). Tak Tahan Dihukum Cambuk, Penjudi Asal Sigli Amuk Algojo. <http://m.tribunnews.com/regional/2015/02/28/tak-tahah-dihukum-cambuk-penjudi-asal-sigli-amuk-algojo#> Accessed 8 Juni 2015.

⁵⁴See: Bongkarnews (2015). Pasangan Mesum Dihukum Cambuk Di Lapangan Beringin Kota Subulussalam. <http://bongkarnews.com/v1/view.php?newsid=7208> Accessed 8 Juni 2015

⁵⁵The names of those convicts are: Rizal, 34; Fauzi Taib, 44; Maidin, 33; Buge Kin Aulia, 31; Insanul Putra, 43; Andri Gunawan, 33; Juliadi, 44; Najmuddin, 44; Sarmiadi, 38; dan Jamal Trisna, 41. See: Berita Jawa Pos (2014). Oknum Polisi Ikut Jalani Hukuman cambuk. Artikel dapat diakses di: <http://www.jawapos.com/baca/artikel/10099/oknum-polisi-ikut-jalani-hukuman-cambuk> Accessed 7 June 2015.

⁵⁶See: Harian Andalas.2015. Dua PNS Gayo Lues Dihukum Cambuk. <http://harianandalas.com/kanal-aceh/dua-pns-gayo-lues-dihukum-cambuk> Accessed 8 June 2015

⁵⁷See: Qanun Nomor 6 Tahun 2014 dapat diakses di http://www1-media.acehprov.go.id/uploads/Qanun_Aceh_Nomor_6_Tahun_2014_tentang_Hukum_Jinayat.pdf Accessed on 19 June 2015

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The latter Qanun not only provides for *khalwat*, *maisir*, and *khamar*; it is expanded to provide for behaviours not previously regulated. No less than 10 new actions is now outlawed. It is shocking to see the maximum threat carried by this law, regarding the number of lashes. In the previous three Qanuns, the number of lashes is two to forty at maximum, depending on which Qanun violated.⁵⁸ The latest Qanun increases the number of lashes. For instance, someone accused of committing adultery can be sentenced to a maximum of 100 lashes, or a fine of 1000 grams of pure gold or imprisonment of 100 month.

This Qanun is also expanded regarding to its application, where non-Moslems are also subject to flogging. This is provided for in Articles 5 (b) and (c). Para (b) of the said Article provides, “Every non-Moslem committing *jarimah* (crime) in Aceh, with a Moslem, and choose and submit voluntarily to Qanun Jinayat.” Para (c) provides, “Every non-Moslem committing *jarimah* in Aceh, which is not provided in the Penal Code or other penal provisions outside Penal Code, but provided in this Qanun.” It is interesting that “protection of human rights” is included as one of fundamentals and application of this Qanun.

The Province of Aceh is a part of the Republic of Indonesia, and has a duty to submit to national and international human rights policies ratified by the Indonesian Government. The national government should intervene on the application of this Qanun Jinayat, because it is provided in the Article 2 of the Convention against Torture that the State Party has a duty to take legislative, administrative, legal or other effective steps to prevent torture within its territory under its jurisdiction.⁵⁹ The paradox rises because “human rights protection” doesn’t refer to national human rights provisions especially the Law no 39/1999 on Human Rights⁶⁰ and international provisions with universal application. In this regard, flogging is a violation

⁵⁸See: Arskal Salim.2008. *Challenging the Secular State : The Islamization of Law in Modern Indonesia*. Honolulu: The University of Hawai’i Press. pp. 27-29.

⁵⁹ibid. pp. 32-35.

⁶⁰The Article 33 of the Law no 39/1999 provides: “Every person has the right to be free from torture, cruel, inhuman and degrading punishment or treatment.”
<http://www.komnasham.go.id/instrumen-ham-nasional/uu-no-39-tahun-1999-tentang-ham>
Accessed on 19 June 2015.

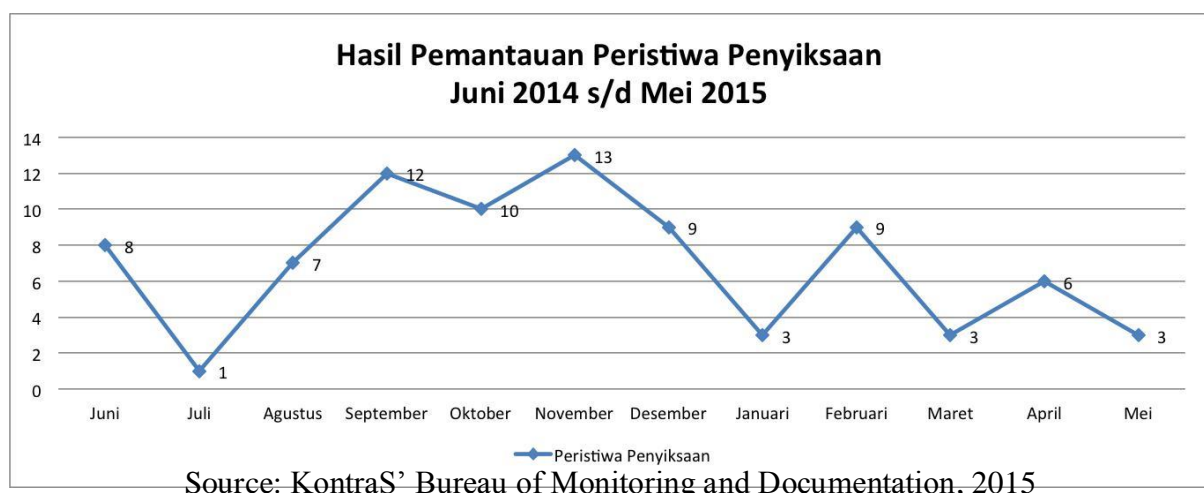
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of the Convention against Torture, especially Article 16,⁶¹ and the International Covenant on Civil and Political Rights, especially Article 7; all have been ratified by the government of the Republic of Indonesia.

II.2.8 The Map of the Crime of Torture in Indonesia

In the following, KontraS shows the data from media monitoring from June 2014 to May 2015. Some of the data will illustrate the trend of the crime of torture and other inhuman treatment, including the size of area, the incidents, actors and victims.

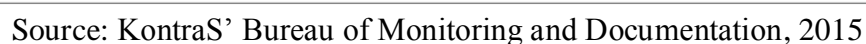
II.2 8.1 Description of Incidents and Victims



From the above illustration, we know that from June 2014 to May 2015, there are 84 cases of torture. The total number of victims from all 84 cases are 274, who can be categorized as follows: dead, gravely and lightly wounded, and other forms of human rights violation such as abrogation of freedom, intimidation and sexual harassment. The number of victims above has included the victims from the application of flogging (Qanun Jinayat) in Aceh Province, of 183 persons. This number may not be as high as the KontraS' findings in the previous years, but KontraS predicts that this number is not an indication of the decline of the practice

⁶¹The Article 16 provides: "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I." See: CAT
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> Accessed on 19 June 2015.

of torture and other inhuman treatment in Indonesia with argumentation as follows: *first*, the year 2014 was a political year, where the focus on the presidential election and campaign from different political parties may have relegated the news on the practice of torture and inhuman treatment—which went on, nonetheless—into disregard; *second*, not all incidents of torture and inhuman treatment are published in national news because of the geographical diversity; *third*, not all victims are willing to file a complaint because they fear retaliation, or because they are limited by other factors such as limited access, lack of will power to come forward, the complexity of the mechanism that they have to endure before gaining protection and redress.

[illegible]

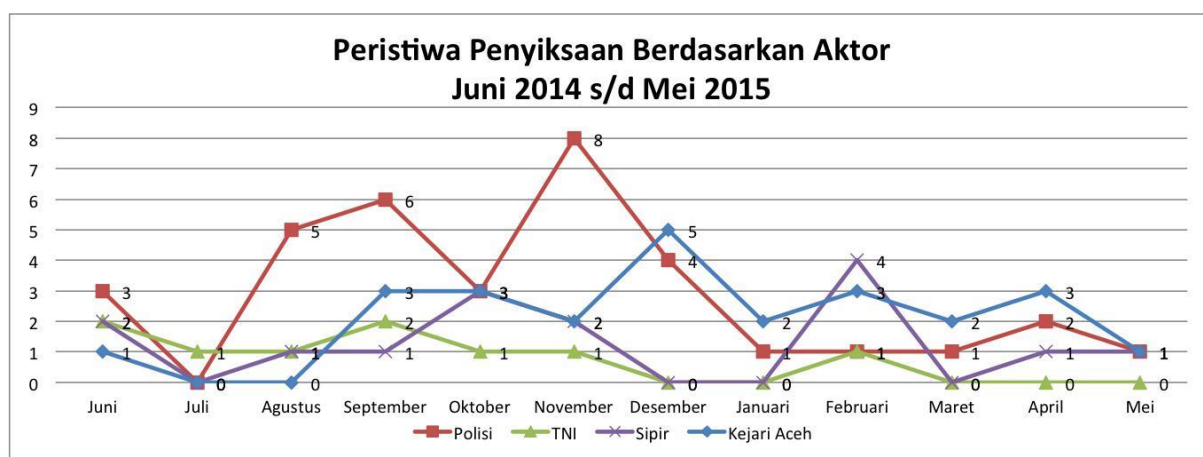
Source: KontraS' Bureau of Monitoring and Documentation, 2015

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KontraS takes note that the crime of torture and other inhuman treatment is distributed over 21 provinces out of the 34 in Indonesia. This number is more than 75% of the territory of Indonesia; and shows that there is no significant change/reformation on the part of the State regarding the number of torture. Furthermore, pertaining to the accountability of perpetrators, one should not place too much hope. The details of distribution is as follows:

- The highest number is in Aceh, as a result of application of flogging. This punishment, according to the Convention against Torture, is a form of cruel and inhuman treatment;
- Outside Aceh, all other regions of Sumatra also has a number of torture and other inhuman treatment; caused by the expansion of business and security services, and growing number of torture and inhuman treatment by non-state actors. Similar thing is happening in Sulawesi;
- For the other 20 provinces, the number of incidents is between 1 and 6. KontraS' data shows that, mostly, the incidents in these 20 provinces are brought on by abuse of power—both judicial or extra-judicial; for example in a military post, street brawling that leads to revenge, etc.

II.2.8.3 Description of perpetrators



Source: KontraS' Bureau of Monitoring and Documentation, 2015

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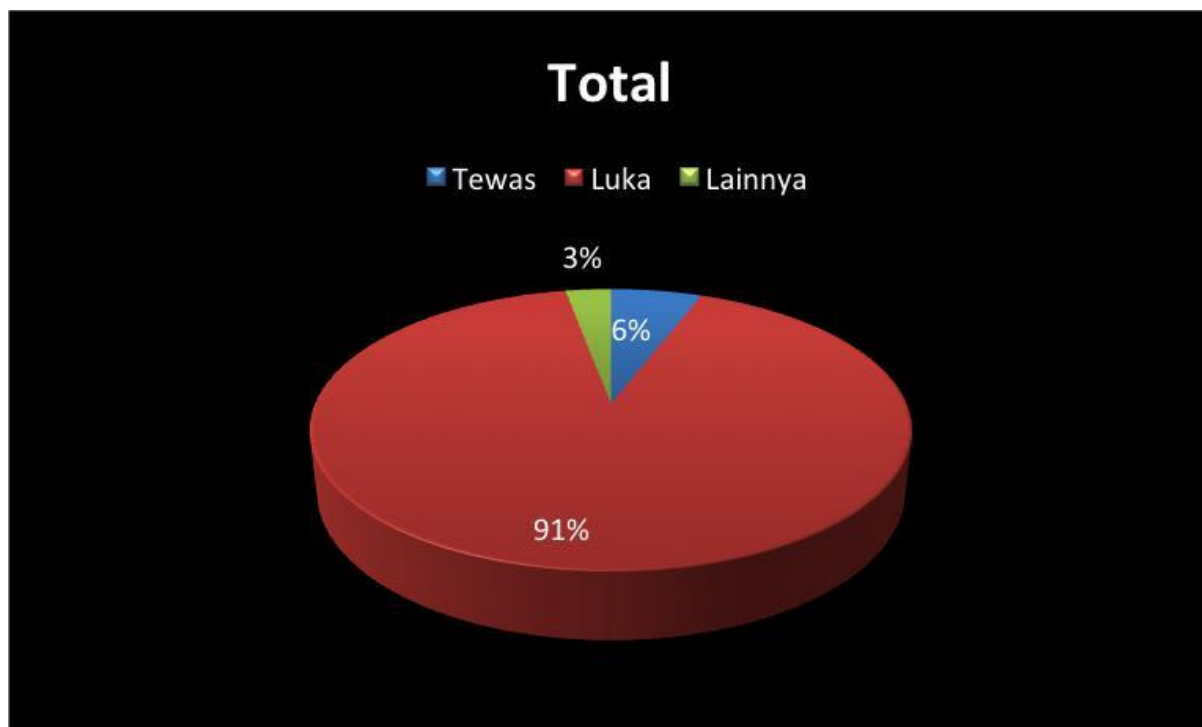
KontraS takes note that the perpetrators come mainly from three institutions: the Police Force, the Armed Forces and Correctional Wardens (Ministry of Law and Human Rights). Following is the detail:

- a. In the first place: the Indonesian National Police Force holds the distinction of having the first place by committing 35 acts of torture and other inhuman treatment. Police actions resulted in 37 victims: 9 dead, 27 gravely wounded, 1 lightly wounded;
- b. In the second place are the Correctional Wardens, with 15 incidents of torture and other inhuman treatment. The actions resulted in 4 dead, 32 gravely wounded, and 7 lightly wounded;⁶²
- c. In the first place is the Indonesian National Armed Forces, with 9 incidents of torture and other inhuman treatment. The actions resulted in 3 dead, 20 gravely wounded;
- d. Aside from the three institutions, KontraS also recorded 25 incidents of flogging by apparatus of Local Government of Aceh, in this case the State Prosecutor Office of Aceh. Flogging has been applied to 183 persons.

To summarize, KontraS recorded that the four institutions have committed actions that lead to 16 dead, 262 gravely wounded, and 7 others subjected to various forms of human rights violation such as sexual harassment, intimidation. etc.

⁶²KontraS has not received direct complaint from victims of torture and other inhuman treatment from this institution during the monitoring period of 2014-2015. It is important, however, to keep watch on the actions of Correctional Wardens. The situation in Correctional Facilities is conducive for torture and other inhuman treatment, for it is difficult for human rights organization to regularly monitor situation inside their premises.

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PART III – RECOMMENDATIONS

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Reflecting on various forms of torture and repetition of the ongoing trends, KontraS makes several recommendations, as follow:

1. The Government absolutely must provide a medium as a legal reference in bringing perpetrators of torture to justice. Expediting the deliberation process on the Bill on Amendment of Penal Code and the Bill on the Crime of Torture is must to fill the void in the law enforcement against these perpetrators. The Bill on Amendment of Penal Code will provide the punishment for perpetrators, while the Bill on the Crime of Torture will provide the comprehensive protection and prevention of torture, and redress for the victims. The State can no longer respond to the crime of torture in a case-by-case approach, the government and parliament must prioritize the evaluation on policies and legislation that still grant justification for torture and other inhuman treatment;
2. It is important to push the state security apparatus—especially the Police Force, the Armed Forces and the Ministry of Law and Human Rights (which supervise all the Correctional Facilities)—to prioritize vetting mechanism in their work environment; in order to test, measure and provide a space for evaluation over the performance of state apparatus and public officials who commit, order, even ignore the crime of torture;⁶³

⁶³In order to fill the “impunity gap”, where impunity grants incentive for perpetrators in forms of reputation, status, and public acceptance of past inhuman practices, the government should ideally put some limitation for perpetrators of human rights violation regarding their rights to sit in a strategic public office. This effort is a usual practice in countries undergoing transition from authoritarian regime, like Indonesia. This mechanism is known as “vetting”: by screening and barring the perpetrators of grave violation of human rights, removing public officials with bad record of human rights, even purging strategic state institutions from persons potentially violating human rights—such as the policy maker in executive, judicial and legislative insitutions, security and defense sector actors (the police, armed forces and intelligence agencies). The vetting mechanism is also important to guarantee trustworthiness on each individual bearing mandate of a public office. See: KontraS & ICTJ. 2011. “Keluar jalur: Keadilan transisi di Indonesia setelah jatuhnya

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3. Related to Recommendation no 2, KontraS encourages the government to provide, ensure and develop a space for evaluation on the capacity development of law enforcement and security officers—especially the Police Force and Armed Forces—in performing their primary duties and functions as investigators and interrogators; those functions must be monitored in order to prevent shortcuts such as by using torture;
4. Independent state institutions with mandate to carry out the functions of evaluation, monitoring, protection and redress—such as Komnas HAM, Ombudsman, LPSK, Judicial Commission, Prosecutorial Commission, Kompolnas, etc.—must perform their duties with diligence and trustworthy measurement (e.g. vetting mechanism) so as to narrow the space available for the perpetrators of torture;⁶⁴
5. The Government has a duty to halt the practice of torture in areas rife with tensions such as Papua, Poso and Maluku—which are still under strict control by security apparatus. The application of torture to secure peace is contra-productive, to say the least;
6. The Government must be able to synergize the performance of various state institutions to ensure a protection mechanism, punishment for the ongoing crime of torture, protection for witness and victims, and redress for the victims according to applicable international human rights legal instruments;
7. The Government must begin an effort to find a reference model that can take non-state perpetrators of torture into custody and punish them. The potential of non-state actors to perpetrate torture and other inhuman treatment—from the corporations to private security services—and the potential for a development of evil relationship between corporations and state apparatus in imparting justification for such practice,

Soeharto.”<http://kontras.org/buku/Indonesia%20report-derailed-Indo.pdf>. Accessed 22 June 2015. pp. 75-78.

⁶⁴KontraS encourages state independent institutions to produce a manual on reporting, monitoring, protection and redress; which requires facts, report, recommendation from each monitoring agencies.

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could be a future trend parallel to the growing business-oriented development policies.

8. The Indonesian government and parliament must prioritize the ratification of the Optional Protocol of the Convention against Torture, Convention for Protection of All Persons against Forced Disappearance, and the Rome Statute for International Criminal Court; all of which can be a reference to build a space for accountability regarding the crime of torture—which is categorized as crimes against humanity. The government must also realize, as soon as possible, its commitments for universality of human rights, which has been expressed intensively before international spaces for accountability (provided by UN bodies), and the recommendations from the Universal Periodic Review, the UN Human Rights Committee, and the UN Special Rapporteurs, as the actualization of Indonesia's commitment to the agenda of guaranteeing protection and advancement of human rights.