

KontraS

ENFORCEMENT IN SECURITY SECTOR AND HUMAN RIGHTS GUARANTEE IN INDONESIA

KOMISI UNTUK ORANG HILANG DAN KORBAN TINDAK KEKERASAN (KONTRAS)



I. INTRODUCTION

The conditions of human rights enforcement in Indonesia during the last 13 years have their own dynamics. On the one hand, the political transition process in post-Soeharto Indonesia indeed is capable of building a democratic profile. But on the other hand, the implementation of human rights is still limited as a discourse, jargon, and individual commitment of a small number of government/state/security officials. The result is that human rights violations still occur, while institutions and security forces still represent some of the main actors of violence.

KontraS considers that an important dimension to measure the dynamics of human rights enforcement should be seen in regard to three main human rights principles, namely the respect, protection and enforcement of human rights. Respect for human rights, from the state's point of view, corresponds to a number of legal provisions and the Constitution of Indonesia ((Indonesian: Undang-Undang Dasar Republik Indonesia 1945), which guarantee respect for human rights values for all the people of Indonesia. The protection of human rights requires the state's capacity to prevent violence and other acts of persecution. The fulfillment of human rights requires specific institutions, as guaranteed by Indonesian legislation and constitution.

Within this framework, the result might be expected, that the progress of human rights in Indonesia is only limited on respect progress, the emergence of various rules in the field of human rights. Progress has been made: for instance, the Commander of the Indonesian National Armed Forces (Indonesian: Tentara Nasional Indonesia, TNI) himself issued internal rules to ban torture. However, many serious human rights violations, such as enforced disappearances or torture, still occur.

Impunity in regard to human rights violations that occurred in the past remains a key concern in Indonesia. KontraS therefore carries out activities dealing with the accountability of national security forces. Both of these issues have a strong affinity relationships, in which the New Order (Indonesian: Orde Baru) regime has used security politics in such a way to restrict democratic expression and opinion spaces and what more essential is the absence for human rights guarantees and respect.

The present note highlights some of the key concerns raised by KontraS in collaboration with the International Centre for Transitional Justice (ICTJ) and the International Federation for Human Rights (FIDH) concerning the current human rights situation in Indonesia. It also serves KontraS national advocacy concerning the draft laws of National Security, the amendment to the anti-terrorism law and tribunal military, and also the draft of state secrets.

Current Issues

Four cases below are part of KontraS' advocacy agenda during the last 13 years. KontraS either as an organization or involved in advocacy coalitions, actively supports the settlement efforts of human rights violations cases, including mainstreaming pro-human rights policies in national legislations. Notes of these cases below are documented through media monitoring, complaint cases, KontraS' investigations and research results as well as state documents directly related to human rights violation cases where KontraS participated to advocate in it.

II.1 SECURITY POLITICS IN PAPUA

▪ Major Cases

Throughout 2011, the condition of human rights enforcement and security in Papua is getting worse. Increased security policy practices are directly proportional with the high number of violence precedents in Papua. Striking cases that gained public attention (to international community) can be classified in several of the events below:

1. Torturing Practices

The beginning of 2011 began with bad news from two military III-9 Kodam Cenderawasih Jayapura Papua courts decision which was held since the end of 2010.¹ The defendants proven to be involved in the torturing practices based on videotape evidence which was uploaded to YouTube, only received a minimum sentence of under 12 months imprisonment. Other torturing practices also occurred against 12 people in Kurulu Jawawijaya District which was perpetrated by TNI AD officers (2/11).²

2. Violence Experienced PT Freeport Indonesia Workers Union³

Violence perpetrated by security forces in responding to actions taken by PT Freeport Indonesia workers union in Timika. This violence also has impact on several tribes of indigenous peoples living in the area around PT Freeport Indonesia (10/10). Earlier, security forces made murder threats, insults, accusations of anti-government (subversion), blocking road access of six indigenous groups and PT Freeport Indonesia workers. Until the violence finally broke out on October 10 and killed two PT Freeport employees who participated in the action.

3. Violence Experienced by Kongres Rakyat Papua III Participants⁴

Combined forces of TNI/Polri violently dispersed the Kongres Rakyat Papua III (the Third Papuan People's Congress) in Abepura (19/10). In this violence, at least three people were found dead and other dozens injured. The deployment of TNI/Polri forces around the congress location is supported by 3 Barracuda vehicles (2 owned by TNI and 1 owned by Brimob Polda Papua). Torture acts along with arrests were experienced by the congress participants. Live ammunition fired and tear gas were aimed at the congress participants; everyone in the location can't get out to run for their lives because they were surrounded by police. Violence practice also remain to be done during interrogations (both in the Korem and in Polda Papua). Security forces also destroyed and ransacked the synagogue near the scene.

1 See: Kajian HAM KontraS terhadap definisi Penyiksaan di Papua
<http://kontras.org/data/Kajian%20papua.pdf> accessed on November 25, 2011.

2 See: Siaran Pers KontraS - Sanksi Hukum Tegas Untuk Aparat TNI Pelaku Penyiksaan & Tindakan Tidak Manusiawi di Distrik Kurulu Kabupaten Jayawijaya Papua. Can be seen in http://kontras.org/index.php?hal=siaran_pers&id=1404 accessed on November 25, 2011.

3 See: Siaran Pers KontraS Temuan Sementara Tindak Kekerasan di Kongres III Abepura dan Mogok Kerja Karyawan PT Freeport Indonesia. Document can be viewed in: http://kontras.org/index.php?hal=siaran_pers&id=1400 accessed on November 25, 2011.

4 Ibid.

4. Search of Papuan Student Dormitory⁵

Papuan student dormitory raids occurred in several regions of Indonesia such as Jakarta and Bali. These searches and intimidation were carried out by combined forces of TNI/Polri, especially in the Dormitory of Papua Students from Paniai-Nabire District, located in Jl. Tebet Dalam No. 39, Tebet Sub-district, South Jakarta. The search was arbitrary because it was conducted without any kind of warrant that explains the purpose and objective of the search on Thursday November 10, 2011 at 10:00 to 11:00 WIB.

5. Series of Mysterious Shootings

Shooting incidents in 2011 increased sharply, specially after the PT Freeport Indonesia Workers Union strike. 11 shootings were recorded.

- **Area of PT Freeport Indonesia:**
 1. Nine people were killed: 7 PT Freeport Indonesia employees and two traditional miners.
 2. The shooting is also aimed at thousands of workers and indigenous peoples in Gorong-Gorong Terminal (10/10). Resulted in two people killed.
- **Victims of gunshot wounds throughout 2011:**
Eighteen people: Victims from TNI: (2 people), Police (4 people), PT FI employees (12 people), civilians (none).
- Beside the shooting on SPSI members in Gorong-Gorong Terminal, the shootings occurred at 11:30 to 13:00 WIT (5 times), 06:00 to 8:00 WIT (3 times), 14:00 p.m. to 15:00 (twice), 00:15 WIT (once) and 18:00 WIT (once). Beside the shooting in Gorong-Gorong Terminal, none of the shooters was identified. There are only allegations and accusations by police that the perpetrator belongs to the TPN/OPM group.
- Beside the shooting in Terminal Gorong-Gorong, 11 shootings occurred at moving/speeding targets/vehicles. While 1 incident targeted the traditional miners resting place (bedeng). Even in bedeng, one of the victims (Eto) managed to run before being shot in the back. If shooting a moving target is assumed to be difficult, then of course the shooter is well trained.

Source: KontraS 2011

The trend to target vehicles is also apparent from several incidents; patrol vehicle/security forces carrier (8 times), employees bus (3 times), logistics transport vehicles/trailers (once), bedeng/traditional miners resting place (once). The attacks tend to target security forces carrier, be it carrying Freeport security, police or TNI members.

6. Other Violent Incidents

KontraS notes 8 important shootings that occurred in Papua during 2011. Such as the shootings on three TNI Yonif 751/BS members (5/7), the shootings on civilians due to armed clashes between TNI AD Yonif 753/AVT

⁵ See: Siaran Pers KontraS – Protes terhadap Pengegeledahan sewenang-wenang yang dilakukan aparat TNI-Polri di Asrama Mahasiswa Papua di Jakarta dan Bali. Can be seen in: http://kontras.org/index.php?hal=siaran_pers&id=1407 accessed on November 25, 2011

with an armed group (12/7), armed clashes between members of TNI AD and Goliat Tabuni group (13/7), the shootings on the inhabitants of Puncak Jaya (12/7), clash between residents and officials in Ilaga District (30-31/7), the deaths of citizens in Timika riots (30/7) and a series of mysterious shootings in Nafri and Abepantai.

▪ Violence Patterns

Of the many violence practices that have occurred in Papua throughout 2011, we can identify the violence patterns as follows.

First, violence tools and forms. Generally violence medium is using the power of firearms. We can look at violent incidents experienced by PT Freeport workers union in Gorong-Gorong Timika (10/10). Excessive use of firearms was also found in shooting cases post- Kongres Rakyat Papua III and mysterious shootings around PT Freeport Indonesia area.

Another striking violence pattern is torture practice, arbitrary arrest and criminalization of civilians with treason accusation. Interestingly in this violence pattern, the subjects who experienced torture practice, arbitrary arrest, up to accused of anti-government (subversion), never had their rights respected as Indonesian citizens. Restrictions on access to health facilities, legal aid access (read: to have a lawyer) and access to family and the poor detention facility became an undeniable reality in Papua.

Another thing that KontraS is also concerned about regarding this violence pattern is that the state security apparatus is also destroying civil assets, particularly the synagogue in the case of Kongres Rakyat Papua III mass search. The chase was carried out deep into the middle of Abepura town and followed by the destruction of the synagogue that the apparatus alleged as a mass hiding location.

Second, violent incidents background. There are allegations that the typical pattern of violence in Papua is related to the affairs of political-economic interests of PT Freeport Indonesia. It is widely known that PT Freeport Indonesia is the main manager of natural assets (read: copper and gold) categorized as National Vital Object by the Indonesian Government. National Vital Object needs security protection from the police and TNI elements.⁶

However, PT Freeport Indonesia has been known to regularly provide "black funds" to TNI and Polri. From the reply letter of Polda Papua to KontraS in 2010, it is known that on a regular basis (once in 4 months) the management of PT Freeport Indonesia provides fundings of Rp 1.250.000,- to 635 security personnels.

Breakdown of PT Freeport Indonesia Security Fund:

Polda Papua	: 50 personnel
Polres Timika	: 69 personnel
Brimob Den A Jayapura	: 35 personnel
Brimob Den B Timika	: 141 personnel
Brimob Polri	: 180 personnel
TNI	: 160 personnel

Source: KontraS 2010

The above funding is provided for patrol security services, RPU escorts and pacifications. This finding is also strengthened by the results of investigations conducted by the Indonesia Corruption Watch (ICW), that throughout a decade security fundings flow from PT Freeport Indonesia to Polri and TNI pockets reached 79.1 millions of US dollars.⁷

Third, the regional context. In addition to the border with Papua New Guinea and Australia, Papua has 3 important areas that have always been the center of attention : Timika, Abepura and Puncak Jaya. It is known that the Timika district is dominated by PT Freeport Indonesia, because it is associated with the acquisition of Vital National Object. Tension frequently arises between PT Freeport management, workers union and the indigenous tribes of Papua. Security tensions could lead to violence. Abepura is a district that is often used as a meeting place of civil society organizations. They often do free speech action, to address concerns regarding economic, social and political aspirations in Papua. Finally, Puncak Jaya. The district is identified by the security forces of TNI/Polri as one of the 'red districts,' where Organisasi Papua Merdeka (OPM) was alleged to build its armed forces there.

Fourth, In KontraS' records there are at least 66 political prisoners/detainees who are still incarcerated in Papua jails. Problems that often appear to distinguish whether a person into the category of political prisoners/detainees are as follows: (1) the ability to distinguish those who have used violence and who do not. (2) the ability to distinguish those who should be responsible for the crimes committed under international law (example: the torture practice, killings outside the legal process, etc) and those that have not been accused of committing a crime under international law. For them (read; political prisoners/detainees) that do not have access to a fair trial mechanism yet, then we should immediately encourage for such standards to be fulfilled (without giving a death sentence). (3) the ability to clarify whether the arrested political prisoners/detainees do not use violence or exposed to charges of committing crimes under international law, can access the victims rights recovery mechanism if they were to be released. It is important to do, particularly in distinguishing the practice of 'forgiveness' and 'amnesty' given by the state. (4) those who are identified as separatist groups and have been detained, but not convicted of violent practices (probably only practice minor crimes such as theft) should also be decided by the state (read: Indonesian Government).

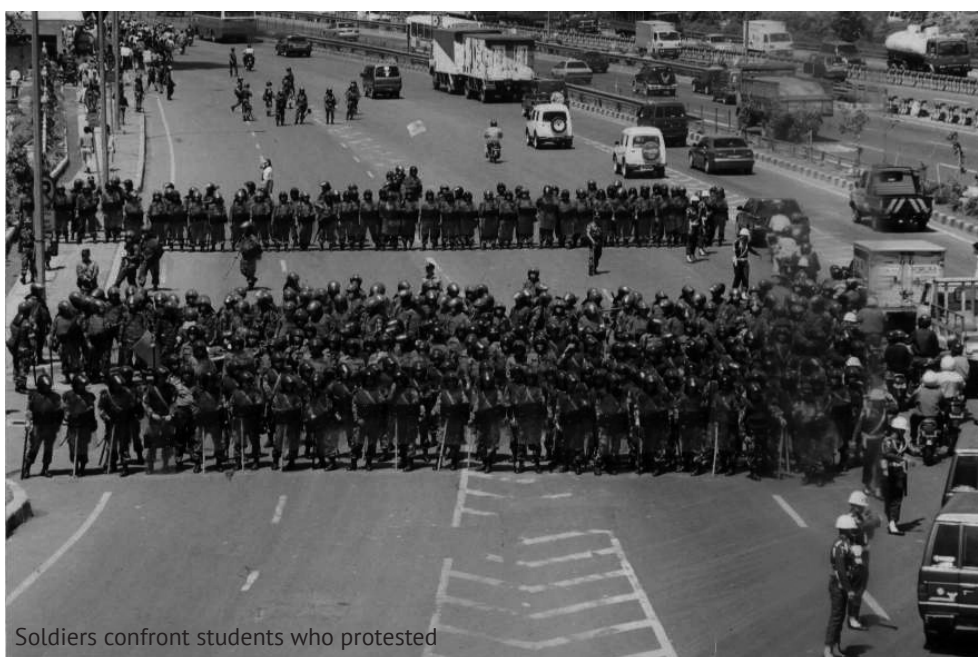
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See: Police Accepted Money from Freeport Since 2001 News can be viewed in: <http://www.thejakartapost.com/news/2011/11/01/police-accepted-money-freeport-2001-icw-reports.html> accessed on November 25, 2011

- **Analysis of Papua**

Major number of problems that we are trying to answer through the implementation of UU Law No 21/2001 regarding Otonomi Khusus (special autonomy) Papua, the establishment of Majelis Rakyat Papua (Papuan People's Assembly, MRP) and security forces mobilization were not able to be an adequate package of measures to solve problems in Papua. The identification of problems should be able to see many aspects of life. For example, historical aspects, cultural expressions, welfare and development, socio-political aspirations, up to law and human rights guarantee enforcement which has always been restricted there.

The choice of a security approach as universal approaches has violated many rules in it. In some specific legislation rules (read: Law No 34/2004 regarding the TNI), it is explained that the application of security policies that involve TNI elements in it, must obtain political recommendations (from the President and also the House of Representative, or DPR RI) and embodied in Presidential Decree. TNI element's involvement in a military operation should also have certain time limit, so that TNI does not become diffuse mixed institution with security enforcement institutions such as the police. The absence of coordination space and smooth communication in taking care of Papua, particularly involving the security sector, will bring a negative impact in the effort to establish a dialogue for peace and justice with dignity in Papua.



Soldiers confront students who protested

II.2. SPECIAL DETACHMENT 88 ANTI TEROR AND TERRORISM HANDLING

▪ Major Cases

The role of Detasemen Khusus 88 Anti Teror (Special Deatchment 88 or Densus 88) under Mabes Polri as a special unit to deal with terrorist activity is huge enough in the past two years. It is even also used to handle criminal acts other than terrorism. But unfortunately, since Densus 88 AT was established in 2003, there is not yet any internal and/or external mechanism that have been used to evaluate the performance of Densus 88 AT, especially the performance associated with legal guarantee and respect of human rights principles.

It is known by the public, that this unit has an important role in breaking the terrorism network in Indonesia. This unit even has the ability to coordinate with many regional and international security agencies, in order to break the world's terrorism network node. Specificity of this unit makes Densus 88 AT as if transformed into an elite unit. Their working intensity is very high in handling some cases such as a series of operations in Aceh, Cawang and Cikampek, Abu Bakar Ba'asyir arresting operation and the involvement of Densus 88 AT personnel on the investigation of Bank CIMB Niaga Medan robbery case, as well as Densus 88 personnel involvement on the arrests of Republik Maluku Selatan (RMS) activists.⁸ These series of cases are quite intensively conducted by Densus 88 AT but unfortunately also prove there is no human rights-based measurement standards used by Densus 88 AT personnel in their operations.

The absence of a measurement standard also remains to be applied on continued operation in 2011, especially in operations of arresting books bombers, arresting Gading Serpong bombers, the findings of explosives in Aceh, the investigation of suicidal bombings in Mapolres Cirebon mosque, the investigation of GBIS Kepunton Solo bomb, Sukoharjo operation, the investigation of bomb explosion in Ponpes Umar bin Khattab and Densus 88 personnels involvement in the investigation of police shootings case in BCA Palu. The risks from the absence of such measurement standards meant that civilians had always been a victim in anti-terrorism operations conducted by Densus 88.

▪ Violence Patterns

Generally, the striking violence patterns from the implementation of Densus 88 AT handling operations are as follows:

- 1) In the seizure operation Densus 88 often takes actions outside the legal process, such as shooting the target, not to paralyze while the target position were not in fight back potential, the practice of false arrest (arbitrary arrest), the torture practices, lead to death.
- 2) Arrested subjects were often times not allowed to meet their family members, not allowed to access legal aid, and lack access to healthcare.

⁸ For Detasemen Khusus 88 Anti Teror Mabes Polri personnels involvement on the arrest of Republik Maluku Selatan activists in Ambon (August 2010) can be seen in the Report on Torture Practice in Indonesia for the International Day of Supports for Victims of Torture. The report can be viewed at: <http://kontras.org/data/torture%20english.pdf> accessed on November 25, 2011.

Matrix of Terrorism Handling by Detasemen Khusus 88 Anti Teror Mabes Polri (2011)⁹

Incident Location	Related to Case	Victims			
		Died	Shooting Wounds	Arrested	Arbitrary Arrests
1) Aceh 2) Jakarta 3) Cirebon 4) Bogor 5) Bekasi 6) Poso 7) Palu 8) Pemalang (Central Java) 9) Pekalongan (Central Java) 10) Kutai Kartanegara (East Kalimantan) 11) Banjar 12) Solok (West Sumatera) 13) Soreang (Bandung, West Java) 14) Serang (Banten) 15) Surabaya (East Jawa) 16) Cengkareng (Banten)	1) Operation of Bok Bomber Arrest, 2) Gading Serpong Bomb and Explosives Findings in Aceh; 3) Suicidal Bombing in Mapolres Cirebon Kota Mosque 4) The pursuit of police shooter in Kantor BCA Palu 5) Suspected JI network terrorist 6) Suicidal Bombing in GBIS Kepunton Solo 7) Aceh terrorist network DPO 8) Suspected terrorist members 9) Shootings against civilians 10) Ownerships of illegal weapons and suspected terrorist group	8	1	69	6

Source: KontraS 2011

▪ Analysis of Terrorism Handling

Densus 88 is not fully subject to the set of internal rules, particularly in the use of firearms authority which has been regulated in Law No 2/2002 and Regulation of the Chief of Police No 1/2009 regarding Use of Force by Police During Operations- and which governs law enforcement officers, including Densus 88 officers. The authorization (the use of more power) should only be done when the police (including Densus 88 apparatus) are in a precarious condition and urgency as required in the rules of the police chief and *standard operating procedures* (SOP). In the future, the handling of anti-terrorism work

⁹ Victims details:
 related to suicidal bomb in Mapolres Cirebon Kota mosque, namely:
 1 (one) died from suicidal bomb (the suicidal bomber himself)
 2 (two) suspected suicidal bomb network in Cirebon, shot on the spot during a raid in Cemani, Sukoharjo Central Java, Saturday morning on May 14, 2011
 1 (one) civilian (angkrikan merchant) killed during raid in Cemani, Sukoharjo Central Java on May 14, 2011.
 The police claimed that the citizens are killed by a shot from a gun owned by the suspected suicidal bomb network in Cirebon.
 Related to the chase of police shooter in BCA Office Palu, namely:
 2 (two) suspected actors, shot to dead while sweeping in Tambaro Village, Poso, Central Sulawesi, namely Fauzan aka Ujang aka Carles and Dayat aka Faruk
 Related to suicidal bomb at Gereja GBIS Kepunton Solo,
 1 (one) died from a bomb blast (the suicidal bomber himself)
 Suspected related in terrorist activity
 Untung Budi Santoso aka Khaidir (48), villagers of Sukarame RT 1/ RW 9 Cingcin Village, Soreang Bandung.
 The victim's family found out the victim was dead 2 (two) days after the arrest (arrested on June 12, 2011)
 Related to the shooting on the civilians by Densus 88 member (not related to terrorism cases)
 Victim: TB Satibi, gunshot wounds in calf section.

which has been done by Densus 88 will also coordinate with the Badan Nasional Penanggulangan Terorisme (National Agency for Counter-Terrorism/BNPT). This non-ministry state agency is mostly filled by military units, whereas the practice of terrorism prevention are in the area of law enforcement. If the TNI should be involved in it, in accordance with Law No 34 /2004 regarding Tentara Nasional Indonesia, the TNI's involvement must obtain approval from the House of Representatives (DPR) and determined by a Presidential Decree.





10th anniversary of reform

II.3 SECURITY AND FREEDOM IN CONDUCTING RELIGIOUS ACTIVITIES

▪ Major Cases

Over the last two years, one of the the most problematic and widespreading human rights issues in Indonesia touches on the issue of guarantees of freedom in conducting religious activities. There were at least 5 cases of primary concern to KontraS:

1. The prohibition to conduct religion activities and the establishment of Gereja Kristen Indonesia Yasmin (the Yasmin Christian Church), Bogor West Java (2006-present),
2. The prohibition to conduct religion activities and the establishment of Gereja HKBP and the attack on the Pastor and his Penatua in Pondok Timur Indah, Bekasi West Java (July-September 2010),
3. Vandalism to the places of worship and mosques that belongs to Jamaah Ahmadiyah, Manis Lor Kuningan West Java (December 2010)
4. The prohibition to conduct religion activities and vanadalism to Al Hidayah mosque that belongs to Jamaah Ahmadiyah, Kebayoran Lama South Jakarta (December 2010),
5. And the prohibition to conduct religion activities as well as attacks on Jamaah Ahmadiyah, Cikeusik Banten (February 2011).

Source: KontraS 2011

These five cases provide a good illustration of the security sector's involvement in terms of of guarantee to conduct religious activities in Indonesia.

The guarantee for religious freedom in Indonesia declined when a Joint Decree (SKB) of 3 Ministers: Minister of Religious Affairs, Minister of Internal Affairs and the Attorney General on June 9, 2008 decided to limit the activities of Ahmadiyah religious organization in Indonesia. Although the SKB only specifically regulates Ahmadiyah, in practice, the threats to freedom to conduct religious activities in Indonesia is also experienced by the Christian community. This condition is exacerbated by the failure of *Judicial Review* of Law No 1/PNPS/1965 regarding Penodaan Agama (defamation of religion) in Indonesia.

The problem of increasing intolerance and threats of violence on the issue of religious freedom has also invited the attention of international community. A letter was filed by the United Nations High Commissioner for Human Rights Navarethem Pillay to Indonesian Government (via Marty Natalegawa). Other letters from United States Government, Canada and European Union representatives raised concerns regarding the Cikeusik violent incidents. The issue of freedom of belief and religion are characterized by strong sentiments of hatred and religious radicalization targeting minority groups, unavoidably stems from the existence of ambiguous state policy. In fact we have a formal set of policies which guarantee the protection of human rights for all citizens of Indonesia. But the failure to implement legislation on local policy level brings its own implications. Conflicts between local policies and national policies are read as “opportunities” by hard-line community groups to put some pressure increase intolerance in society.

Unfortunately, this condition is exacerbated by the inability of security forces, in this case the police, to take a neutral position in providing security and law enforcement in the middle of society. The police tend to be insensitive in providing the protection to vulnerable minority groups.

▪ **Violence Patterns**

Out of above 5 cases of violence, the striking violence patterns can be identified as follows:

- Most of the areas where the attacks occurred is in the capital city (Jakarta) and several major cities in Java. The high rates of intolerance in urban areas also indicate a high social tension in urban areas
- Verbal violence, pressure and intimidation to disband Jamaah Ahmadiyah and/or their worship places Provocation and incitement efforts in massive-scale to attack Jamaah Ahmadiyah and/or their worship places Destruction of worship facilities
- The prohibition to conduct worship
- Physical attack that led to the destruction of physical assets (houses of worship, homes, vehicles, etc), injuries and fatalities
- The lack of law enforcement space, even to bring the perpetrators to justice.

▪ **Analysis of Security and Freedom to Conduct Religious Activities**

The declining situation of guarantees for religious freedom in Indonesia during the last 2 years has demonstrated the existence of a condition in which the collateral security can not be enforced by the state. This condition also showed the state's inability in guaranteeing the rights that can not be reduced in any condition (non-derogable rights), namely the right to life, freedom of religion and freedom of thought and conscience. Another criticism is also directed to the law enforcement apparatus. The 5 cases above demonstrated the incompetence of the police apparatus to deal with issues of violence issues experienced by religious and/or beliefs minorities. Uncertainty of police officers is visible from their unpreparedness on the ground when the mob attacked the location of the crime scene.

An interesting example in the case faced by Jamaah Ahmadiyah is the, TNI's involvement in suddenly holding a security operation called Operation Sajadah. This operation aims to 'invite' Indonesian Jamaah Ahmadiyah to worship according to the 'true' Islam teachings.

TNI Operation Sajadah TNI:

Although the government through the Minister of Defence and Security denies TNI involvement in Operation Sajadah, KontraS monitoring throughout February and March 2011 showed that there were various “intensive activities” directly related to the Jamaah Ahmadiyah. This intensity is very visible in many cities in West Java, as in Subang, Ciareuteun, Cimanggu, Cibinong, Sukabumi, Majalengka and Bogor. TNI actors involved, among others, derived from Daramil, Dandim, Babinsa, to TNI AD Kodam Siliwangi members. What is meant by “intensive activity” is when TNI elements in those areas used their authority to call by force, perform data collection, prohibit the activity of worship, sign treaty to ban Sholat Jumat, force a number of Jamaah Ahmadiyah to utter *dua kalimat Syahadat*, disseminate the joint ministerial decree, summon by force to make public repentance, an inducement to leave the Ahmadiyah sect with a number of offered money, as well as terror and other intimidation.

Source: KontraS 2011



II.4 ISSUES OF MILITARY ASSISTANCE AND THE SETTLEMENT OF PAST HUMAN RIGHTS VIOLATIONS

▪ Major Cases¹⁰

Transitional justice agenda in Indonesia can not be said to have worked perfectly. The state still have not determined the main priorities in settling cases of serious human rights violations, including cases of Tanjung Priok 1984, Talangsari 1989, Trisakti 1998, tragedy of May 1998, Semanggi I and II (1998-1999) to the abductions and forced disappearances of pro-democracy activists in 1997/1998. In fact these settlement of course requires a political and human rights policy package comprehensively and of course by adhering to the principles of transitional justice. Some precedent that could be used to measure the transitional justice agenda in Indonesia are as follows:

First, the four recommendations by the Panitia Khusus (special committee) of the House of Representatives (DPR RI) on the abductions and forced disappearances cases in 1997/1998 to the President and relevant government institutions were ignored. In this context the discursive process is already running, but the implementation is still limited to the agenda which are purely charitable to the victims of past human rights violations.

Second, the lack of clarify in the legal process to address serious human rights violations cases—and now is in the hands of the Attorney General—KontraS is disappointed with the Attorney General's lack of initiative, whom until now has not issued any policy to make any inroads on the stagnant cases of serious human rights violations. The accumulated disappointments can also be seen from the limited concept and a clear human rights framework of the Ministry of Justice and Human Rights in formulating legislation process for the settlement of human rights violations cases. In this case is the agenda of legalization of RUU Komisi Kebenaran dan Rekonsiliasi (truth and reconciliation commission), the revision on Law No 26/2000 regarding Pengadilan HAM (Human Rights Court) to establish a Human Rights Court in Aceh, as well as the ratification of International Convention on the Protection of All Persons from Enforced Disappearance Practices, And the implementation of the Rencana Aksi HAM Nasional (National Human Rights Action Plan) which can be used as an indicator to measure the achievements of human rights implementation in Indonesia.

Third, the absence of a justice agenda for the handling of post-conflict situation in Aceh and Timor Leste. Although Aceh has gone through quite an encouraging peace process (see MoU Helsinki), but the peace situation was not followed by the agenda of human rights accountability. This situation is contrary to the unpopular policies that are chosen by the state, for example, proposing to give the title of national hero to (late) Soeharto, giving the position of Deputy Minister of Defense Affairs to Lt. Gen. (Ret.) Sjafrie Sjamsoeddin, setting free Eurico Guterres (one of the main Integration Fighters Commanders) through Supreme Court decisions, including promoting the protection of the 404 former Integration Fighters Force that has been listed in the DPO of Serious Crime Unit in East Timor.

¹⁰ For the issue of transitional justice in Indonesia can be seen in joint-publication between KontraS dan The International Center for Transitional Justice (ICTJ): Derailed (Transitional Justice in Indonesia Since the Fall of Soeharto) for more information see: http://ictj.org/sites/default/files/ICTJ-Kontras-Indonesia-Derailed-Report-2011-English_0.pdf accessed on November 25, 2011.

- **Analysis of Impunity and military Assistance Issues¹¹**

As we all know, since 1997 the United States Government has implemented laws that prohibit military assistance to foreign military units involved in any human rights violations. On that basis, the US government stopped giving the training to Kopassus, because of their involvement in a number of human rights violations practices. Particularly Kopassus was involved in the cases of abduction and enforced disappearance of pro-democracy activists in 1997/1998, the violence in East Timor in 1999 and the kidnap-murder of OPM figure Theys Hiyo Eluay in 2001. In that rule, Indonesian Government should take effective measurements in advance to prosecute Kopassus members who were involved in human rights violations, through legal mechanisms used in Indonesia, if wanting to reopen the joint military training programs. This includes providing training assistance to Kopassus. However, on July 23, 2010 The US Government reopened the cooperation with Kopassus. This collaboration is preceded by negotiations with four Kopassus officers, including Kopassus Commander Gen. Lodewijk Paulus who went to Washington to lobby the US Government. Recovery of this cooperation ignores the process of finding justice and truth, through the ad hoc Human Rights Court for past human rights violations cases. Moreover, the appointment of Lieutenant General (TNI) Sjafrie Sjamsoeddin, an alleged suspect in war crimes in Timor, as Deputy of Minister of Defense has certainly contributed to allegations that Indonesian government has closed their eyes to the settlement of past human rights violations cases.



Army attacked the campus Atmajaya

11 See: Kopassus Officially Off US Military Embargo: <http://www.thejakartapost.com/news/2010/07/23/kopassus-officially-us-military-embargo.html> accessed on November 25, 2011.

RECOMMENDATION

There are a number of things that should be recommended to resolve the problems mentioned above;

Papua

- To encourage Indonesian Government to immediately implement professional law enforcement on [serious] human rights violations cases that occurred, such as the Wamena and Wasior cases whose files are with the Attorney General today. It is not clear why this case is not forwarded. In other words, law enforcement must be balanced. Community members are accused of treason, often heavily sentenced, detained in a place with bad facility, and tortured. Meanwhile, TNI and police members enforce only their internal mechanisms and the punishment is mild.
- To encourage Indonesian Government to immediately engage in a dialogue to find a formula and agenda of the dialogue, including the pro-independence armed groups. One of its targets, for example, is a cease fire (promise not to use weapons between Indonesian security forces and the OPM). This dialogue approach can be a bridge to widen the understanding of what happened in Papua is not just the issues and allegations of separatism that have been developed into a popular public discourse. Deep dialogue approach can be used to measure the extent to which Papua citizens are discontent about development failure, marginalization, discrimination, historicity, political status and the settlement of human rights violations cases either in the past and present
- The Indonesian government should evaluate the system and security settings in Papua to make it proportional (for example, to merely guard the border). To particularly ensure the ethics of security apparatus assigned in Papua. This evaluation should cover the Minister of defence and Security, Head of Polri, TNI Commander, Head of BIN and state agencies directly related to security policy in Papua. This evaluation is also to assess the professionalism of security forces in Papua. This evaluation must be announced to the public, as a measure of Indonesian Government accountability over security policy in Papua. It is expected that from the alignment of security policy evaluation and peaceful dialogue agenda, there will be reduction in the number of TNI troops in Papua
- [Komisi I] DPR RI (Commission I of the House of Representatives) shall establish strict controls over the agenda of security forces mobilization in conflict-prone areas, such as in Papua. Political recommendations from DPR RI to mobilize security forces must be treated as absolute measurement, before the President can issue a political statement related to the implementation of security policies
- [Komisi I] DPR RI can also do an extended public hearing with all stakeholders related to the settlement of the Papua problems. It is expected that from the public hearings, genial ideas for managing peace in Papua can be collected
- Regarding a justice agenda, Indonesian Government should also consider a gradual amnesty to Papuan detainees/political prisoners. From KontraS' notes, there are at least 66 people that still stated as Papuan political prisoners/prisoners.

Densus 88 and Anti-Terrorism

- To evaluate Densus 88's implementation performance related to the conduct of anti-terrorism activities in Indonesia
- To open a public grievance and complaint mechanism more effectively through Komisi Kepolisian Nasional (National Police Commission, Kopolnas)

Security and Freedom of Religion

- To build a space for popular dialogue/campaigns among people in Indonesia to prevent the widespread practice of intolerance in Indonesia
- To reformulate and synchronize national and local policy, especially to guarantee the implementation of religious freedom guarantees in Indonesia
- To encourage regular and intensive training to law enforcement officials (especially police) on protection of minority religion and belief issues.

Impunity and Military Assistance

- Revision of Law No 31/1997 regarding Peradilan Militer (military tribunal). This revision is expected to become one of the main chamber of TNI accountability, especially in the human rights enforcement guarantees
- To implement a vetting mechanism in TNI internally. The effectiveness of this mechanism can only be measured if the parties allegedly involved in a series of crimes/human rights violations in the past do not get promotion
- To delay any kind of military assistance until the investigation process of (past) human rights violations cases in Indonesia are settled.