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KontraS

Komisi Untuk Orang Hilang Dan Korban Tindak Kekerasan
The Commission for The Disappeared and Victims of Violence

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Subject : Information Regarding Paragraph 32 of the Human Rights Committee Concluding Observation in 2014 to the Indonesian Government : The Indonesian Government has failed to Act and Follow up.

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The Commission For the Disappeared and Victims of Violence (KontraS) – a human rights non-governmental organization based in Indonesia would like to inform you regarding the Paragraph 32 of Concluding Observation by the Human Rights Committee to the Government of Indonesia on 2013.¹ As stated by the Paragraph 32 of the Concluding Observation, the Government of Indonesia shall give informations regarding four urgent cases, inter alia; the assassination of Munir-Human Rights Defender in Indonesia, the enforced disappearances case of activists in 1998, Blasphemy law, and the practice of Female Genital Mutilation. The government shall provide what steps have been taken within one year for those urgent cases.

By this letter, we would like to give information based on our monitoring for one of those cases, regarding the assassination of Munir. We also would like to inform you that we sent the official letter to the Ministry of Foreign Affairs regarding the report of the Government of Indonesia relating to those four cases which shall be sent in August 2014 to the Human Rights Committee. On 7th of November, The Ministry of Foreign Affairs sent the official letter stated that the MoFA is not in position to give informations to the Human Rights Committee because there is no adequate information relating to those issues given by another ministry/ institution to follow up

¹ Letter of Concluding Observation : CCPR/C/IDN/CO/1 on 21 August 2013 by Human Rights Committee.

those recommendation, such as: the Police Institution, the Attorney General, the Ministry of Religion, and the Ministry of Internal Affair.

Based on the facts above, KontraS would like to give information regarding to the update of the assassination case of Munir.

First regarding to the assassination case of Munir, after ten years being killed, those who responsible- the mastermind for the case never bring to justice while the government has no effort to re-investigate the case to ensure all the perpetrators bring to justice in line with the national and international human rights law. Instead of giving effort to resolve the case, in the **Government of Indonesia has granting parole to Polycarpus Budiharipriyanto** based on Letter issued by Ministry of Law and Human Rights number W11.PK.01.05.06-0028 on 13th of November 2014. Polycarpus is the perpetrator of Munir murder case who was sentenced to 14 years in prison since 2008. After receiving the parole, Polycarpus has to report once in a month until August 2018 to the Sukamiskin prison warden.

On 28th of November Polycarpus officially out from prison. Since 2008, he received remissions for total 51 months and 80 days from many occasion such as on the Independence's days and Christmast's days.

While on October 2, 2013, the trial process of Polycarpus was unfair with the final review over a final review. The Supreme Court has reduced the sentence of Polycarpus Budihari Prijanto, the convicted murderer of human rights activist Munir Said Thalib, from 20 years to 14 years, as stated in the official website (<http://putusan.mahkamahagung.go.id/>). Previously, Polycarpus as the perpetrator of the Murder case of Munir- at first has sentenced to 14 years' imprisonment by judges at the Central Jakarta District Court in 2005, but the Supreme Court increased the term of his jail to 20 years in January 2008.

We believe the process and the decision to reduce sentence of Polycarpus in 2013 also violated the national law. The Supreme Court shall not give another final review over the case because there is no novum. The medical evidence given by Polycarpus legal assistant is not a novum, but it was based on the previous trial. On the previous trial, there were dissenting opinion between Justices and prosecutors relating the arsenic in take to Munir body. The prosecutors said that the arsenic in take from orange juice, while the justices believe the arsenic was in take through fried noodles. The second evidence given by Polycarpus legal assistant is the difference of *tempus delicti* (time of the incident) and *locus delicti* (place of the incident) on the charge of prosecutors on the trial in Central Jakarta District Court and on the final review memory. Both of those arguments are not in line with the definition of novum in penal code. Novum should existed before the trial, not based on the dissenting opinion by justices and prosecutors as above mention.

Second, On the rule of national law, it is clear that final review only can be filed once, because final review itself is the final legal process which should be respected. If there could be final

review over final review, then the rule of law will become blurred and there will be systemic damage impact in our law. On the national level, there are several regulations that prohibit more than one final review, inter alia; Law no.4 of 2004 on judicial power, particularly Article 23 paragraph 2, and Law No.48 of 2009 on judicial power, Article 24 paragraph 2, states that there can not be final review over final review. Further more, Law no.8 on Criminal Code Procedure, article 268 paragraph 3 states that the final review of a verdict only can be filed once. Also, law no 14 of 1985 on The Supreme Court, Law no 5 of 2004, and law no 3 of 2009, particularly on article 66 paragraph 1, state that the final review can only submitted once. Even more, the circular issued by the Chief of Justice, firmly and clearly stated that the request for the final review in similar case filed more than once in both civil and criminal matters are contrary to the law.

The assassination of Munir is a test for the government of Indonesia to prove its commitment for upholding democracy and human rights. This case is not only about a killing, more than that it can reflect the protection of the Government of Indonesia for Human Rights Defender within the country and the impunity problem which blatantly seen on this case when the high level personnel of security actor who were involved in this case had never been able to be investigated by the National Human Rights Commission.

In regards to this case, we would like to respectfully ask the Human Rights Committee to urge the government of Indonesia resolve this case without undue delay as also stated on the concluding observation. The government of Indonesia shall review the decision for giving the parole to Polycarpus, more over the Government also shall follow up recommendations of the Fact-Finding Team in 2006 and conduct the legal processes evaluation consists of Ombudsman, the Judicial Commission, National Police Commission and Prosecutorial Commission and publish the official report of the Fact-Finding Team of the assassination of Munir to public.

Jakarta, 4th December 2014



Haris Azhar
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