

## INDONESIA

### Submission to the Committee of Civil and Political Rights LOIPR

Commission for the Disappeared and Victims of Violence (KontraS)  
2020



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

#### I. Introduction

The Commission for the Disappeared and Victims of Violence – a human rights non-governmental organization based in Jakarta, Indonesia – would like to deliver our report related to the situation of the civil liberties in Indonesia, in regards with the call for submission on the List of Issues Prior to the Reporting for Indonesia (LoIPR).

The global social and political context shows the turmoil marked by mass action in the past year in several countries, such as Argentina, Brazil, Bolivia, Hong Kong, Spain, Venezuela, and others. This large mass wave represents a variety of political, economic, government and human resources systems. However, the growth of movements in each country shows at least several similar phenomena: the fundamental failure of the political system in a country and the neglect of human rights so that it results in distrust of political leadership in a country. The situation of freedom of assembly is now a concern in several Asian countries because of the trend of restrictions on freedom of assembly in these countries. According to Forum-Asia report (2019)<sup>1</sup> illustrates that restrictions on freedom of expression, assembly and association in 20 countries (South, East, and Southeast Asia) are a tangible form of shrinking-space which can be seen as an attempt to criminalize those who express opinions differently. In fact, some countries, such as Myanmar and Sri Lanka, even though the direction of their government is liberal still maintains repressive laws and often uses these legal rules which are actually contrary to human rights.

Recently, almost all countries in Southeast Asia experience serious human rights violations, narrowed space for the civil society organizations and the media, and symptoms of damage to democratic institutions by silencing dissent and tolerance of corrupt practices.<sup>2</sup> The condition has become a trend in a country to be used as an excuse to encourage economic growth. In fact, the incessant drive for economic growth does not go hand in hand with improving people's welfare. Public involvement in the formulation or public participation in development was not heeded. This can be seen from a number of statements issued by public officials recently.<sup>3</sup> The direct or indirect impact of the promotion of economic growth is its

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<sup>1</sup> 'Instruments of Repression: A Regional Report on the Status of Freedoms of Expressions, Peaceful Assembly, and Association in Asia'. This regional report provides reviews until May 2018, from 20 countries that are part of the FORUM-ASIA member organizations (except China and Laos). The approach taken is thematic and comparative: the analysis is break down into topics that include freedom of expression, assembly and association. Accessed on April 4, 2019.

<sup>2</sup> See more: <https://lokataru.id/wp-content/uploads/2019/11/shrinking-space-asean-country-2.pdf> accessed on 27 November 2019 at 19.34 WIB.

<sup>3</sup> <https://www.thejakartapost.com/news/2019/11/27/dilemma-of-democracy-tito-says-nondemocratic-countries-have-better-economic->

consequence on civil liberties. As a result, in order to facilitate development - as well as the use of a narrative of stability and security - the state "teaches" a silencing of civil liberties.<sup>4</sup> One measurable reflection of this portrait is the report of The Economist Intelligence Unit's (2018) Democracy Index which states that Indonesia experiences a decline in democracy in line with the global trend of "a democratic recession".<sup>5</sup>

Nevertheless, there are various factors that causing the degradation of the democracy condition in a country. In this section, KontraS will describe several matters related to the human rights incidents from the civil and political sector that become the benchmark of the democracy condition and fulfilment of human rights in Indonesia.

In the element of civil liberties, KontraS summarizes it in two parts, namely freedom of expression and freedom of religion, belief, and worship. However, this division cannot be seen as a limitation given the principle of human rights where rights cannot be separated and interdependent with one another. In practice, freedom of peaceful assembly is interconnected with several other rights, such as the right to freedom of association, expression and opinion, worship and belief, movement and relocation, liberties and the right to security. All of these rights are categorized into fundamental freedoms which are a prerequisite for democratic countries, such as Indonesia.

The condition of civil liberties can be further depressed by the emergence of new policies which have gaps in silencing those who are considered different. The policy that has been under the spotlight recently is the existence of the 11 Ministerial Joint Decree (SKB) stipulating the regulation of the synergy of ministries and institutions in the context of handling the radicalism of the State Civil Apparatus (ASN).<sup>6</sup> The existence of this decree will be dangerous for freedom of expression where the State Civil Apparatus in the name of "radicalism" can be dismissed. The silencing effort on the accusation of radicalism is very dangerous and increasingly adds to the state's way to suppress citizens after it is rampant to be convene through the Electronic Information and Transaction (ITE) Law in the digital sphere and the repression of security forces in the field.

From the explanation above, there is an increasing trend in the form of restrictions on the space for fundamental civil liberties. Looking through the global context, the same conditions afflict several countries in Asia and Europe where laws and regulations that emerge to limit the rights of citizens to assemble and exercise their rights. The silencing efforts that occur are in fact often motivated by the reason of security stability or simply facilitating economic growth. In fact, the limitation of civil space will not make conditions more comfortable and will instead create panic (panic narrative). Even by turning off sounds (especially dissent), the state allows injustice so that social tensions increase which eventually forces people into the streets (protests).

## II. Legal Framework

### Criminal Code Bill (RKUHP)

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[growth.html?utm\\_term=Autofeed&utm\\_medium=Social&utm\\_source=Twitter#Echobox=1574827276](#)

accessed on 27 November 2019 at 19.20 WIB.

<sup>4</sup> <https://katadata.co.id/berita/2019/10/18/kebebasan-berekspresi-disebut-mundur-moeldoko-demi-stabilitas>

accessed on 27 November 2019 at 19.20 WIB.

<sup>5</sup> [https://www.economist.com/media/pdf/DEMOCRACY\\_INDEX\\_2007\\_v3.pdf](https://www.economist.com/media/pdf/DEMOCRACY_INDEX_2007_v3.pdf) accessed on 27 November 2019 at 20.00 WIB.

<sup>6</sup> <https://news.detik.com/berita/d-4799859/skb-penanganan-radikalisme-asn-dikritik-simak-lagi-isinya/2> accessed on 28 November 2019. See also: <https://www.dw.com/en/indonesias-internet-law-limits-freedom-of-expression/a-19568549> atau <https://www.newmandala.org/the-role-of-social-media/> accessed on 5 December 2019 at 03.06 CET.

The Criminal Code Bill, which has been re-postponed, still has many problems. In general, this bill is still over-criminalized and does not provide protection to the community, especially vulnerable groups. One of the problems that still exists in the Criminal Code Bill is in the regulation of gross human rights violations. In its regulation, the Draft Criminal Code can actually eliminate various specificities in the regulation of gross human rights violations in the Rome Statute such as equalizing sentences for various types of human rights violations, excluded legal principles such as *ne bis in idem* and non-retroactive, to the authority of Komnas HAM (National Commission on Human Rights) as an independent investigator potentially eliminated.

Another issue that is no less important is the return of criminal articles against acts of defamation of state authority, in this case acts of attacking the dignity of the President and humiliation of public authority and state institutions. These two articles, in addition to being unnecessary in a democratic country, also have the potential to be abused to suppress freedom of speech, especially those that are critical of the state.

Articles governing the private sphere of citizens such as the prohibition of living together as husband and wife outside the marital ties and an expanded understanding of adultery will also curb the freedom of society in the private sphere which should not be interfered by the state, and open up opportunities for horizontal violence. in the midst of society in the form of persecution and inhumane acts towards people or groups that are considered to violate this provision.

Related to torture, other cruel, inhuman, degrading, ill treatment or punishment: Narrow space on human rights violations concept. Acts of torture, other cruel, inhuman, degrading treatment or punishment are often equated with maltreatment as regulated in the Criminal Code. In fact, there is a significant difference between the definition of torture and maltreatment, starting from the aspect of the element, the purpose and objectives and the perpetrators. In addition, in the concept of human rights, the practice of torture is also a *jus cogens* which means it cannot be reduced in any circumstances. Because of its irrevocable nature, various regulations have been formulated aimed at prohibiting and abolishing torture and cruel, inhuman and degrading treatment or punishment, as stipulated in the Universal Declaration of Human Rights (UDHR) and the Convention Against Torture (CAT).

The Indonesian government has ratified several international human rights instruments related to the prohibition of torture and other cruel, inhuman, degrading treatment or punishment in legislation such as the International Covenant on Civil and Political Rights (ICCPR) in Law No. 12 of 2005 and the Convention Against Torture and Treatment or other cruel, inhuman and degrading punishment (CAT) in Law No. 5 of 1998.

It is unfortunate, the articles related to the prohibition of torture in the Criminal Code do not refer to the provisions in the Convention Against Torture (CAT). The Criminal Code only regulates the practice of torture, but does not clearly and explicitly regulate other cruel, inhuman degrading treatment or punishment (as Article 16 of the CAT), and there is no explanation of what the consequences of such acts will be. The maximum penalty of 7 years in the Criminal Code Bill contradicts the Committee Against Torture recommendations, which is a minimum of 6 years. The punishment for the perpetrators of torture must be heavier given the cruel practice of torture carried out. Criminal Code Bill does not specifically regulate command responsibility (Article 4 CAT). As such, responsibility is only imposed on those who carry out torture directly, whereas the actions of anyone who 'participates or participates', in order to prevent torture or other inhumane acts, are not regulated in the Criminal Code Bill.

The regulation of death penalty in the Criminal Code Bill indeed showing a "tighter" in putting the death sentence with arranging several terms that is more complete. However, the tightening of the formulation does not eliminate the conflict between the imposition of capital

punishment with the purpose of punishment itself in the Criminal Code Bill as stipulated in article 52 paragraph (2) which states "Criminalization is not intended to depict human beings and degrading human dignity."

In the current Criminal Code, death penalty is still the main punishment (other than imprisonment, confinement and fines). Meanwhile, in the formulation of the Criminal Code Bill, the death penalty is no longer included in the main punishment but instead becomes an alternative punishment. Which means that each death-row inmate must undergo a waiting period of 10 years in detention before the government evaluates the convict's attitude. If they are found to be in a good behavior, their sentence can be reduced to life imprisonment or 20 years in prison. There are at least 11 article formulations in the Criminal Code Bill that still contain death penalty.

The inclusion of capital punishment in the Criminal Code Bill clearly rules out various legal and human rights instruments, and this policy creates confusion and legal uncertainty. "Moreover, there is no guarantee for death-row inmates who have served a 10-year waiting period will be declared eligible for sentence to be reduce". If they are not having a good behavior, the death-row inmates would instead have to undergo two sentences at once, which is 10 years in prison and execution.

The Criminal Code Bill is not appropriately used as a reference for laws that provide regulations relating to genocide and crimes against humanity. There is a difference between the principles of criminal law and genocide and crimes against humanity. The Rome Statute of 1998 refers to these crimes, along with war crimes and aggression crimes, as "the most serious crimes of international concern to the whole" Regulations in the Criminal Code Bill does not provide regulations which follow the Rome Statute concept, including: (a) Genocide and Crimes against Humanity, its jurisdiction is universal, which means that it can be put on trial in any country, regardless of the place of the act, or the nationality of the perpetrator or victim. This contradicts the Criminal Code Bill which limits jurisdiction only in the Indonesian territory; (b) There is an expiration (non-retroactive principle) to prosecute every crime of Genocide and Crimes Against Humanity in the Criminal Code Bill. This is contrary to the principles of the Human Rights Court Law which provides specificity related to the use of retroactive principles on Genocide and Crimes Against Humanity. The expiration of the RKUHP will legitimize the authority of the court to adjudicate crimes against Genocide and Crimes Against Humanity that occurred before the Criminal Code Bill is enacted; (c) Amnesty cannot be granted against perpetrators of Genocide and Crimes Against Humanity in the Criminal Code Bill; (d) There are no articles in the Criminal Code Bill that regulate command responsibility in the crimes of Genocide and Crimes Against Humanity, so that punishment only targets the field perpetrators.

### **Correctional Institutions Bill**

Ratification of the Correctional Draft Bill will have an impact on the invalidation of Government Regulation Number 99 of 2012 concerning the Requirements and Procedures for the Implementation of the Rights of Prisoners that provide restrictions on remission for convicted cases of corruption, drugs, and terrorism. This will return the arrangement to the provisions in the Criminal Procedure Code, thus potentially facilitating the remission of prisoners in these cases. In addition, there are also provisions regarding conditional leave that can be used by inmates to leave prison. Not specified in more detail the qualifications of prisoners who can apply for conditional leave, it is possible for this arrangement to be used by prisoners of serious crimes such as corruption.

**UU No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Establishment of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of the Criminal Acts of Terrorism (Anti-Terrorism Law)**

The Terrorism Law has re-opened the opening of the military into the realm of security, in this case the eradication of terrorism, without clear parameters, boundaries, and accountability mechanisms. The National Military Forces (TNI) Law indeed stipulates that the TNI can carry out activities to eradicate terrorism based on the Military Operation Beside War (OMSP). However, what should be regulated in the Terrorism Law is precisely the elaboration of combating terrorism in the context of the OMSP which consists of parameters, limits, and accountability mechanisms for TNI involvement in combating Terrorism. If the involvement of the TNI is not limited based on clear event parameters, it does not rule out the possibility that this will lead to violations of civil rights in the future, bearing in mind that the TNI's approach to "eradicating" terrorism is a defense or "war model" approach is different from the approach of the police who have been trained to eradicate terrorism in the context of law enforcement that refers to rules regarding the criminal system.

The definition of de-radicalization on article 43A that already become a controversy where the regulation on that article showing an interpretation of de-radicalization that tend to be misused. There are no definition or measures to determine the de-radicalization, the method until facilities that to be used by the government to conduct the de-radicalization.

In connection with forced attempts (arrest, detention and wiretapping), it is important to look at the amendment of Article 25 clause (2) to (6) which has indications of abuse of authority, torture practices and neglect of the terrorist suspects rights during the detention process. The length of the detention period as stipulated in this article with a mathematical amount of 290 days is certainly contrary to the principles of a fast, fair and low-cost trial. This provision must also be observed based on criminal procedural code which stipulates a maximum detention period of 170 days. There is no logical argument for the mathematical calculation stipulated 290 days of detention. In addition, to information from Special Detachment 88 Counter-Terrorism apparatus who have difficulties in revealing criminal acts of terrorism with a period stipulated in the Criminal Procedure Code.

In addition, the agreed arrest period, which is 14 days plus 7 days by the public prosecutor, opens up the opportunity for the arbitrary practice of law enforcement officers in view of the fact that in practice, the time period of 1x24 hours which has been regulated in the Criminal Procedure Code is still many arrests that are not preceded. The procedure is followed by a wrongful arrest and torture in cases of terrorism.

### **Law 16 of 2017 concerning Establishment of Government Regulation in Lieu of Law No. 2 of 2017 concerning Amendments to Law Number 17 of 2013 concerning Social Organizations into the Act (Mass Organization Law)**

The Mass Organization Law has provisions that restrict civilian spaces in democracy. This is particularly evident in the provisions regarding the dissolution of CSOs that can be carried out unilaterally by the Government without involving the judiciary. Under this law, the Government can unilaterally impose administrative sanctions on civil society organizations in the form of written warnings, termination of activities, and/or revocation of registered certificates or revocation of legal entity status (dissolved). The right to assemble is a basic human right and constitutional right which must be guaranteed by the State. In this case, the limitation of the right to gather by the state must use constitutional channels and are in line with the principles of due process of law, namely by submitting the decision to dissolve CSOs through a Court mechanism. Moreover, the dissolution of CSOs through this mechanism has the potential to create further conflict in the community in the form of stigmatization, discrimination, and persecution of former members of CSOs that were dissolved with the stamp as "members of prohibited organizations."

## Law on Electronic Information and Transactions

The Law on Electronic Information and Transactions, which came into effect in November 2016, has also been used to target human rights defenders for their work. Article 27 of this law makes it illegal to deliberately distribute, transmit, or make an accessible electronic information and/or electronic documents that contain defamatory and/or contemptuous content. In particular, Clause 3 of this vague, over-reaching, and ambiguous article has been used as a tool to criminalize human rights defenders and government critics for the expression of their opinions. During 2014-2019, according to our monitoring data, the Electronic Information and Transactions used massively by the State to silencing particular groups or individuals.

## Treason act in the Criminal Code Bill

The application of treason act (specifically Articles 106 and 110 of the Indonesian Criminal Code) - used disproportionately, for instance to political activists in Papua and Maluku - should have been terminated and the articles must be revoked or amended in accordance with Indonesia's international human rights obligations. This Indonesian human rights obligation is a consequence of ratifying various key international human rights instruments. As a State Party of the human rights treaties, Indonesia must harmonize or adjust its legislation and legal practices in accordance with the provisions of international human rights law. Furthermore, Indonesia is obliged and bound not only to the provisions (articles) that are textually stated in the human rights covenant or convention, but must also implement the recommendations and authoritative interpretations of each treaty body of international human rights instruments.

The issue of applying treason act is also closely related to the right to freedom of opinion and expression regulated in Article 19 of the ICCPR. In its authoritative interpretation (General Comment No. 34) the UN Human Rights Committee explains that "freedom of belief in an opinion about a political, moral, or religious view cannot be limited by any legal provisions" and this reduction or limitation of the right to opinion in the form of "harassment, intimidation or stigmatization of a person, including arrest, attempted detention, or imprisonment for reasons of beliefs they hold, constitute a violation of Article 19 (1) of the ICCPR."<sup>7</sup>

Limitation of "manifestation" of opinion or opinion that is only justified if it is related to the reputation or reputation of others, public morals, public health, and national security.<sup>8</sup> Specifically for national security (a concept often used by the state to justify the application of treason crimes), this term is spelled out in the Siracusa Principles as a human rights instrument (soft law) which is a consensus of opinion of international human rights law experts.<sup>9</sup>

In the context of applying treason for Papuan (and Maluku) political activists, it is important to note that the punishment is based on possession, distribution, raising, or spreading prohibited flags or symbols (Morning Star Flag for Papua, Benang Raja Flag for Maluku, or Flag Crescent

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<sup>7</sup> UN Human Rights Committee General Comment No. 34 on Article 19: Freedoms of opinion and expression (ICCPR), para 5 dan 9; bisa diakses di:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en).

<sup>8</sup> Article 19(3) of ICCPR.

<sup>9</sup> *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, UN Doc. E/CN.4/1984/4 (Annex), can be accessed at: <https://undocs.org/pdf?symbol=en/E/CN.4/1985/4>.

Moon for Aceh) which is associated as a separatist or pro-independence symbol.<sup>10</sup> For this matter, the perspective of human rights also forbids it. All banned flags or symbols clearly do not symbolize or can be interpreted as a form of invitation to violence. Furthermore, so far the state has never explained how these forbidden symbols can move others to commit violence or endanger national security.

### III. Case Studies

#### 1. Freedom of expression and Limited protection for the human rights defenders: Papuan Activists

Based on KontraS monitoring, for one year (December 2018 - November 2019) there were 161 incidents of violence experienced by human rights defenders. The categorization of human rights defenders compiled by KontraS comes from various backgrounds, such as students, journalists, laborers, Papuan activists, environmental activists, communities, and activists in general. From the data recorded, human rights defenders with the status of students become the dominant victims over the past year with the actions experienced in the form of repressive acts, arbitrary arrest, and ill-treatment. Meanwhile, in general, the condition of human rights defenders is quite diverse with the majority of cases being arbitrary arrested by the police.

Based on KontraS monitoring, incidents of violations of freedom of expression during the past year (December 2018 - November 2019) reached out 187 events, with a massive number of victims of arbitrary arrest and detention of 1,615 people. Trends in violations of freedom of assembly, including to express opinions are soaring in the form of forced dissolution, ill-treatment and killings. This is relevant if it is associated with a series of mass action events in large numbers in almost all major cities in Indonesia and in Papua that occur throughout the year.

These repressive acts were also aggravated by the government's poor response to public efforts to demand changes in situations that also often get intimidated. From the large group of events above, security forces often act repressively in handling mass actions.<sup>11</sup> In addition, repressiveness also emerged against political opponents who showed the strengthening of the partisan political role.<sup>12</sup> These restrictions on freedom of expression also often occur to groups that are using their constitutional rights to balance the state narratives, such as the May Day 2019 action, May 21-23 2019 riots, and a series of Papuan demonstrations against the racism, and student actions throughout Indonesia on 23-30 September 2019.

By looking at some important things that are the focus, then the protection of human rights defenders can include several things, namely: *First*, legal protection. This protection is not only related to the existence of a law that guarantees the protection of human rights defenders, but also eliminates laws that have the potential to threaten human rights defenders. *Second*, guarantees and supports the activities of human rights defenders. This relates to the effectiveness of human rights defenders in defending, for example the right to obtain information to communication either with government or non-government. *Third*, recognition

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<sup>10</sup> Additional legal products other than treason articles in the Criminal Code are Government Regulation No. 77/2007 concerning Regional Symbols.

<sup>11</sup> See more: KontraS Report on Freedom of Assembly <https://kontras.org/2019/12/06/menemukan-pola-pembatasan-kebebasan-berkumpul/>

<sup>12</sup> <https://www.tandfonline.com/doi/full/10.1080/00074918.2018.1549918> accessed on 28 November 2019.

of defense activities by human rights defenders. This includes guaranteeing the defender's immunity related to their defense activities.

Violence and human rights violations in Papua continue to recur, the pattern of violence tends to be the same and recurring; the use of militaristic security approaches, such as arson, sweepings of residents' homes in intimidated ways, followed by arrests, arbitrary detention, torture and lightning [outside of legal procedures], excessive use of force [firearms], dissolution of action peace accompanied by violence, arrest and detention. In addition, there is still stigmatization of the Papuan people as "separatists" or "troublemakers" and so on, so that they are deemed worthy of being criminalized.

In 2019, there was a significant escalation of violence related to the Papua issue. In terms of civil liberties, there has been an increase in repression received by civil society who express their opinions, especially those relating to the right to self-determination as well as Papuan independence. This repression along with aspirations for self-determination and strong international support for Papua.<sup>13</sup>

This repression is not only obtained by Papuans (Orang Asli Papua – OAP), but also other individuals who vocally convey ideas related to Papua.<sup>14</sup> In terms of violence by the authorities, there are no signs of avoidance from the methods or acts of violence. The data presented in this report are only those that were successfully obtained to describe the real conditions in Papua and West Papua. This is due to the difficulty of accessing information on various events, the low and limited exposure to the media, and worsen by restrictions on internet access by the government in a number of riots which have made it harder to work on human rights monitoring and are suspected as a new tactic in responding to the situation in Papua.<sup>15</sup>

In terms of the freedom of association in 2018-2019, expression and opinion, the issue of Papua has become a very vulnerable issue in the form of government repression when publicly expressed. Based on KontraS monitoring, there were 14 incidents of violations of the right to expression that occurred on the Papua issue resulting in at least 41 people injured, 7 killed, and 529 arrested. The most dominant perpetrators in violations of the right to expression in Papua are the Police and the National Military. The most dominant violation of the freedom of expression incidents is the dissolution of demonstrations/actions accompanied by violence and arrest. The real number can be ascertained above the number findings since there were

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<sup>13</sup> International support for example can be seen from the Pacific Islands Forum which issued a statement that the UN High Commission on Human Rights must visit and report on the condition of Papua for the past year. This statement is exactly a week before the Surabaya incident occurred. See: <https://www.theguardian.com/world/2019/aug/22/why-are-there-violent-clashes-in-papua-and-west-papua-explainer> accessed on 5 December 2019 at 01.09 CET. Earlier, in early 2019, Benny Wenda, a prominent Papuan activist, met with the UN High Commissioner for Human Rights, Michelle Bachelet, while submitting a petition signed by 1.8 million people in support of an investigation into the Papua situation. See: <https://thediplomat.com/2019/07/west-papuas-quest-for-independence/> accessed on 5 December 2019 at 01.15 CET.

<sup>14</sup> One of them happened to a human rights lawyer who paid attention to the Papua issue, Veronica Koman. She actively speaks about the situation of Papua through his personal Twitter account. The police then named him a suspect on charges of spreading false news and issuing a red notice to Interpol to arrest him. See: <https://jakartaglobe.id/context/police-issue-red-notice-to-interpol-to-track-and-capture-veronica-koman> accessed on 5 December 2019 at 01.36 CET.

<sup>15</sup> <https://www.npr.org/2019/08/28/754276641/violence-follows-pro-independence-protests-in-indonesias-papua-region?t=1575317377044> accessed on 5 December 2019 at 01.38 CET.



several major events after the racism incidents at the Surabaya Student Dormitory in August<sup>16</sup> and were followed by riots in Fakfak, Manokwari and Wamena where it was difficult to obtain real data on the number of victims. This has not been counted the effects of fear that arise and cannot be quantified but the impact on freedom of expression. For example, after the riots in Papua, the government sent more than 1,000 troops to secure the situation.<sup>17</sup>

The legal process towards those who are arrested for expressing their opinions regarding the Papua issue is also not in accordance with the principles of due process of law and seems discriminatory. Most recently, on August 28, 2019, there were arrests of 6 Papuan activists namely Charles Kossay, Surya Anta, Ambrosius Mulait, Dano Tabuni, Isay Wenda, and Arina Elopere who expressed their opinions peacefully in public as a form of protest against racism and discrimination constantly happening to Papuans in front of the Presidential Palace. The six Papuan activists were arrested by unlawful means, without an arrest warrant, and at gunpoint. The police searched them without showing permission from the local district court as required by law and forcibly seized property belonging to the six activists. Whereas freedom of opinion is guaranteed by the 1945 Constitution and the action has complied with the provisions of Law No. 9/1998 regarding Freedom of Expression and Opinion in Public by carrying out an orderly and peaceful action preceded by a mass act notification letter to the Police.

However, from the beginning of the arrest to the examination, the six activists were immediately determined and examined as suspects without a summons as a witness and without conducting a case. Even before the examination was conducted, legal counsel was not permitted to meet and provide assistance. The actions of the Metro Jaya Regional Police investigator clearly violate a series of laws and regulations.<sup>18</sup> For the arbitrary actions and unfair trial, until the time this note was written, activists are submitting a pretrial petition as guaranteed by the Criminal Procedure Code.

In addition, there are many irregularities when Papuan activists are in custody. Discrimination against the lawyers and family when visiting Mobile Brigade Headquarter (MAKO BRIMOB), the absence of Metro Jaya Police District (POLDA METRO JAYA) at the inaugural hearing of the pretrial and the sole judge of pretrial which is allegedly intentional slowing down the trial process, as well as the process of case transfer to the Central Jakarta District Attorney's Office only through the Whatsapp application. After serving nine (9) months in prison, five Papuan political prisoners Surya Anta, Ambrosius Mulait, Dano Tabuni, Charles Kossay and Ariana Lokbere were released today. The Panel of Judges at the Central District Court declared the five Papuan political prisoners guilty of committing treason against the state in violation of Article 106 of the Criminal Code.

In the defense of the trial the facts of the trial proved that when the five Papuan political prisoners were publicly expressing their opinions on the incident of student racism in Surabaya. There was no intention to commit treason, there was no act of attacking the head

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<sup>16</sup> One source said 43 Papuan students were arrested during the incident. See: <https://theconversation.com/riots-in-west-papua-why-indonesia-needs-to-answer-for-its-broken-promises-122127> accessed on 5 December 2019 at 02.02 CET. In Jayapura, 28 people were arrested and named as suspects. See: <https://www.dw.com/en/exiled-west-papuan-leader-a-referendum-is-the-only-solution/a-50248569> accessed on 5 December 2019 at 02.06 CET.

<sup>17</sup> <https://www.npr.org/2019/08/28/754276641/violence-follows-pro-independence-protests-in-indonesias-papua-region?t=1575317377044&t=1575504998534> accessed on 5 December 2019 at 01.27 CET.

<sup>18</sup> Starting with the Criminal Procedure Code (Articles 17, 18, 19 paragraph (2), 21, 33, 34, 36, 38, 128, and Article 129), Supreme Court Regulation No. 4/2016, Chief of National Police Regulation No. 14/2012, until the Head of Criminal Investigation of the National Police Regulation No. 3/2014

of state, there were no incidents of violence whatsoever, but the judge's decision did not consider the facts of the trial.

The criminalization that occurred to Papuan activists who voiced the Papua problem using the treason article, the ITE Law and other criminal articles was part of the era of democratic decline and commitment to advancing human rights. After the incident of Papuan student racism in Surabaya there were 57 Papuan political prisoners scattered in seven cities having to undergo legal proceedings. Since a long time ago a legal approach has been used but it will not be effective to resolve conflicts and problems of Papuan rights.

These findings show that the security approach through the use of armed forces on the issue of Papua is not a humanist and democratic way of solving complex political problems in Papua. Aside from not touching the root of political problems, this approach will also continue the circle of violence around the issue of Papua and maintain the impunity of the perpetrators. The impact is opening up opportunities for future events with the same or similar patterns. This condition is urgent and the time has come to encourage the government to no longer see progress as limited to infrastructure development and the entry of foreign investment<sup>19</sup>, but also from the fulfillment of basic human rights to the community, including the fulfillment of a sense of justice to victims of violence, especially in this case related to the issue of Papua.

In 2019, there was a significant escalation of violence related to the Papua issue. In terms of civil liberties, there has been an increase in repression received by civil society who express their opinions, assembled to demand for justice toward the government, especially those relating to the right to self-determination as well as Papuan independence. This repression along with aspirations for self-determination and strong international support for Papua.<sup>20</sup>

At this point, repression is not only directed at actions that are considered "violating" (past the time allowed to conduct demonstration or rally), but also on certain issues, such as Papua and the use of symbols considered by the state as separatist symbols, such as the Morning Star symbol.

## **2. Freedom of assembly: Arbitrary arrest and violence outbreak during *Reformasi* Corrupted demonstration**

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<sup>19</sup> The government's response by stating economic development and improving the quality of life, especially the construction of the trans-Papua toll road (with the assistance of the TNI) will reduce the aspirations of independence reviewed by James Elimslie, West Papua Project di Center for Peace and Conflict Studies, University of Sidney. Lihat <https://theglobepost.com/2019/10/24/indonesia-west-papua-unrest/> accessed on 5 December 2019 at 01.45 CET. Not only that, efforts to reduce the Papua conflict were also carried out with populist actions such as visits and discourses about opening palaces in Papua. President Joko Widodo himself has visited Papua 12 times. Lihat <https://www.aljazeera.com/news/2019/09/west-papua-unrest-tests-indonesia-jokowi-term-begins-190911060733265.html> accessed on 5 December 2019 at 02.02 CET.

<sup>20</sup> International support for example can be seen from the Pacific Islands Forum which issued a statement that the UN High Commission on Human Rights must visit and report on the condition of Papua for the past year. This statement is exactly a week before the Surabaya incident occurred. See: <https://www.theguardian.com/world/2019/aug/22/why-are-there-violent-clashes-in-papua-and-west-papua-explainer> accessed on 5 December 2019 at 01.09 CET. Earlier, in early 2019, Benny Wenda, a prominent Papuan activist, met with the UN High Commissioner for Human Rights, Michelle Bachelet, while submitting a petition signed by 1.8 million people in support of an investigation into the Papua situation. See: <https://thediplomat.com/2019/07/west-papuas-quest-for-independence/> accessed on 5 December 2019 at 01.15 CET.

Over a span of 5 years, cases of violations of freedom of expression, assembly, and expressing opinions in Indonesia occurred 1,384 events. Trends in violations of freedom of expression, assembly, and expressing opinions are soaring on the type of forced dissolution and prohibition. This is relevant if it refers to book raid events and the dissolution of mass action.

This began to be seen from the process of arrest to post-action. At least, handling mass action in a large number of the three cases above, KontraS found several patterns:

*First*, arbitrary interpretation of discretion resulting in fatalities, such as the use of firearms and beatings. *Second*, the mass of action that was detained was accompanied by torture which resulted in injuries, even unconscious. *Third*, access to meeting detained victims is restricted. *Fourth*, do not prioritize serious legal mechanisms to prosecute perpetrators who cause the death of the participants of the action.

The patterns above then become a culture for the police in dealing with mass actions in large numbers. In addition, we also found that the security forces did not pay attention to the regulations that overshadowed their activities while on duty, such as Chief of National Police Regulation (Perkap) Number 8 of 2009 concerning Implementation of Principles and Human Rights Standards in Implementing the Tasks of the Indonesian National Police, Perkap Number 16 of 2006 concerning Mass Control, Perkap Number 1 of 2009 concerning the Use of Force in Police Measures.

Since the government choose to involve the police members to become the leader of the corruption eradication as pointing one of its members to become the Chair of the National Corruption Eradication Commission or KPK. There was no response at all by the government during the series of several controversial legislation being discussed and triggering the outbreaks from the civil society.

Hence, about 10 thousand students and civil society groups gathered in front of the DPR building and followed by the other students in different cities in Indonesia such as in Bandung, Medan, Palembang, Lampung, Yogyakarta, Malang, Semarang and Makassar, Kendari and Surabaya.

Clashes between the police and demonstrations not only occurred in Jakarta but in several other areas also police used violence in the face of demonstrators. In Bandung, the action carried out by students in front of the Bandung DPRD was forcibly dispersed using tear gas until beating. As a result, 105 people were injured and taken to hospital; two of them are high school students. In Palembang, three students of Sriwijaya University (UNSRI) were critically injured and treated at Charitas RK Hospital and Muhammad Hoesin Hospital. In Kendari City, 5 people were wounded, and 2 students were killed named Randi (22 years), a student at the Faculty of Agriculture at Halu Oleo University was hit by a live bullet in his chest and La Ode Yusuf Badawi (19 years) was hit by the police and his head was severely injured. South Sulawesi, There are about 37 students who were injured in the head and face as a result of getting beaten by the police. In Medan, 45 students were arrested by police.

The situation today have a clear reflection that the democracy in Indonesia today is not in a good condition at all, abuse of power by the police that is very cruel and inhuman is a picture of how the government can react when the civil society wants to speak their rights and delivering their aspiration for the future of the rule of law in Indonesia. This situation is clearly not getting better after 21 years of *Reformasi* since the measure taken by the government and the security apparatus still precisely the same from the same Semanggi II Tragedy in 1999.

### **3. Right of the Prisoners: Situation of detention centers in Indonesia**

In 2019, Indonesia had 473 prisons.<sup>21</sup> Although several prisons date back to the Dutch colonial period, a number of prisons have been built recently or renovated. Many reports have revealed that detention conditions in Indonesia are often harsh and sometimes life threatening, and that there is significant overcrowding.<sup>22</sup> Although the Directorate General for Correction Facilities has recognized the need to address prison overcrowding and a regulatory and legislative reform plan has been developed to reduce the number of prisoners<sup>23</sup>, national statistics show that the number of prisoners has steadily and significantly increased: from 2013 to 2019, the prison population rose from 160,064 to 261,294.

Over the same period, occupancy capacity increased only slightly (+16,000) compared to the increase in the number of prisoners (+100,000), resulting in a very sharp increase in the national occupancy rate, from 143 per cent in 2013 to 205 per cent in March 2019.<sup>24</sup> Prison occupancy rates vary considerably from one prison to another: according to the information collected during the mission and provided by prison staff, the occupancy rate of the prisons visited varies from 15 to 512 per cent. The highest occupancy rate (512 per cent) was recorded at Kerobokan prison where four death row prisoners used to be detained<sup>25</sup>: it has an official capacity of 323 places but houses 1,653 people.

### **Access to food**

Due to prison overcrowding, the prison staff interviewed explained that they do their best with what is provided but that they know the quantity is too limited and the food not nutritious enough. Interviewed prisoners did not generally complain about the quality of food as they are allowed to receive additional food from their families which is allowed in all the prisons visited except Batu prison (Nusakambangan). The situation is also particularly difficult for people who do not receive any food from the outside, such as foreign nationals or people whose families live far from the prison. A foreigner sentenced to death interviewed at Narkotika Prison (Nusakambangan) said that the food was very bad: this person lost 20 kg in three months and had food poisoning after eating the food in prison.

### **Healthcare facilities**

All prisons visited include a medical doctor. In some prisons, such as Lowokwaru, the doctor carries out routine medical checks on prisoners but in others, such as Makassar, there is no routine check and prisoners must request access the clinic. Discussions with prison staff revealed that the healthcare budget is 10,000,000 Rupiah (or 657 Euros) per year per prison which is equivalent to 27,400 Rupiah (or 1,72 Euros) per day for the entire population of one prison. In a prison like Batu, which houses 106 prisoners, this corresponds to a budget of 258 Rupiah (or 0.016 Euros) per day per prisoner. With such a limited budget, prisons clinics cannot provide a fair level of health services.

Access to mental health treatment and psychosocial support is extremely limited. All the prison staff interviewed regretted that there are no professional and permanent human resources to

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<sup>21</sup> Directorate General for Correction Facilities, List of prison centers, available at:

<http://www.ditjenpas.go.id/unit-pelaksana-teknis/>

<sup>22</sup> US Department of State (2019) Indonesia 2018 Human Rights Report, p. 4. See also ICJR (2018) Strategies to reduce overcrowding in Indonesia.

<sup>23</sup> UNODC (2016) Country Program for Indonesia 2017-2020, p. 20.

<sup>24</sup> In 2013, the total prison population was 160,063 with an occupancy capacity of 111,857. In March 2019, the prison population was 261,294 with an occupancy capacity of 127,112. Source of 2013 data: ICJR (2018), p. 27. Source of 2019 data: World Prison Brief Data – Indonesia, available at:

<http://www.prisonstudies.org/country/indonesia>

<sup>25</sup> Including two Bali Nine members.

support the mental health of prisoners, particularly those who remain on death row for many years. According to prison staff, this need is not reflected in the central government budget.

#### **4. Freedom of religion**

In the perspective of human rights, religious freedom is the most basic/fundamental human right. This right is included in the category of non-derogable rights, that is, rights which cannot be postponed and reduced in fulfilment, in any case whether in a state of peace or war/emergency. Indonesian domestic legislation products have provisions similar to those of universal human rights principles. This can be referred to Article 28 E and Article 29 paragraph 2 of the 1945 Constitution. Article 28E grants every person the right to embrace religion and worship according to his religion. While article 29 emphasizes the state's guarantee of religious freedom. Breath of harmony is also included in Law No.39/1999 concerning Human Rights Article 22. Unfortunately, this constitutional guarantee is not operationalized in laws or other legal products, such as:

1. Joint Letter of 3 Ministers (Religion Minister, Internal Affairs Minister, Attorney General) No. 3/2008 regarding Ahmadiyya Community in Indonesia.
2. Law No. 1/PNPS/1965 regarding blasphemy.
3. Law No. 23/2006 regarding the Citizenship Administration: already accommodated the traditional beliefs in the population registration, however, it is needed to be monitor on the implementation in field.
4. Joint Regulation of the Minister of Religion and Minister of Internal Affairs Number 8 and Number 9 of 2006 concerning Guidelines for Implementing Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Establishing Religious Houses.
5. Criminal Code Bill threatening the freedom of religion and belief.
6. Discriminative local registration that based on certain religion.

The guarantee of freedom of religion, belief and worship lies in inconsistent rules of law. There are rules that protect religious freedom according to beliefs (the 1945 Constitution and the Human Rights Law), but there are also rules that prohibit or limit religious freedom according to beliefs as stated above. A number of the policies above resulted in the paradox of state administration in Indonesia which narrowed the meaning of freedom of belief, religion, and worship. This is also influenced by the nature of law enforcement who are not keen to see the problem. Based on KontraS notes, for five years (2014-2019) there were 549 incidents of violations of freedom of religion, belief, and worship.

The other actors involved in this freedom of religion, belief and worship violation are the Government (177 cases), civilians (150 cases), mass organizations (148 cases), and the police (92 cases). meanwhile, the total number of minority groups that have fallen victim to 954 people with details of individuals (421 people) and groups (533 people). The number of violations of freedom of religion, belief, and worship continues to be in the spotlight every year. KontraS defines "civilians" here as those who move without carrying the flag of the organization and commit acts of violation against minority groups, such as intimidation, assault, obstruction and worship. Because this is a homework passed down from regime to regime. Apart from the existence of a policy that is contrary to the constitutional law, it is also caused by the weak law enforcement of the perpetrators who commit criminal acts in the realm of freedom of religion, belief, and worship.

#### **5. Death Penalty**

Since the third batch of execution that was carried out in mid-July 2016, the government has not carried out the process of execution of death-row inmates. However, the conviction of

prisoners still continues. In KontraS records, at least some courts still apply death sentences, especially for certain types of crimes. During December 2018 - November 2019, there were 40 incidents of death sentences carried out by the court. The sentence was given to 27 narcotics cases and 13 murder cases. Of these cases at least 89 people were sentenced to death. Among those numbers, 35 people were sentenced to death at the first phase of trial in District Court (PN) while one case was sentenced by the Supreme Court (MA). Related to the distribution of territories, the courts in the North Sumatra region occupy the top position of 10 (ten) death sentence sentences.

Due to the vary of the death sentence by the court, especially the first phase of trial, show that the application of the death penalty tends not to be done based on the precautionary principle. In some cases, the court tends to grant the demands of the Public Prosecutor (Jaksa Penuntut Umum - JPU), especially for narcotics and murder cases. This precautionary principle is very important because the court is the last filter and fortress in protection, fulfillment, and respect. Some cases can be used as valuable lessons, such as the case of Mery Jane Veloso who is a victim of human exploitation/trafficking, the case of Yusman Telaumbanua where the district court is disproportionate in seeing the degree of violations of the perpetrators (quoted from the judges at the review level), or the Zulfikar Ali case which during the investigation process experienced an unfair trial.

The justice process for death row inmates which tends to be unfair in the trial process also occurs when the convicts undergo a death row in the Correctional Institution (LAPAS). In KontraS report related to the conditions of prison for death-row inmates, there are number of important problems that must be immediately resolved such as medical conditions (physical or mental), communication with the outside world, as well as related to the feasibility of conditions of detention. Even though the Ministry of Law and Human Rights through the Directorate General of Correctional Institution (DitjenPAS) claims to have implemented the Mandela Rules principle, in fact there are still number of violations forms of the rights of convicted persons, especially those sentenced to death.

Related to the mental health, death-row inmates can actually be said to experience mental health disorders when sentenced to death by the court. However, fulfillments related to mental health access to these convicts have never been facilitated by the state and even tend to be ignored. This has bad implications for the death-row inmates during the process of implementing the detention period. Even in worse conditions where it is actually the effect of not fulfilling access to mental health, the state tends to give the wrong treatment, such as placing the prisoners in solitary confinement or committing acts of violence. This response adds to the adverse effect on the mental health conditions of death row inmates. In addition, there are several factors that can affect mental health conditions in addition to sentences to death-row inmates, such as overcrowded conditions in the prison and interrupted communication access with the outside world.

## **6. Torture, and other cruel, inhuman, degrading ill treatment or punishment**

### **Ratification of OPCAT and National Preventive Mechanism Implementation (NPM) in preventing practice of torture in Indonesia**

According to our monitoring data, several practices of torture, and other cruel, inhuman degrading ill-treatment or punishment occurred in incarceration, both in the police detention to the Correctional Institutions. From the results of documentation conducted by KontraS over the past one year, namely the 2014-2019 period, 581 cases of torture occurred in Indonesia. The forms of torture carried out are quite diverse, both using bare hands, hard objects, firearms, and sharp weapons. From this torture case, the reason for the importance of presenting an NPM is based on the experience that torture and ill-treatment usually occur in isolated places of detention, where perpetrators of torture are convinced that they are beyond

the scope of effective monitoring and accountability. Victims of torture are killed or intimidated to the extent that they dare not talk about their experiences.

Although Indonesia has not ratified the OPCAT, but the embodiment of NPM should be supported considering the conditions of torture practices have not shown significant changes over the last few years. Torture actors from the state apparatus do not learn from past mistakes, in addition we also see inadequate law enforcement in prosecuting torturers.

### **The practice of torture, and other cruel, inhuman degrading ill-treatment or punishment in Indonesia**

Based on KontraS' monitoring through the media and information that we obtained from KontraS networks in the regions, in the period of June 2018 to May 2019, there were 72 cases of torture, other cruel, inhuman degrading ill-treatment or punishment that occurred in Indonesia. KontraS sees that the coverage of reports of incidents of torture tends to decrease compared to previous years. This can be caused by various of matters, such as minimum access to information, there are national issues arise (for example: reporting on elections and presidential elections), or closed access for families of victims to provide information due to pressure from the authorities. Nevertheless, KontraS focuses on the incidents of torture that occur, not on how high or low the incident of torture has been for one year.

The dominant provinces recorded in our monitoring data related to incidents of torture are North Sumatra, East Nusa Tenggara, South Sulawesi, Papua, and Aceh. Still from the findings of KontraS, these areas often become the dominant provinces that carry out torture, other cruel, inhuman, degrading ill-treatment or punishment. The reasons are varied, such as in Aceh with the latest policy developments affecting the implementation of flogging law after the enactment of *Qanun Aceh* No. 6 of 2014 concerning *Jinayah* Law.

Furthermore, we also found the fact that the police institution was still ranked first in carrying out the practice of torture and other inhumane acts. And specifically, in the period June 2018 to May 2019, the number of torture in Polri institutions is 57 cases. The high rate of torture by Polri Members shows that police institutions do not make incidents of torture carried out by members as an effort to evaluate and correct the work of the National Police in the field. KontraS's findings also state that the practice of torture carried out by members of the Indonesian National Police was carried out to obtain information or as a form of punishment. This action occurs mostly at the level of the Resort Police (Polres) and Sector Police (Polsek) in the territory of Indonesia. Meanwhile, acts and practices of brutality are still dominated by members of the TNI, especially in the use of firearms. However, access to public information to identify cases of torture committed by members of the TNI institution as well as the extent to which the process of punishment carried out against violating members is still very limited.

The practice of torture by the police was further reinforced by our findings which illustrate that the practice of torture and other cruel, inhuman, degrading, ill-treatment or punishment tend to occur in places of detention, which is 32 incidents. The practice of torture is a classic problem that has not been resolved among law enforcement institutions. The torture method when interrogating suspects at the police office<sup>26</sup> is actually an old way that must be abandoned after Indonesia ratified the Convention against Torture since 1998, and the Police themselves have internal regulations of the Chief of National Police Regulation (Perkap)

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<sup>26</sup> Abdul bin Rasyid was hit on the right cheek at the crime scene. With unknown reason. Even though the victim was on his way around the coast of Seruni to buy coconut milk. He was also taken to the Bantaeng Police Headquarters, then beaten again by around three police officers. Even when he was at the Bantaeng police station, a long-barreled weapon was pointed at his thigh. <https://www.rakyatsulsel.co/2019/03/21/oknum-polisi-diduga-keroyok-dan-ambil-uang-anak-bawah-umur/>

Number 8 of 2009 concerning Implementation Human Rights Principles and Standards in the Implementation of the Duties of the National Police of the Republic of Indonesia. The practice of torture generally occurs in situations where the position of the victim is so helpless against the perpetrator; a common situation in a closed detention room.<sup>27</sup>

#### **IV. Recommendations**

##### **For the government of Indonesia:**

- a. The state shall immediately respond and handle problem to counter and manage the sensitive issues such as Anti-Communism, LGBTIQ, freedom of religion and belief, and other tentative issues with persuasive measures to reduce the provocation and violence that could harm and affect to the vigilante groups and targeting the minority groups regarding their freedom of assembly as citizens.
- b. External Supervisory Institutions such as National Police Commission (Kopolnas), National Commission on Human Rights (Komnas HAM) and the Indonesian Ombudsman to use the authority by the mandate of each institution to monitor the handling of mass actions by the police resulting in injuries to proceed transparently and can be legally accountable.
- c. The National Police shall stop arbitrary arrests, and instead support initiatives for continuous dialogue in an effort to end the conflict peacefully. And stop raising unnecessary approach to maintain the security in Papua such as the launch of security apparatus to Papua, which causing the situation of human rights in Papua decreased.
- d. To the Ministry of Communication and Information to stop all forms of limiting the access to information for the Papuan people such as the throttling internet access and other form of limitation to the journalists to cover the situation in Papua.
- e. To the Ministry of Justice to amend the prison regulations to comply with international standards, including the Nelson Mandela Rules, for all categories of prisons, including Batu high risk security prison; Ensure that regulations clearly describe the treatment of prisoners, including with regards to family visits, bedding, education, healthcare, library or sport. Increase the healthcare budget to provide adequate medicine for prisoners. Allow prisoners access to medicines appropriate for their medical conditions. Increase the food budget to improve the quantity and quality of food provided, especially in prisons where visitors are not allowed to bring food to their relatives;
- f. Independent state institutions that have the mandate to carry out the functions of supervision, monitoring, protection and remedy must strictly use reliable measurement tools (one of which is the vetting mechanism) to narrow the movement of perpetrators of torture crimes. These external institutions must be ensured to synergize with other state institutions (internally) to ensure the existence of a preventive mechanism, punishment for crimes of ongoing torture, protection of witnesses and victims and restoration of victims' rights in accordance with the standards of international human rights law instruments.

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<sup>27</sup> Manfred Nowak, Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention, UN Doc. A/HRC/13/39/Add.5, 5 Februari 2010, hal. 14.



- g. As a form of accountability and improvement to the dominant institutions towards the occurrence of the practices of torture, it is time to open up to a comprehensive evaluation involving external supervision. The National Police (Polri), National Military Forces (TNI) and Correctional Institutions must ensure that members involved in torture cases are processed fairly and in accordance with applicable laws, with legal mechanisms that are transparent and accessible to the public.
- h. Along with the ongoing of NPM initiation by five state institutions, KontraS proposed to the government to immediately draft the OPCAT ratification process. The NPM has a mandate to make regular visits to all places where someone been deprived of their liberty. This visit must culminate in a recommendation to advance protection to someone been deprived of their liberty, which is usually found in detention centers (prisons, detention centers, immigration detention centers).
- i. The formulation of special laws concerning the abolition of the practice of torture, other cruel, inhuman, degrading, ill-treatment or punishments by referring to the overall substance contained in the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment and other international law instruments that complement it.
- j. The government and parliament shall revoke the blasphemy law in the Criminal Code Bill, which tend to become the provision to criminalized the form of Freedom of Religion and Belief.
- k. The government of Indonesia shall conduct moratorium as the first step towards the abolition of death penalty practices in Indonesia, not only to shift the death penalty as alternative punishment, but formally conduct the moratorium to prevent the form of torture, other cruel, inhuman degrading-ill treatment in the prison and other form of discrimination affected during the imprisonment period.