Briefing Paper

The Legacy of Torture and Challenge of Reform in Indonesia

AJAR – KontraS

A joint paper by AJAR and KontraS

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Komisi untuk Orang Hilang dan Korban Tindak Kekerasan

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About AJAR

AJAR (Asia Justice and Rights) is a regional human rights organization based in Jakarta. AJAR works to increase the capacity of local and national organization in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and a willingness to learn from the root causes of mass human rights violations in Asia Pacific region.
Please visit: www.asia-ajar.org

About KontraS

KontraS (Commission for the Disappeared and Victims of Violence) was established in 1998 by Indonesian human rights NGOs and student organizations in response to the increase in political violence and abductions committed toward the end of Soeharto's authoritarian regime. KontraS is working toward a democracy based on people's sovereignty, free from fear, oppression, violence, and human rights violations.
Please visit: www.kontras.org.

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In 2016, Indonesia's post-authoritarian era of political reform entered its 18th year. As part of this process of *reformasi*, Indonesia has made significant progress in upholding human rights for citizens, ratifying core conventions, and enacting regulations to promote and protect human rights. Indonesia's constitution includes protections against torture, and the country has ratified the UN Convention Against Torture (CAT). However, Indonesia has yet to deal with mass torture that took place throughout the Soeharto regime (1965-1998). Futhermore, torture and other cruel, inhuman and degrading treatment or punishment is still not criminalized, with little accountability for perpetrators, and so torture remains pervasive.[1]

I. Historical context

Torture is embedded within a long history of violence in Indonesia. The National Commission on Human Rights (Komnas HAM) has concluded that in the atrocities of 1965-1966 that marked the birth of an authoritarian military regime, hundreds of thousands of people became victims of crimes against humanity, including extrajudicial killings, illegal detention, torture, inhuman treatment, sexual violence, rape and sexual slavery. Some were members of the Indonesian Communist Party, but most were simply suspected of being members or supporters. Stigmatization and discrimination against victims have become embedded in society, reinforced by state policy and social norms.[2]

In the years after 1965, massive and longstanding conflicts broke out in Timor Leste (then known as East Timor), Aceh and Papua. Military, police and intelligence personnel used mass detention, torture, rape, and sexual violence as a strategy to suppress rebellion and intimidate others, motivated in part by racism, and justified through accusations of separatism or treason. As in 1965-1966, police and military offices and other public buildings were used by security forces as torture sites. Timor Leste became independent in 1999 and Aceh arrived at a peace agreement in 2005, but Papua remains a conflict area. Throughout the New Order regime (1965-1998) torture was a common practice by the security forces all over the country, as the regime squashed dissent among labour, land rights and student activists, as well as towards minority religious groups.

Without a way to reckon with Indonesia's systematic use of torture and assert institutional reform, the practice of torture lingers. It is still routinely used to force confessions and extract information from detainees during criminal investigations. Accountability is lacking in state policy and practice, with a culture of impunity and denial of past crimes forming a foundation for continued torture.

II. Implementation of transitional justice mechanisms

Indonesia has made significant progress, such as amending the constitution and the legal framework for the protection of human rights, including the fulfillment of the right to remedy and guarantees for non-repetition through institutions such as the National Human Rights Commission and ad hoc transitional justice mechanisms. However, Indonesia has yet to fully address a legacy of mass torture, while victims, their families, and civil society organizations face challenges to end impunity, as outlined below using a transitional justice framework:

Truth seeking: After *reformasi*, the government established ad hoc investigation teams for cases such as the riots and mass sexual violence in May 1998. **Komnas HAM** also established ad hoc *pro justicia* inquiries for nine cases of

1 See KontraS, "Torture: Rates Rising, Actors Expanding," 2014, at kontras.org/data/Report%20on%20Practices%20of%20Torture%20in%20Indonesia%202013-2014.pdf

2 AJAR, KontraS, LAPPAN, SKP-HAM Palu, ELSAM, JPIT, "Still Denied: The Right of Rehabilitation for Victims of Torture from the 1965 Atrocities in Indonesia," Submission to Special Rapporteur on Torture, 2016.

crimes against humanity.[3] They recommended criminal investigation and prosecution, but the Attorney General's Office (AGO) has done nothing, claiming the files were administratively incomplete, which Komnas HAM disputed. Investigations by Komnas HAM have made an important contribution to victim's right to truth. For example, the commission's investigation into the atrocities of 1965 found that torture was committed systematically, citing 33 places of torture across the country.[4] Similarly, a bilateral commission, Timor Leste and Indonesia's Commission of Truth and Friendship, affirmed systemic violations committed by Indonesian security forces, including torture, during the 1999 referendum, though the governments have not acted on its recommendations. Komnas HAM has recently completed an investigation on violations during military operations in Aceh, including acts of killings and torture committed in 2003.

In 2006, civil society and victims' groups sought judicial review of Law No. 27 of 2004 on a national Truth and Reconciliation Commission (TRC). They challenged the requirement that victims must forgive perpetrators to receive reparations. However, the Constitutional Court then struck down the entire law, a political defeat in the struggle against impunity. Pressure by civil society in Aceh led to a local TRC law in 2013, and a selection process of commissioners is ongoing. Papua's 2001 Special Autonomy Law also provided for a TRC, but it has been stalled. Seeing official indifference, civil society and victims' organizations have begun documenting survivors' stories, and conducting public hearings and advocacy as alternative forms of truth seeking.

Judicial Proceedings: Indonesia enacted the Human Rights Law (No. 39 of 1999) and Human Rights Court Law (No. 26 of 2000). Based on these laws, the human rights court heard three cases: Timor Leste (1999), the massacre of Tanjung Priok (1984) and the Abepura case in Papua (2001), based on investigations by Komnas HAM and the Attorney General's Office (AGO). In those cases, Komnas HAM concluded that state officers had tortured civilians, however the AGO later dropped accusations of torture in the prosecution Moreover, these three cases have resulted in the acquittal of all defendants, at first ruling or on appeal.[5] This failure to deliver justice reveals systemic weakness in the judiciary and a lack of political will in the administration. Taken with the AGO's refusal to follow up on Komnas HAM inquiries into other cases, the government is not pursuing justice in past cases.

Reparations: In Indonesia, reparations are only provided if a court acknowledges human rights violations. However, the Witness and Protection Agency (LPSK) can provide referrals for urgent health and psychosocial services, based on a recommendation of "legal status as victim" from Komnas HAM. Civil society organizations and torture survivors are also engaging local governments to provide alternative reparations and social services, such as the apology and provision of services for the 1965 torture survivors by the Mayor of Palu, in Central Sulawesi.[6]

Security Sector Reform (SSR): the police, military, and intelligence agencies were the main perpetrators of torture under the authoritarian regime. The SSR initiated under *reformasi* soon slowed and stalled. New laws regulate the sector, but they are problematic, with weak accountability mechanisms. For instance, the Law on Military Courts maintains

3 The nine cases are: shootings of students at Trisakti and Semanggi I and II (1998-1999); the Wasior (2001-2002) and Wamena (2003) cases in Papua; the May Riots (1998); the Tanjung Priok massacre (1984); activist disappearances (1997-1998); the Talangsari case (1989); summary killings (1982-1985); 1965-66 atrocities; and Jambu Keupok, Aceh (2003).

4 Komnas HAM, "Statement on the Investigation on Gross Human Rights Violations during the Events of 1965-1966," 23 July 2012, p.22.

5 ICTJ-KontraS, "Derailed: Transitional Justice in Indonesia since the Fall of Soeharto," March 2011.

6 Jeremy Kutner, "A City Turns To Face Indonesia's Murderous Past," *The New York Times,* 12 July, 2015. http://www.nytimes.com/2015/07/13/world/asia/a-city-turns-to-face-indonesias-murderous-past.html

impunity by blocking any external oversight, and many police and military internal mechanisms remain weak.[7] Without a vetting policy, personnel linked to serious crimes, including those prosecuted in human rights courts or military tribunals, continue to serve, receive promotions, and sit in elected office.

President Joko Widodo has announced his intention to pursue non-judicial measures for past violations, closing the door to prosecutions.[8] An inter-agency team was established to deal with the major cases already filed with the Attorney General.[9] Many victims are suspicious of the lack of a comprehensive strategy to deal with the past, one that seeks reconciliation without seeking truth or including any judicial process. More recently, the Coordinating Minister of Political, Law and Security Affairs announced that these past human rights cases might be finished by May 2, 2016.[10]

III. Current legal context on laws on torture

The right to not be subjected to torture is guaranteed by the amended Constitution, Human Rights Law No. 39 of 1999,[11] and Law No. 5 of 1998 on the Ratification of the Convention against Torture. However, the criminal justice system does not yet comply with obligations under treaties Indonesia has ratified, with no specific provisions criminalizing torture. Forced confessions and long periods in police detention without access to lawyers remain the norm, despite a relatively new law of legal aid, Law No. 16 of 2011, that provides legal counsel for the poor through state funding. Further, the Human Rights Court Law No. 26 of 2000 covers criminal penalties for human rights abuses, including torture, but they must be a "gross violations of human rights," defined under this law as genocide and crimes against humanity.

The criminal code recognizes "maltreatment" (in Indonesian, *penganiayaan*) as the only offense covering acts similar to torture. The grade of maltreatment depends upon the state of mind of the perpetrator, and the harm that results, with additional penalties for using maltreatment to coerce a confession or get information. It remains very difficult to prosecute torturers claiming to act on official orders.

There are also internal regulations prohibiting torture by the police and military. Chief of National Police Regulation on Human Rights (Perkap No. 8 of 2009) requires police compliance with human rights standards. While it bars torture in investigation, prosecution and detention, it does not establish torture as a criminal offence. The Commander of the Indonesian National Military also issued a regulation prohibiting torture in law enforcement by the military, including in investigations, prosecutions, military courts and military prisons (Perpang No. 73/IX/2010). However, yet again there is neither a specific offence nor a penalty for torture. Although military courts were placed under the Supreme Court in 2004, increasing their independence, military prosecutors remain part of the chain of command, reducing their independence and the number of prosecutions.

A draft criminal code has been under development for years, and is said to criminalize torture. In the absence of the new criminal code, a law to criminalize torture is being drafted jointly by the

7 Chief of National Police Regulation on Human Rights, No. 8 of 2009 and Military Commander Regulation No. 73/IX/2010.

8 "Indonesia to Settle Past Serious Human Rights Violations by May," *Jakarta Post*, 18 March, 2016, http://www.thejakartapost.com/news/2016/03/18/indonesia-settle-past-serious-human-rights-violations-may.html

9 The agencies are: Komnas HAM, the Coordinating Ministry for Political, Legal and Security Affairs, the Law and Human Rights Ministry, the Attorney General's Office, the police, and the State Intelligence Agency.

10 "The case of the so-called the Human Right Violation in the past is expected to finish soon," http://megapolitan.antaranews.com/berita/20487/the-case-of-the-so-called-the-human-right-violation-in-the-past-is-expected-to-finish-soon

11 Constitution Article 28G(2) states, "Every person shall have the right to be free from torture or inhumane and degrading treatment" and Law No. 39/1999 on Human Rights, Article 33(1), states "everyone has the right to be free from torture, or cruel, or inhumane and degrading punishment or treatment."

Photo: KontraS

Abdulhamid lost his son due to extrajudicial killing in 2005, during Indonesian military operations in Aceh. **"Even now without looking at [a photograph], I remember my beloved son. I always dream that he has come home."**

Ministry of Foreign Affairs and the Ministry of Law and Human Rights, although it too has not been released or debated.

The **UN Special Rapporteur on Torture** was permitted to visit in November 2007. He expressed appreciation for progress since 1998, and noted that internal police reports showed a decrease in torture. However, he reported that torture was common to obtain confessions, punish suspects, and seek information, pointing to "the lack of legal and institutional safeguards and the prevailing structural impunity" as increasing risk of torture in detention.[12]

Indonesia's human rights performance has also been reviewed under the **Universal Periodic Review** in 2008 and 2012. Both reviews raised concerns about the incidence of torture, with recommendations to address the issue.[13] The Indonesian delegates referred to provisions in the draft Criminal Code that criminalize torture and to plans for the ratification of OPCAT.

Indonesia has ratified the CAT and the ICCPR, and has submitted two reports under CAT and one under the ICCPR.[14] In 2008 the **Committee Against Torture** examined Indonesia's second report of compliance with the treaty, expressing deep concern over widespread torture and ill treatment, insufficient safeguards during police detention, and the lack of accountability for the disproportionate use of force and widespread torture during military operations.[15] The government has to provide an agenda for

12 UN document A/HRC/7/3/Add.7.

13 UN documents A/HRC/8/23 in 2008 and A/HRC/21/7.

14 CAT 2002 and 2008 and ICCPR 2013.

15 CAT Concluding Observations at http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIndex.aspx.

the third report on CAT implementation, but no agenda session has taken place yet.

Indonesia has not made a declaration under CAT article 22 or ratified the Second Optional Protocol to the ICCPR to allow the Committee to receive individual complaints or communications. There currently is no regional complaints mechanism in Asia.[16] Indonesia has also not ratified the Optional Protocol to CAT and so does not accept the monitoring function of the Subcommittee on the Prevention of Torture.

However, KOMNAS HAM, the National Commission on Violence Against Women, the Indonesian Child Protection Commission, the Ombudsman, and the Witness and Victims Agency have decided to adopt a multiple body approach to a national prevention mechanism of torture (a body that would be required if Indonesia signed the Optional Protocol to the CAT). Based on their mandates, they can monitor and supervise every person in the places of deprivation of liberty. They will conduct dialogues with the state, conduct regular visits, and ensure the availability of facilities, resources and services to prevent torture. Currently, those institutions are building the internal mechanisms necessary to work together on preventing torture.[17]

IV. Situation of the survivors of torture

The practice of torture, with a lack of state accountability, is continuing in Indonesia. Survivors of past abuses continue to suffer discrimination, poverty, psychological trauma and health issues long after their release.[18]

Thousands of survivors of torture from the 1965 atrocities continue to struggle on their own against ongoing discrimination in politics and society as they become increasingly elderly and infirm. In Papua, racism, stigma, and labeling persons as members or supporters of the armed independence group Organisasi Papua Merdeka are common justifications for torturing victims. Most political prisoners in Papua experienced torture during their arrest, detention and interrogation. Like others survivors in Indonesia, they experience discrimination long after their release, as well as poverty, psychological trauma and health issues.[19]

In Aceh, the practice of torture, including rape and sexual violence was widespread during military operations. The military accused civilians in Aceh of being members, supporters and family of the armed independence group Free Aceh Movement (Gerakan Aceh Merdeka, GAM). Victims were taken to Indonesian military posts and headquarters to be interrogated and tortured, as well as to empty houses, public facilities and companies, such as Rumah Geudong in Pidie and the Wira Lano company in East Aceh. Women survivors of torture faced ongoing trauma, stigmatisation from their community. Many are single mothers, after husbands or other family members were killed or dissapeared. AJAR's research in Indonesia found that only a small minority of women survivors of torture were able to access government-funded medical support.[20]

16 The ASEAN Inter-governmental Commission on Human Rights lacks a complaint mechanism and has a limited mandate for monitoring violations.

17 Interview with Roichatul Aswidah, Commisioner of Komnas HAM, January 19. 2016

18 In 2014-2015, KontraS and AJAR collected the testimonies of 120 torture survivors using participatory methods that assist victims to deal with trauma and empower themselves. They included survivors of torture from the 1965 atrocities in Yogyakarta (10), Kupang, Nusa Tenggara Timur (24), Buru Island, Maluku (17), Jakarta, Bogor, Depok and Bekasi (12) and North Sulawesi (11). In conflict areas, we documented 34 survivors of torture in Aceh and 12 survivors in Papua. KontraS also provided legal assistance for 33 new victims of torture for the period of 2013-2015 and documented 174 new cases of torture during that period.

19 AJAR, ELSHAM Papua and Tapol, "The Practice of Torture: Business As Usual in Papua," 2015, at asia-ajar.org/wp-content/uploads/2015/11/Torture-report-English.pdf

20 The action research documented stories of 60 women in Indonesia, 34 of them torture survivors, but only 5 were able to access medical support from Indonesia's Victim and Witness Protection Agency. See "Enduring Impunity: Women Surviving Atrocities without Justice," Jakarta, October 2015,

The practice of torture is ongoing. KontraS documented 174 victims of torture 2013-2015. Most perpetrators are police, although military and prison officials also conduct torture. Motives include the assertion of power over civilians and sometimes business owners; obtaining confessions; and lack of knowledge of and adherence to laws prohibiting torture and other inhumane acts.[21]

Current practices of torture in Indonesia include the use of a firing squad in carrying out the death penalty and caning, introduced as a punishment by Islamic courts in Aceh for a range of offences including sexual relations outside marriage, consumption of alcohol, being alone with someone of the opposite sex who is not a spouse or relative, and for any Muslim found eating or drinking during sunlight hours in the fasting month of Ramadhan.

Survivors of torture do not get sufficient legal aid and rehabilitation from government. However, recently the Supreme Court affirmed a 2013 decision by a local court in West Sumatra, granting compensation to a victim of torture to be paid by the police. This decision followed a criminal conviction in 2012 that found the police officers guilty of "maltreatment." Nevertheless, the lawyers of this case have yet to receive the Supreme Court decision, two years later. [22]

In addition, some of survivors of human rights violation in crimes against humanity (including torture) of 1965, were able to access medical support from Indonesia's Victim and Witness Protection Agency (LPSK) mainly because the National Commission of Human Rights (Komnas HAM) has already finalized the pro justicia investigation process and recognized them as victims of gross violation of human rights.

V. Analyzing gaps and negligence

The Indonesian government has not shown a commitment to recognize the truth about widespread torture by state agents, or to prosecute perpetrators, prevent recurrence, and offer reparations to victims. As a result, torture has become embedded in the functions and culture of the state security apparatus even after the transition to democracy.

The fundamental problems of the practice of torture include:

- The absence of transparent, accountable, honest and fair enforcement of the law.
- Internal mechanisms that emphasize administrative penalties tend to legalize impunity.
- A lack of understanding and knowledge by law enforcement officials of detainees' rights.
- The absence of a specific definition or provisions on torture in law, in particular the Criminal Code (KUHP) and Criminal Procedure Code (KUHAP). [23]

Although Indonesia signed the Convention against Torture in 1998, it has yet to amend its criminal laws to include a definition of torture as required. Although the lack of a formal legal framework to deal with torture adds a layer of protection for perpetrators, even under the current legal framework perpetrators could be prosecuted much more than they are. The lack of political will to prevent torture and punish those responsible have left victims with little

http://asia-ajar.org/2015/11/enduring-impunity-women-surviving-atrocities-in-the-absence-of-justice/

21 KontraS Report 2013-2014: Practice of Torture in Indonesia, Rates Rising, Actors Expanding http://kontras.org/data/Report%20on%20Practices%20of%20Torture%20in%20Indonesia%202013-2014.pdf

22 The Supreme Court decision was published on their website in March 2016, but was reached in 2014. "Police torturers can be sued, this is the precedent," Hukum Online, 15 March 2016, http://www.hukumonline.com/berita/baca/lt56e7fa8879f2b/polisi-pelaku-penyiksaan-bisa-digugat--ini-preseden-putusannya.

23 KontraS Report 2013-2014: Practice of Torture in Indonesia, Rates Rising, Actors Expanding http://kontras.org/data/Report%20on%20Practices%20of%20Torture%20in%20Indonesia%202013-2014.pdf

hope for justice, while perpetrators can commit crimes without fear of redress.

The Witness and Victim Protection Agency (LPSK) was established in 2006, where victims have "(a) the right to compensation in cases of gross human rights violations, (b) the right to restitution or compensation for loss by the perpetrator of the crime," with additional provisions to receive urgent social assistance and medical care. The original law did not specifically mention victims of torture, as it not recognized in Indonesia's criminal code. However, a revision under Law 31 no 2014 has included torture as a priority for LPSK.[24]

Although police and military institutions have created regulations against torture,[25] internal accountability remains weak. Other mechanisms, such as the national police's Division on Professionalism and Security (PROPAM) and the military police (POM TNI) have also failed to seriously address allegations of torture by security personnel. In the few cases where accountability has been sought, the light treatment of perpetrators sends a message that the state and judiciary do not strongly condemn torture.[26]

Torture is a crime under international law with non-derogable rights for victims. The recent initiatives from government to settle past violations, including torture, by only non-judicial measures is against those human rights principles.

VI. Recommendations

To the Indonesian government:

- Acknowledge and rehabilitate victims of past torture, including from 1965-6 and the conflicts in Aceh and Papua, by establishing a Presidential Committee on truth and justice, reparations, and reform.
- Strengthen existing mechanisms to deal with ongoing violations, with a particular focus on torture, fulfilling effective redress for victims.
- Ensure that the Attorney General takes rapid and effective steps to prosecute in the human rights court those implicated by the National Human Rights Commission.
- Ratify the Optional Protocol to the Convention against Torture to develop effective national torture preventive mechanisms.
- Develop an individual complaint mechanism, where victims of torture and human rights violations can provide details of their experience in safety, and ensure that the complaints of victims are followed by effective investigations and prosecutions.
- Amend local regulations or by-laws that provide for torture and other ill-treatment, such as the use of caning as punishment in Aceh.
- Implement the recommendations from UN mechanisms, particularly the Universal Periodic Review in 2012, the UN Human Right Committee in 2013, and the UN Special Rapporteurs, as an indication of Indonesia's commitment to promoting accountability and preventing all forms of torture and other cruel, inhuman or degrading treatment or punishment. Urgently schedule a session meeting with the Committee against Torture, which has already been delayed for years.

To the National Commission of Human Rights, the Witness and Protection Agency, the Commission on Violence against Women, and the Ombudsman:

- Develop the national prevention mechanism on torture
- Conduct effective inquiries into allegations of torture and ill treatment in detention. Recommend fair and credible prosecutions to the Attorney General's Office of those suspected of committing or ordering torture.
- Develop an individual complaint mechanism and effective urgent

24 Krisiandi, "Korban Penyiksaan Jangan Segan Minta Perlindungan LPSK," *MetroTVNews.com*, 26 June 2015, http://news.metrotvnews.com/read/2015/06/26/140833/korban-penyiksaan-jangan-segan-minta-perlindungan-lpsk

25 Chief of National Police Regulation on Human Rights, No. 8/2009 and Military Commander Regulation No. 73/IX/2010

26 KontraS Report 2014-2015: Delegitimizing the Practice of Torture in Indonesia: https://www.kontras.org/data/REPORT%20OF%20TORTURE%202014-2015%20DELEGITIMIZING%20THE%20PRACTICE%20OF%20TORTURE%20IN%20INDONESIA.pdf

protection where victims can provide details of their experience in safety, and ensure that complaints are adequately followed up by effective investigations and prosecutions.

- Establish reparation programs to help victims repair and rebuild their lives.

To the parliament:

- Expedite the Bill of Amendment on the Penal Code and the Bill on the Crime of Torture to strengthen the legal framework. The Bill of Amendment must require effective punishment, while the Bill on the Crime of Torture should include comprehensive protection and prevention of torture as well as redress for victims.
- Resume security sector reform to uphold human rights standards for both individual and institutional accountability, including amending the Law on Military Courts.
- Closely monitor state performance, in particular accountability processes for human rights violations, and support vetting mechanisms as a prevention mechanism.

To the International community:

- Continue engagement with the Indonesian government, including the demand for fulfillment of international obligations to prevent the use of torture, effectively prosecute those responsible, and provide reparations.
- Closely monitor the situation in Indonesia, including allegations of torture and the responses to them, and promote the need for truth, justice and prevention.
- Support civil society organizations engaged in documenting cases of torture, providing psychosocial support to survivors, and advocating for justice.


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