



SUBMISSION INPUT

The Commission for the Disappeared and Victims of Violence (KontraS) on the Development of practical tools to assist law enforcement bodies in promoting and protecting human rights in the context of peaceful protests

Overview

The Commission for the Disappeared and Victims of Violence (KontraS) in Indonesia firmly believes that fundamental rights such as the freedom of peaceful assembly and of association for protesters should be fulfilled, protected, and fully promoted by the Indonesian Government in order to define and practice its democracy. Therefore, in this submission KontraS would like to provide a deeper understanding of Indonesia's law enforcer's procedure and implementation in promoting and protecting human rights in the context of peaceful protests.

It is undeniably true that Indonesia has moved from its authoritarian regime before 1998 which decreases a chance of apparent silencing acts such as the amount of enforced disappearance cases to protesters and other pro-democracy actors since the 1965 incident. But there is still no absolute guarantee that protesters are able to practice their protest acts peacefully. In the 2 year period, namely 2022 - 2023, KontraS succeeded in documenting at least **125 cases of violations of freedom of assembly**. Glancing at the actors, police officers are still the dominant actor in violations, followed by the government and Community Organizations. Several methods are found such as violations that take the form of forced dispersal, prohibitions on gatherings, arbitrary arrests, intimidation, and even abuse. Tools were also used such as shooting tear gas, water cannon, rubber bullets and even live bullets.

Law Enforcement Core Regulations and its Practices on Field

Several acts mentioned above as well as tools used **contradict with regulations** which could lead to an ideal scenario of peaceful assembly by law enforcement officers. Referring to Law No.9 of 1998 concerning Freedom to Express Opinions in Public, there are regulations regarding the location of demonstrations. Article 9 Paragraph (2) of Law 9/1998 states that the expression of opinions is carried out in places open to the public except within the Presidential Palace. In the explanation of this article, expressions of opinion can still be carried out within a minimum radius of 100 meters from the outer fence of the Presidential Palace (The Merdeka Place). However, in the practice of large demonstrations in Jakarta whose aim was to go to the Merdeka Palace to voice out their concerns to the President, the police carried out efforts to limit restrictions beyond the minimum radius, namely from a distance of 2000 meters (2 KM). The police usually carry out these restrictions by installing concrete fences covered with barbed wire.

Still in Law 9/1998, an article exists to regulate notification of actions. Previously, during Soeharto's New Order authoritarian regime, the implementation of demonstrations was under the full control of the Armed Forces of the Republic of Indonesia (ABRI) in the form of granting permits/not to demonstrate. In Law 9/1998 there is a change in paradigm from what was originally a permit to a notification letter. The written letter is then submitted to the National Police within a minimum period of 3 x 24 hours. Then, after

receiving the notification letter, Article 13 states that the National Police is obliged to immediately provide a notification receipt letter. However, in practice, when KontraS sent a letter of notification of action addressed to the Directorate of Intelligence and Security (Dit Intelkam) Polda Metro Jaya, the police did not issue a letter of receipt of the notification. The reason for not providing a receipt was not for a valid reason.

There are several difficulties faced when carrying out actions or protests, especially when balancing the discourse that is being developed by the state. This attack was systemic and spread across various public issues. In Indonesia, the pattern that has occurred recently is that attacks target multiple sectors, both related to the environment, agrarian conflicts, the education sector, the press sector and even labor disputes. It doesn't stop there, state actors play a big role and are massively involved in various events. This can be said to be the government's agenda to maintain security stability, but by bypassing the legal system and human rights principles. This kind of pattern occurred, for example, during the ASEAN Summit in May 2023. At that time, there was an alleged criminalization attempt by the West Manggarai Police against four Labuan Bajo residents, namely Ladislaus Jeharun, Dionisius Parera, Viktor Frumentus, and Dominikus Safio Sion by the West Manggarai Police on May 6 2023. They were summoned by the police on suspicion of committing the crime of sedition. Journalists who report the voices of the people have become victims of hacking and intimidation. Most recently, four activists from the Mining Advocacy Network (JATAM) were also suspected of being hacked.

The situation is made worse by community groups fighting for rights on sensitive issues which often face attacks in the form of persecution and stigmatization. For example, this happened to LGBTIQ groups who received a lot of hate speech after the failure of the implementation of ASEAN Advocacy Week which was scheduled to be held on 17 – 21 July 2023. Unfortunately, the state, through its apparatus, does not seem to be moving. This will only strengthen the potential for discriminatory actions, violence and reduce the space for people to move

Another challenge is the use of legal instruments to silence (judicial harassment) as a massive pattern. Forms of silencing that previously focused on physical attacks have now slowly shifted. Apart from digital attacks, legal instruments are often used as powerful weapons to silence the public, as is the case with the ITE Law and the offense of spreading fake news. Moreover, many cases target environmental defenders (strategic lawsuits against public participation), even though there is Article 66 of Law no. 32 of 2009 which guarantees that anyone who defends the environment cannot be criminalized or prosecuted civilly. One of the cases is of course the ongoing criminalization of Fatia-Haris using Article 27 paragraph (3) of the ITE Law. Likewise, Ernawati criticized the police and viralized the hashtag #PercumaPoliceReport on her social media. Ernawati was actually reported on suspicion of defamation. Reforming criminal law through the new Criminal Code does not answer the problem and actually has the potential to perpetuate this phenomenon, because it still contains anti-democratic articles.

Crisis/emergency situations within the Police as law enforcement officers are familiarly known as riots. In dealing with emergency situations regarding protests, police officers as law enforcers must submit and obey a number of laws and regulations such as:

1. Law Number 9 of 1998 concerning Freedom to Express Opinions in Public;
2. Law Number 39 of 1999 concerning Human Rights;
3. Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination;
4. Regulation of the Head of the National Police of the Republic of Indonesia Number 16 of 2006 concerning Guidelines for Crowd Control;
5. Regulation of the Head of the National Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions;

6. Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Carrying out the Duties of the National Police of the Republic of Indonesia;
7. Standing Procedure Number 1 of 2010 concerning Overcoming Anarchy (Protap 1/2010);
8. Regulation of the Head of the National Police of the Republic of Indonesia Number 2 of 2019 concerning Riot Action
9. Police Mobile Brigade Corps Commander Regulation (Perdankor) Number 2 of 2021 concerning Riot Action;
10. Police Mobile Brigade Corps Commander Regulation (Perdankor) Number 3 of 2021 concerning Repression of Anarchy;

Apart from that, in the process of forming members of the Indonesian National Police in each educational unit, enlisted officers, non-commissioned officers and officers are given knowledge as well as guidance on how to handle emergency situations when dealing with demonstrators. For example, this is stated in the Teaching Materials (Hanjar) for Advanced Mass Control Police education (Lemdiklat Polri, 2022); Teaching Materials (Hanjar) for Polri's education on Decomposing Masses (Lemdiklat Polri, 2022). Indeed, the hanjar states that in dealing with emergency situations, members of the National Police who in this case carry out Shabara's technical functions are required to comply with human rights principles.

From a legal perspective, there are already regulations that clearly regulate the role of the police in demonstrations, from their authority to their obligations. All matters regarding the role of the police at demonstrations are regulated in detail in Perkap Number 7 of 2012 concerning Procedures for Providing Services, Security and Handling Cases of Expressing Opinions in Public, especially Articles 18 to 28. Apart from that, the National Police also has National Police Chief Regulation Number 9 2008 concerning the Implementation of Services, Security and Handling of Cases for Expressing Opinions in Public. However, these various regulations were not implemented properly in the field when the police handled protests.

Apart from that, law enforcement officers often act brutally and excessively when responding to protests. Excessive violence that occurs in the field as part of excessive use of force and criminalization is often accompanied by arrests and detentions - which are carried out arbitrarily. For example, police arrests of demonstrators were not accompanied by clear reasons. The police often argue that this action is a form of security. Apart from that, arrests are usually without a warrant. This clearly violates procedural law procedures as regulated in the Criminal Procedure Code (KUHAP). For example, acts of force and violence occurred against residents of Pematang Bedaro Hamlet, Teluk Rasa Village, Kumpeh Mulu, Muaro Jambi, Jambi. On July 20 2023, 29 residents, including two children aged six years, were arrested and taken to the Jambi Regional Police.

Recommendations to Assist Law Enforcement Bodies in Promoting and Protecting Human Rights in the Context of Peaceful Protests

1. The state institutions, namely the States Legislative (DPR-RI) and the National Human Rights Commission (Komnas HAM) and the National Police Commission (Kopolnas) to strengthen oversight and monitoring mechanisms, especially those related to human rights aspects as well as strengthening control and supervision of law enforcement functions, maintenance security and order.
2. The National Police Chief needs to make stricter regulations, requirements and supervision of members of the Indonesian National Police granted permission to use firearms. This step needs to be done to minimize misuse of weapons fire and reduce casualties due to shootings carried out by members of the National Police.

3. The Security Maintenance Agency (Kabaharkam) on Indonesian National Police, Regional Police Chief and Chief Resort Police to change the paradigm in handling demonstrations. Demonstrations must be seen as a form implementation of human rights guaranteed by the constitution not as activities that disturb order and security.
4. The National Police Headquarters, especially the Head of the National Police Profession and Security (Propam) Division and every Regional Police must have the courage to take action and provide appropriate sanctions for members who commit violations through the Police Code of Ethics Commission (KKEP) mechanism. The KKEP mechanism should not only be carried out procedurally but must be able to touch the root problems and solve them. The KKEP mechanism will firmly provide a deterrent effect to members of the Indonesian National Police who commit violations while increasing trust in the National Police institution.
5. The National Police must review the deployment of members to Papua and ensure that members of the National Police in Papua do not perpetuate the situation of violence in the Land of Papua. On the other hand, members of the National Police in Papua must also refrain from doing repressive actions against the expressions of indigenous Papuans.
6. The National Police Education and Training Institution must strengthen curriculum and educational materials related to human rights standards in educational institutions under the Educational Institution and National Police Training such as the Police Academy and Police School Country. The National Police also need to conduct in-service training for officers who work in the field. This is done so that a variety of human rights principles relating to police duties can be internalized by members of the National Police in carrying out their duties.