



Press Briefing

Embracing the Establishment of an Ad Hoc Human Rights Court For Forced Disappearance Case of 1997/1998 Institute for Policy Research and Advocacy (ELSAM)

Jakarta, 7 November 2009

I. Preface

Approaching the end of its serving terms for the period of 2004-2009, on September 28th, the House of Representatives of the Republic of Indonesia issued an important recommendation related to resolving and revealing the case of forced disappearance of 1997/1998. The House's plenary session has approved the recommendations made by a Special Committee for Handling and Addressing the Inquiry Result on the Case of Forced Disappearance of People of 1997/1998, which recommended some crucial matters to the government.¹ The special committee's recommendations which have been approved by the House's plenary session are as follows:

1. Recommending the establishment of an Ad Hoc Human Rights Court by the president
2. Recommending the president along with all government institutions and other stakeholders to immediately undergo a search process to find 13 people who according to the Komnas HAM are still disappeared.
3. Recommending the government to provide rehabilitation and compensation to the family of the victims.
4. Recommending the government to take immediate action to ratify the Convention Against Forced Disappearance as evidence of commitment and support to stop the practice of forced disappearance in Indonesia.

Those recommendations will at the same time, wipe out doubts and distrusts from the people towards the House which has been considered as one of the institutions that always obstructs

the process of resolving and revealing past violations of human rights and human rights violation revealing in the past.² It has been a constitutional obligation for the House members for the period of 2009-2014 to immediately follow up the recommendations made by the previous members of the House by sending a recommendation letter to the President regarding the establishment of the Ad Hoc Human Rights Court ³ Article 43 paragraph (2) of the Law on Human Rights Courts states that “An Ad Hoc Human Rights Court envisaged under paragraph (1) Shall be formed on the recommendation of the House of Representatives of the Republic of Indonesia for particular incidents upon the issuance of a presidential decree.

The House’s recommendations regarding to the case of forced disappearance were also “the first test” for the new administration of President Susilo Bambang Yudhoyono and Vice President Boediono. Why so? It is simply because President SBY and Budiono’s administration has an obligation to implement the decision made by the House’s Plenary Session upon the recommendations prepared by the House’s Special Committee for Handling and Addressing the Inquiry Result on the Case of Forced Disappearance of 1997/1998.⁴

Moreover, the recommendation have also raised the following important consequences that must be carried out by the president and law enforcement institutions:

The President must issue a presidential decree regarding to the establishment of the Ad Hoc human rights court immediately in order to investigate and prosecute the case of forced disappearance of 1997/1998

The Attorney General must conduct an immediate investigation on the case of forced disappearance of 1997/1998 in accordance with the investigation result of Komnas HAM and the House’s recommendations.

Komnas HAM must prepare a team immediately to coordinate and provide assistance to support the Attorney General in conducting the investigation;

The Witness and Victims Protection Body must immediately prepare the procedures and a team that aims at providing protection and assistance for witnesses and victims of forced disappearance case as well as assisting the reparation process for the victims.

II. Stages and Processes in Resolving and Revealing Forced Disappearance Cases of 1997/1998

The recommendations made by the House of Representatives regarding to the establishment of an Ad Hoc human rights court for forced disappearance cases in 1997-1998 cannot be immediately implemented if the related institutions do not prepare and implement the particular recommendations of the House. In fact, it will never take place if the civil society do not pay attention and make an effort to endorse the President and other related institutions to implement the particular recommendations.

The following are descriptions of related institutions which have to take charge on the solving and revealing process of the forced disappearance case in 1997/1998 as well as their roles in the establishment process of the Ad Hoc Human Rights Court, in which there are four related institutions/stakeholders i.e., the President, Attorney General, National Commission of Human Rights (Komnas HAM), and Witness and Victim Protection Body (LPSK).

1. The issuance of a Presidential Decree on the establishment of an Ad hoc Human Rights Court.

Subsequent to the recommendations made by the House on the establishment of an ad hoc human rights court for the forced disappearance of 1997/1998, which has been followed up by a proposal from the Chief of the House⁵ President Yudhoyono should immediately issue a decree of the establishment of an ad hoc human rights court for the case of forced disappearance of 1997/1998. The presidential decree should at least address the following:

- a. The forced disappearance case of 1997-1998 is recognized as a gross human rights Violation occurred prior to the adoption of the Law No.26 of 2000 on Human Rights Court, will be investigated and prosecuted before and ad hoc human rights court.⁶
- b. The human rights court should be established upon the recommendation by the House of Representatives. ⁷

- c. Determines that the ad hoc human rights court is located in a district court (whether in central Jakarta, Medan, Surabaya, or Makassar) **8** .
- d. All expenses for the establishment and the facility and infrastructure procurements for the ad hoc human rights court at a district court (whether in Central Jakarta, Medan, Surabaya, or Makassar) should be imposed on the state budget.

Based on the existing practices, particularly in the processes of the Ad Hoc Human Rights courts for East Timor and Tanjung Priok cases, the issuance of a presidential decree on the establishment of an ad hoc human rights court of the forced disappearance case should not take a long time. The issuance of Presidential Decrees for East Timor and Tanjung Priok took only one month after the House had released its recommendations regarding to the two cases, and three weeks after the submission of the proposal prepared by the Chief of the House.⁹ Thereby, it should not be something difficult for President SBY to issue a presidential decree on the establishment of an ad hoc human rights court establishment regarding to the forced disappearance case, considering that the political decision of the House has clearly mandated it upon him.

2. The investigation toward forcible people omission case during 1997-1998.

In handling cases regarding to past human rights violations, particularly those which had been investigated by the Komnas HAM, the attorney general has always seemed to be “reluctant” to follow up the case by making an excuse that there has not been any recommendation from the House to establish an ad hoc human rights court. As a result, the General Attorney’s Office for the prosecution faced difficulties in taking actions needed in the process of investigation, such as the request to arrest and confiscation.

Therefore, in the forced disappearance case of 1997-1998, the Attorney General could not use the same argument or to dodge his obligation¹, since the House has explicitly recommended the President to issue a Presidential Decree on the establishment of an Ad Hoc human rights court for forced disappearance case. Thereby, the Attorney General seems to just wait for the issuance of the Presidential Decree on the Ad Hoc human rights court while preparing the procedures and

team in order to conduct investigations on the forced disappearance case of 1997-1998 in accordance with the investigation result of the Komnas HAM.

As it has been known, Komnas HAM had submitted its investigation result on the forced disappearance case of 1997/1998 to the Attorney General in the late of 2006. In its conclusion, Komnas HAM argues that there has been adequate preliminary evidence on the allegation of gross human rights violations in the forced disappearance case of 1997/1998 in forms of killing, unlawful deprivation of liberty, torture, assault, and forced disappearance against civilians. These actions were part of a direct attack targeted against civilians i.e., a series of actions committed against civilians as an implementation of a policy made by the authorities. Since the violations were perpetrated systemically and widespread, thus it can be categorized as crimes against humanity¹¹.

Furthermore, Komnas HAM has also identified some suspects allegedly involved in the forced disappearance case of 1997-1998, particularly but not exhaustively as many of 27 soldiers, which are the following ¹²:

- a. There were 11 individuals who were allegedly committed crimes against humanity directly
- b. There were 10 persons who should be held accountable on the basis of chains of command responsibility principle.
- c. There were 6 persons who should be held accountable on the basis of Joint Criminal Enterprise principle.

Therefore, should the Attorney General conduct an investigation, and then it should be carried out by following the investigation result made by Komnas HAM.

The investigation process of the forced disappearance case of 1997/1998 itself is normally instigated by an establishment of an investigation team for gross human rights violations of forced disappearance case of 1997/1998 through a decree issued by the Attorney General¹³ the decree will be followed by an investigation order for investigators appointed by the Attorney General to ¹⁴:

1. Conduct an investigation for gross human rights violations of forced disappearance case of 1997/1998;

2. Report the result/progress of the investigation processes to the Attorney General of the Republik of Indonesia with a courtesy copy to Deputy Attorney General for Special Crimes.
3. Conduct the order to the best ability and with full responsibility.

Based on the experiences from the East Timor and Tanjung Priok cases, the composition of the investigation team usually consists of the following elements:

1. Office of the Attorney General
 2. Indonesian police department
 3. Indonesian national armed forces
 4. Department of internal affairs, and
 5. Retired prosecutors
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However, the results obtained by the investigation team for East Timor and Tanjung Priok cases formed by the Attorney General did not meet the investigation standards compared to what had been conducted by Komnas HAM. There were a lot of data and facts which could not be revealed in the investigation process, so almost all suspects/defendants in the East Timor and Tanjung Priok cases were acquitted¹⁵. In the case of East Timor for instance, of all indictments issued by the Attorney General against the 18 of suspects/defendants, none of the suspects/defendants was convicted.

Likewise, the evidence gathered by the Attorney General's Office Investigation could not which could not bring any witnesses or present any accurate evidence at all, that could show that the prosecutors were supposed to protect public interests and citizens from criminal acts, since they did not have the willingness to carry out and prove the allegations based on the preliminary evidence obtained by Komnas HAM.

Therefore, in order to prevent the reoccurrence of the same failures in the East Timor and Tanjung Priok cases, the investigation team that will be established by the Attorney General should involve and accommodate other reliable and high integrity people in human rights protection, such as elements from Komnas HAM, retired judges, NGOs, and advocates who have the competency and knowledge related to gross human rights violations. Moreover, this

opportunity could be used by the Attorney General to improve his public image on human rights enforcement in Indonesia.

3. Assistance and Coordination between Komnas HAM and the Attorney General

Subsequent to the completion of the Komnas HAM investigation process and the submission of the case to the prosecution stage, Komnas HAM can inquire for a written statement to the Attorney General as the case investigator and prosecutor on the progress of the investigation and prosecution carried out by the Attorney General (16). However, in light of the experience with the East Timor and Tanjung Priok cases, it would be better if Komnas HAM could assist the Investigation Team appointed by the Attorney General. The assistance may be given in a form of providing data, information and resource persons related to the inquiry process which had been carried out by Komnas HAM, which may also include recommendations of some competent and high integrity figures to involve in the particular Ad Hoc Investigation Team. In addition to that, Komnas HAM should also intensively coordinate with the Attorney General, in order to make the assistance process runs well.

It is expected that the investigation result of the Attorney General could “determine that there has been gross human rights violations in the forced disappearance case of 1997/1998 in forms of killings, unlawful deprivation of liberty, torture, assaults, and forced disappearance against civilians, and could also identify the perpetrators who allegedly committed the violations.

4. Witness and Victim Protection Organization (LPSK) and The Fulfillment of Victims and Witnesses’ Rights

In its report, the Ad Hoc Team of Komnas HAM for Forced Disappearance Cases of 1997-1998 states that there are unwillingness and reluctance from some witnesses to cooperate with inquirers in giving information related to the cases. The report also mentions a name of one of the witnesses that they had called-out. It indicates that there is a serious threat faced by witnesses in the forced disappearance case, which had made them feel reluctant and they requested that their identities to remain confidential.

In this context, LPSK has a crucial role in the investigation process for forced disappearance case of 1997-1998. LPSK must be ready to establish a procedure that is accessible for

witnesses and/or victims who seek for protection. In addition to that, LPSK also ought to set up a professional and well-trained team to protect witnesses and victims who feel threatened during and after the investigation process (footnote 17).

One thing that cannot be separated from the authority of LPSK is the fulfillment of victims' rights particularly the right of the victims of human rights violations. In addition to the rights of witnesses to be protected, the victims of gross human rights violations also entitle to reparation in forms of compensation (19), medical aid, and psycho-social (20), rehabilitation support, and restitution (21).

If LPSK is able to carry out its mandate accordingly in providing protection for witnesses and victims throughout the trial processes, particularly in the investigation process, then in that case, one of the government duties is to provide protection and reparation for the witnesses and victims of forced disappearance cases will immediately realize through the existence of LPSK.

III. Conclusion and Recommendation

The recommendation of the House of Representatives (DPR) to establish an Ad Hoc Human Rights Court and fulfill victims' rights is an appropriate "political decision" in the midst of high fatalism and skepticism among society towards the legislative branch. At least, this recommendation can be a new precedent in order to solve and reveal past human rights that have been "stagnant" for a decade and set back for the recent five years.

This decision also indicates that the government will fulfill its obligation to fulfill victims' rights as well as to end the practice of impunity. As a result, Indonesia will not be burdened by unresolved human right violation cases.

In light of the above, Institute for Policy Research and Advocacy (ELSAM) would like to recommend the following;

1. The President of the Republic of Indonesia, Susilo Bambang Yudhoyono should immediately issue a Presidential Decree regarding to the Establishment of an Ad Hoc Human Rights Court for forced disappearance case of 1997-1998;
 2. The Attorney General should immediately follow up the Komnas HAM's findings through the establishment of an Investigation Team that involves some elements in the society who are competent and have a high integrity towards human rights violations;
 3. Komnas HAM should conduct an intensive coordination with Attorney General regarding to the investigation process and provide assistance to the Investigation Team of the General Attorney.
 4. LPSK should establish a procedure and a team that will provide protection and fulfillment of witness and victims' rights in the forced disappearance case of 1997-1998.
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Footnotes:

¹ According to the Chief of the Special Committee, Effendi Simbolon, this special committee recommendation was made based on the inputs from the National Commission on Human Rights (Komnas HAM), witnesses, victims, and their family that there has been a gross human rights violation in the abduction and forced disappearance cases against civilians.

² As in the case of Trisakti, Semanggi I and Semanggi II

³ Although the House was not familiar with the carry-over principles of a decision made by the previous legislative members to be conducted by their successors. Kompas, Tuesday, 29 September 2009|20:46 WIB The Recommendations for the Disappeared Will Not Necessarily be Followed Up. Kompas, Tuesday, 29 September 2009|20:46 WIB

⁴ Vice President Called for the Government to Find the Disappeared.

⁵ See Decision NO.44/DPR-RI/III/2000-2001, 21 March 2001 which agrees with the establishment of an ad hoc human rights court for the alleged gross human rights violations in East Timor and Tanjung Priok in 1984, which was then proposed the President through a Letter of the Chief of the House of Representatives of the Republic of Indonesia NO. KD.02/1733/DPR-RI/2001 on 30 March 2001.

⁶ As mentioned in the Article 43 paragraph (1) of the Law No. 26 of 2000 regarding to the determination of Human Rights Courts.

⁷ See Article 43 Paragraph (2) of the Law No. 26 of 2000 regarding to human rights court and the plenary session result of the House of Representatives of the Republic of Indonesia on 28 September 2009.

⁸ Article 45 paragraph (1) and (2) of the Law No.26 of 2000 on Human Rights Courts .

⁹ The Indonesian Legislative Assembly issued a Decision No.44/DPR-RI/III/2000-2001 on 21 March 2001, while the Letter of the Chief of the House of Representatives No.KD.02/1733/DPR-RI/2001 was sent on 30 March 2001.

¹⁰ see Article 21 of the Law No. 26 of 2000 on Human Rights Courts.

¹¹ Executive Summary of the Inquiry on Forced Disappearance Case of 1997/1998, Komnas HAM, October 2006.

¹² Executive Summary of the Inquiry on Forced Disappearance Case of 1997/1998, Komnas HAM, October 2006.

¹³ See the Decision Letter of the Indonesian Attorney General number KEP-070/JA/04/2000 on 17 April 2000 regarding to the Establishment of an Investigation Team for Gross Human Rights Violations in East Timor, and the Decision Letter of the Attorney General number KEP-383/A/JA/11/2000 on 10 November 2000 on the establishment of an Investigation Team for Gross Human Rights Violation in Tanjung Priok.

¹⁴See the Work Order of the Deputy Attorney General for General Crimes Sprint number 43/E/04/2000 on the East Timor case and Work Order of the Deputy Attorney General for General Crimes number Prin-114/E/EJP/11/2000 on 14 November 2000 regarding the Tanjung Priok Case.

15. Progress Report on the Human rights Courts, ELSAM, 2003

¹⁶ Article 25 of the Law No. 26/2006 on Human Rights Courts.

¹⁷Article 28 of the Law on Witness and Victim Protection has provided requirements for witnesses and victims who seek protection from LPSK, i.e., the importance of the information provided by the witnesses and victims; the degree of threat that they receive, analysis result from medical and psychologist team toward them, and their criminal records.

¹⁸As provided in the Article 5 of Act No. 12/2006 on Witness and Victim Protection.

¹⁹ See Article 7 paragraph (1) point (a)

²⁰ See Article 6 of the Law number 13/2006 on Witness and Victim Protection.

²¹ Government Regulation number 3/2002 on compensation, restitution, rehabilitation for victims of gross human rights violations.
