



The Commission for the Disappeared and Victims of Violence (KontraS)
Submission on
“Notion of Short-Term Enforced Disappearance”

Notion on Short-Term Enforced Disappearance

The notion itself may fundamentally be addressed from two treaties to address the enforced disappearance itself, The Rome Statute and The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). The Rome statute itself mentioned enforced disappearance as

“Arrest, detention or abduction persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time”

While the International Convention for the Protection of All Persons from Enforced Disappearance define enforced disappearance

“Arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

By the International Criminal Court’s Chamber III of Pre-Trial, Situation in the Republic of Burundi,¹ The temporal element of enforced disappearance is defined as the intention of the perpetrator, namely a public official, to release the victim from legal protection within the "long period of time" that can be fulfilled throughout the duration "several months or years".²

Referring to ICC’s, KontraS has documented the occurrence of several acts of enforced disappearance during 1965-1998. Based on the data collected, in the 1965-1998 period there have been at least 53,000 cases of enforced disappearances in Indonesia.

Enforced disappearance was one of the methods often "used" by the New Order regime, especially to target groups considered "dangerous" by the New Order regime. Cases of enforced disappearances were first documented in 1965-1966 when the New Order regime carried out "annihilation" of members and sympathizers of the Indonesian Communist Party (PKI) or other groups deemed affiliated with the PKI and "left-wing" movements. This incident was later classified as the worst crime against humanity in the history of Indonesia.

¹ Pre-Trial Chamber III, *Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi*, (ICC-01/17-X-9-US-Exp., October 25, 2017).

² *Ibid.*



Based on KontraS' findings, at least 32,774 people disappeared by force in the 1965-1966 period. KontraS also documented other incidents of enforced disappearance that occurred in the period 1966-1998 in several different incidents of Gross Human Rights Violations. In the 1982-1983 "Mysterious Murders" incident, at least 23 people were recorded as missing, still in the 1980s, during the 1985 "Tanjung Priok" incident, 23 people were forcibly disappeared. Furthermore, during the "Talangsari" incident in 1989, 88 people were recorded as missing. Enforced disappearances also occurred during the "Military Operations Area" in Aceh, at least 1,935 people were recorded as missing during the 1989-1998 Military Operations Area period. In 1997-1998 the New Order government also kidnapped 23 pro-democracy activists, 13 of whom are still missing today. This number does not include the disappearances that occurred in Timor Leste when the country was still part of Indonesia under the name East Timor. Truth and Reconciliation for East Timor recorded at least 18,600 East Timorese who disappeared.

These conditions indicate that enforced disappearance is a form of human rights violation that occurred quite frequently during the New Order Regime. Referring to the two definitions of enforced disappearance from the Rome Statute and ICPPED also referring to the decision of the Pre-Trial Chamber III on the Situation of Burundi, various incidents of enforced disappearance that occurred during 1965-1998 can be categorized as "long-term enforced disappearances."

After entering reform, the risk of enforced disappearance, especially for citizens who are practicing civil liberties such as the right to assemble and associate, the right to peaceful assembly and expression is still vulnerable. The form of enforced disappearance in question is not enforced disappearance that occurs over a long period of time as formulated by the ICC in the Pre-Trial Chamber Situation of Burundi, but a new pattern known as short-term disappearance.

By the UN Working Group on Enforced or Involuntary Disappearances, short-term disappearance is defined as a condition in which a person is detained secretly and outside the protection of the law and may reappear afterwards, either dead or alive. One of the short-term disappearance cases that has attracted the attention of the international community is the short-term disappearance of Roberto Agustin Yrusta in Argentina, where he was convicted robber whose whereabouts were hidden by the Argentine authorities while in detention. It was recorded that he disappeared for more than seven days after he asked to be transferred to a prison location adjacent to where his family lived. During his transfer, Yrusta was placed in a special solitary confinement cell, where he was subjected to torture and inhuman punishment, nor was his family able to get any information from the prison authorities. The Committee on Enforced Disappearances ('CED') as the treaty body that was founded on the 2006 ICPPED, continues to recognize that the incident was a case of enforced disappearance, despite the short time period.³

³ CED, *Yrusta v. Argentina* (Communication No. 1/2013, April 12, 2016). CED/C/10/D/1/2013; Rujuk pula: Priyai Pillai, "Enforced Disappearances: A Global Scourge, Increasingly Under the Radar" (opiniojuris.org, May 31, 2019).

It should be noted that in the Yrusta case, it can be concluded that short-term disappearance often occurs in the context of "enforcement of criminal law" and affects the suspect/defendant/convict. Short-term disappearance can also be related to the practice of torture and other forms of inhumane punishment.

In the Status Quo, Indonesia has yet to have a formulation in its national criminal law which explicitly prohibits short-term disappearance, in several formulations of the criminal procedural law there are still several articles which open up space for the practice of short-term disappearance to occur.

Legal Framework which Lead and Prevent to Short-Term Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) intended to prevent acts of enforced disappearance. Indonesia has not yet ratified ICPPED into its national law. In fact, the provisions of the Convention against Enforced Disappearance define enforced disappearance based on three interrelated elements and comprehensively regulate: (i) acts of deprivation of liberty in the form of arrest, detention and kidnapping, or other acts; (ii) as is the case with state apparatus or individuals or groups carrying out the deprivation of liberty based on the authorization, support and approval of the state; and (iii) followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate or whereabouts of the victim. Enforced disappearance causes victims who are 'disappeared' to be beyond the reach of legal protection and deprived of their rights. In addition to regulating the definition of enforced disappearance, the Convention against Enforced Disappearances also comprehensively regulates the state's obligation to recognize the rights of victims of enforced disappearances, which include the right to truth, the right to obtain reparations and compensation quickly, fairly and fairly, as well as the right to form and be involved in organizations that aim to uncover cases and assist victims.

Indonesia itself has signed ICPPED on the 27th September 2010, but has not ratified it, so that as an international legal norm, ICPPED does not yet have legally binding power in Indonesia.

Prior to being regulated by the Convention Against Enforced Disappearances, international law regarding enforced disappearances has been regulated in the Rome Statute which then categorizes enforced disappearances as part of crimes against humanity, and is one of the four most serious crimes under the jurisdiction of the International Criminal Court (ICC) to on trial. Unfortunately, in this case Indonesia has also not ratified the Rome Statute and automatically the state is not under the jurisdiction of the ICC. So if viewed from the perspective of the rule of law, Indonesia still has a legal vacuum related to the prevention and protection of enforced disappearances.

Enforced disappearances in Indonesia are now regulated in Law no. 26 of 2000 concerning The Human Rights Court. Similar to the Rome Statute, the law categorizes enforced disappearance as a Crime against Humanity. Apart from Law no. 26 of 2000, enforced disappearance is also

regulated as part of a crime against humanity in the newly ratified Criminal Code (KUHP), namely Law no. 1 Year 2023.

Even though it has been regulated in the Law on The Human Rights Court, not a single suspect from the various incidents of enforced disappearances that have occurred so far has been convicted through the mechanism of the Human Rights Court. As for the perpetrators of the 1997-1998 Enforced Disappearances, they were once tried in a military court, but the perpetrators were released after serving less than a year's sentence and are now still able to hold various public positions. This shows that even though the law has regulated the matter of enforced disappearances, law enforcement against enforced disappearances through the mechanism of the Human Rights Court has not been carried out ideally.

Alternatively, there are still several provisions in the Indonesian criminal procedural law that open up space for short-term disappearance to occur. Indonesian criminal law provides a very broad scope of authority for members of the Police to carry out arrests and detentions. Unfortunately, this broad authority to carry out arrests and detentions is not accompanied by strict supervision or judicial scrutiny.

Detention is regulated in Article 21 of the Indonesian Criminal Procedure Code. Article 24 and 25 of the Criminal Procedure Code then stipulate that the length of detention is 20-40 days. The authority of the Police to carry out arrests and detentions without supervision opens up the possibility for members of the Police to carry out arrests and detentions without procedures. This causes the suspect to be in detention for a certain period of time without fulfilling the suspect's rights, including providing information about the whereabouts of the suspect to the suspect's family or attorney. These incidents often occur in arrests made by the Police against people who are practicing their right to peaceful assembly or demonstrations.

Roles and Questions for Responsible Authorities

Referring to the explanation of the UN WGEID Short-term enforced disappearance Factsheet, namely "...Whereby persons are placed in secret detention, outside the protection of the law..." The emphasis point in this definition is that there is a phrase placing a person detained in a secret place that curbs a person's freedom in an uncertain period of time. In practice in Indonesia, the practice of short-term enforced disappearance is found in the repressive actions of the police apparatus in handling demonstrations, not only being arrested and detained but also being dragged into the judicial process.

For instance, in the action against the Job Creation Bill in October 2020 in Jakarta, the police made random arrests of demonstrators and civil society – hereinafter referred to as victims – who were at the point of the protest. The arbitrary arrests were carried out not based on law, the police who carried out the arrests never introduced themselves or showed a warrant. After being arrested, the victims were then taken to a closed room at the police station with restricted access. Without a clear legal status and without the assistance of an advocate, victims are forced to answer interrogation questions from police investigators.



The police often did not give access to advocates who wanted to assist them, and did not even provide information or copies to the victims' families that their members had been arrested. Meanwhile, the time span from being arrested to interrogation usually takes more than 24 hours, after which they are taken to the state detention center (remand center) which is managed by regional police work units such as the regional police and resort police. At this point, the problem lies in the police detention center which is the place where the victims are detained and is not freely visited by their families or lawyers.

By this incident, the actions of investigators outside the procedure have never been given firm action by internal oversight units such as the Professional and Security Unit (Propam) or the Investigative Oversight Bureau (Rowassidik) unit. Supposedly, the internal oversight unit in the police can provide prevention, but not limited to the legal process by imposing ethical sanctions.

Recommendation

Several recommendations are written below for the UN WGEID to encourage the Government of Indonesia such as

1. The People's Representative Council of Indonesia (DPR RI) and the President to explicitly create and provide criminal sanctions for police or civil servant investigators who carry out arbitrary arrests and detentions (contrary to the law)
2. The People's Representative Council of Indonesia and the President together make laws that explicitly create and provide criminal sanctions for the military (and/or other state officials who are not authorized to make arrests and detentions) who carry out arbitrary arrests and detentions (contrary to the law);
3. The Supreme Court and the Police socialize the crafted law and the urgency of prohibiting arbitrary arrests and detentions, even for suspects caught in the act, to all judges and police personnel.
4. For the Indonesian Government through DPR RI and the President to carry out the DPR RI Special Committee's 2009 recommendation to resolve the 1997 - 1998 enforced disappearance cases.