

# KOMNAS HAM AND ‘ZERO COMMITMENT’ FOR HUMAN RIGHTS IN INDONESIA?

[Comment for Ken Setiawan’s PhD Thesis]

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This short paper is to address a question, to what extent KOMNAS HAM’s struggle for human rights in the context of Indonesia during SBY administration? Hence, I would like to describe into two parts, one is about law and human rights enforcement in current Indonesia and second how KOMNAS HAM fulfill their promises. Then it concludes few things on NHRI’s challenge in the context of Indonesia.

## How is law and human rights enforcement in current Indonesia?

Upholding the rule of law is not just law enforcement , but state efforts to build a legal system that works in a fair, non-discriminatory, and reaching all the political structure of the state administration to ensure the basic rights of citizens.

There are – I would call -- **five fundamental barriers** (*palang pintu*) in enforcing the rule of law and human rights in Indonesia (Wiratraman 2011).

First , the law and its enforcement have too much power into **the vortex of political economy**, so it is not so hard to see a number of cases of bribery and corruption involving officials or political leaders and capital owners, becomes serious barriers for justice. Slow and complicated processes to bring Century Bank case and Lapindo Mud case become real instances.

Second , the government has not only **failed in preventing violence**, but is also involved in the conflict and violence. This causes a situation of threat to the basic rights of citizens, especially the right to safety. For example, cases of violence against the Ahmadiyah or Syiah (minority groups), the destruction of places of worship, homes, and even schools prove how religious freedom as non-derogable rights (rights that should not be reduced at all) have been so easily breached.<sup>2</sup>

Third, **sustaining impunity**. Human rights perpetrators who committed crimes systematically are released and allowed to obscure and obstruct legal processes. Attorney General Basri Arief has stated that murder case of human rights activist, Munir, legally finished (Reuters , 7/9/2011) . Such statement indicates how strong the fact of sustaining impunity.

Fourth , **the weakening of the protective functions of state institutions**. The blockage of political aspirations through parliament, impartiality of the administration, injustices and discriminatory are still dominant in practices. Unfortunately, the National Human Rights Commission (KOMNAS HAM) as an independent agency which is widely expected to be progressive in solving human rights violations, actually stuck in this situation. Hence, so that its role was seen less straightforward and dare to dismantle the roots of human rights violence.

Fifth, **crackdown over freedom of the press**. The press has been predominantly controlled by media owners who most of them involve in political power arenas, both at the national and local levels. Press has been often attacked and threatened by the use of violence, and surprisingly such violation continuously happened without clear accountability of perpetrators. These facts corroborates an annual report of Reporters Sans Frontiers (RSF) which puts Indonesia in the worst position since last decade. Last year (2012) was at 146 level, among Southeast Asia countries, Indonesia has a better position than Vietnam and Myanmar. Today is level 139 of 179 countries.

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<sup>2</sup> KOMNAS HAM’s responses with regard to freedom of religion show that the behaviour of NHRIs can differ between issues even within a particular right. KOMNAS HAM did nothing about the attacks on the Ahmadiyah, because most commissioners considered its adherents to be members of a deviant sect (Setiawan 2013, p. 178)

Those five barriers, as referred to Adriaan Bedner's framework on rule of law (Bedner, 2010) is called as a denial of 'substantive elements' that are obviously very dangerous for the future of law and human rights. In a sense, it has been vulnerable building to constitutional political systems. Ironically, it seems so helpless to the law and human rights enforcement issues in current situation. I am afraid these facts would gradually lead to a 'zero commitment'.

### **How does KOMNAS HAM fulfill their promises, especially at the context of those fundamental issues in human rights?**

#### *The first, look at the posture (?)*

- (1) Budget: 3-3.7 million euros/year [one-fourth compare to Eradication Corruption Commission/KPK, 20-21 million euros/year]
- (2) Measurement of KOMNAS HAM's Effectiveness [2012]
  - Improving training and socialization for increasing level of awareness for state apparatus and citizen [measured by number of participants, 1000 for 2012 and - targeted 1500 for 2014; number of KOMNAS HAM website visitors, 3000 for 2012 and – targeted 3500 for 2014]
  - Increasing the effectiveness of human rights enforcement [measured by percentage of Komnas' recommendation which is followed by legal process, 65 %; number of recommendation for gross violation of human rights which is brought to Prosecutor, 2 recommendations/year; percentage of human rights disputes which are settled by mediation mechanism, 60-70%/year]
- (3) Higher legal status legitimacy, from Presidential Decree in 1993, now KOMNAS HAM is mandated by Act on Human Rights in 1999 (Act No. 39 of 1999) and strengthened by Act on Human Rights Court (Act No. 26 of 2000).

It is understandable to tight budget allocation, but on the other side, it would be quite dangerous for themselves since many human rights violations could not be solved by what they would like to target it. Measuring human rights enforcement quantitatively would lead to be trapped into 'formal measurements' and be unable to unravel the grand and fundamental problem of human rights.

#### *Second, learning from the past and present situation (?)*

I just want to limit my comparative analysis between the first KOMNAS HAM (1993-1998) when it was established in 1993 and the present KOMNAS HAM (2012-2017)

For the first time, KOMNAS HAM was set up under authoritarian military regime Soeharto in 1993. It was so many public pessimism over such institution, since many believe that part of the New Order government diplomatic strategy to soften international pressure in the case of East Timor. In short, the Commission was deemed a cosmetic way of government in international affairs. Unexpectedly, this was precisely the period of the Commission's successful in getting public confidence, since the goes beyond law enforcement agencies that already exist. The starting point for the birth of the public trust begins when the Commission assessed successfully handled cases in Bogor Regency Rancamaya ground in early 1994. Commission managed to prove itself as an institution that is relatively free from state interference although established by the state. Hence, the theory of state corporatism has been challenged in the case of the establishment of KOMNAS HAM during Soeharto regime.

The key effectiveness at that time was really related to individual integrity and commitment for human rights which really above average. In addition, the commissioners succeeded in developing an ethical culture and work that could avoid conflict of interest, the development of internal democratic mechanisms, as well as the support of the mass media.

Then, we have to appreciate for KOMNAS HAM works, especially in doing investigation for gross violation of human rights cases, including the latest controversial one, 1965 case. These works had been carried out during three periods of KOMNAS HAM 1998-2012.

Turn to the present KOMNAS HAM.

In the end of 2012, KOMNAS HAM appointed its new set of Chairperson and Commissioners who shall serve from 2012 - 2017. KOMNAS HAM's new Chairperson, Otto Nur Abdullah, is a former chair of Imparsial,

human rights organization in Indonesia. Also Sandrayati Moniaga, my colleague as a Leiden Law School PhD student, who serves as Vice-Chairperson. However, there has been 55 days running organization, nine commissioners voted to oust chairman, Mr. Otto Nur, and elected a new leadership, Siti Nur Laila. This is a new record for Indonesian constitutional system in history of fastest impeachment among state institutions.<sup>3</sup>

Many suspect that the infighting has been orchestrated by politicians who want to interfere with the internal process of the commission ahead of the 2014 elections. Many organizations, included my organization (KontraS, Elsam, and SEPAHAM), believe that the objective of impeaching Otto, because of his reputation for uncompromising struggle to uncover past human rights abuses, as we have known that several political leaders and even President candidates are running for election next year (2014).

The most serious concern for questioning KOMNAS HAM today is they will stop efforts to uncover past human rights abuses.

Regardless the issue of bring KOMNAS HAM into political-economy vortex, there are several paradoxes within present KOMNAS HAM.

First, related to leadership and integrity. In early January 2013, plenary session of the Human Rights Commission decided to change the Rule, especially dealing with the change of leadership the Commission which is conducted every year. Rule changes were most likely driven by issues such as car service facilities, apartments, special insurance, business airline tickets. They would like to perform as consistent to build the principle of collective collegial and bureaucratic reforms. However, their arguments about Rule changes are very fragile, full of paradoxes, and injuring common sense. Unsurprisingly, no less than former members of the National Human Rights Commission, the victims of human rights violations, human rights academics network, NGOs coalition, the Commission staff, the media, the Parliament member, the Presidential Advisory Council (Wantimpres), as well as the general public, all have pressured the Commission to annul their Rule changes. For them, leadership rotation per year would disrupt financial management, case management, and inter-institutional relations.

I would prefer to argue that Rule changes is aimed to weaken the Human Rights Commission in order to smooth the presidential candidates who is running election for 2014, especially to block human rights issues.

Second, lack of competence. Several Commission members cast counterproductive statements due to their lack of competence on human rights. To give examples, in the case of shooting the TNI in Papua, Natalius Pigai stated, "...members of the military deserve to be shot because it works just sleeping and hanging out." Such reckless comment ended with an apology to the TNI chief at TNI headquarters. Hence, the position of KOMNAS HAM looks like subordinating themselves before the military. Another statement was made by Nasution Maneger, "Miss World 2013 event should not be held in Indonesia. Indeed, it is seen as freedom (part of human rights) respect. But when it is held in Indonesia, it becomes a human rights violation".

In short, KOMNAS HAM has been actually disrespected either by state or non-state institutions. However, since the KOMNAS HAM has a very important authority to initiate judicial process for gross violation of human rights, then his position is at a critical point, to what extent KOMNAS HAM today would bravely bring the past as well as current human rights abuses into judiciary or justice system. It is a big question mark! Especially to see KOMNAS HAM at the context of -- no longer as a 'state corporatism' -- but rather 'neo-corporatism'.

### **The challenges for KOMNAS HAM: Concluding Remarks**

I would like to end by notes several important points that Ken has made in her PhD thesis. Regardless the social and political context, she argued, "Commissions have been able to create a space both for themselves and for broader human rights movements in their respective countries. Their presence and their actions will at the very least continue to remind the state of its human rights obligations, and may very well continue to lead to better protection of human rights" (Setiawan 2013: 188). In this regard, it is necessary to point out that actually KOMNAS HAM is a 'legitimized tool' to monitor human rights at field, therefore, although Commissioners have a limited knowledge on human rights or even as '*titipan*' of politicians, NGO's activists as well as victim insist to influence KOMNAS HAM. It is sort of a possible space for improving human rights situation, although sometimes the way to involve with their roles has been rather painful and confusing.

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<sup>3</sup> KOMNAS HAM infighting ends with new leadership, The Jakarta Post, March 07 2013, <http://www.thejakartapost.com/news/2013/03/07/komnas-ham-infighting-ends-with-new-leadership.html>

As I illustrated above, present KOMNAS HAM has a very serious problem of leadership: integrity and competence. There are few points to emphasize this issue,

- (1) Most commissioners are deemed more representing political parties composition, start from nomination till names are brought to DPR/People's Representative Council;
- (2) Those who are elected mostly do not understand the urgency of how to handle human rights cases. Haris Azhar's KontraS noted, only three of them are really understand and capable to handle human rights cases. Four of them are also really confronting human rights principles, values, and even laws, due to their personal views about acceptance of death penalty, disagreement over LGBT rights, and falsification of marginal groups rights.<sup>4</sup> Having these facts, KOMNAS HAM would rather easily fail to fulfill their premises to protect human rights in Indonesia.

As concluded by Setiawan (2013: 176-177), "The research has found that for both KOMNAS HAM and SUHAKAM, internal structures, personal factors, and the leadership's ability to create a 'sense of mission' within the organisation have been central to their performance. Most crucial are individual commissioners. Particularly in the case of KOMNAS HAM, the combination of relative autonomy and the personality of leading commissioners has determined organisational success and failure." However, I would prefer to argue carefully for Setiawan (2013: 176) optimistic view on those Commissioners with backgrounds as NGO activists or academics are well suited for educational activities, where those with connections with the administration or security forces can play an important role in accessing these bodies and encouraging the implementation of NHRIs' recommendations. We need to identify their roles and its effectiveness. Sometimes we all see their roles are very important, but if we look at their absence in criticizing more fundamental issues, or they just really want to express critical without further clear recommendation or even action, then I would say a 'comprador commissioner'. This is really dangerous, since in a more democratic's Indonesia, even lecturers play roles in this model.

Hence, I am fully agree with Setiawan claims, and likely similar to my research on press freedom, even when KOMNAS HAM mandates are strengthened and human rights are guaranteed in law, this does not necessarily translate into better performance, let alone effectiveness of the organisation. Rather, the performance and effectiveness of NHRIs depend on the interplay of both internal and external factors, which are unique to every organization (Setiawan 2013: 188).

Is there 'breaking barriers' strategy?

Simply, I am looking forward for two things,

- (1) The role of KOMNAS HAM in unravelling several crimes against humanity in Indonesia through pro-justitia mechanism, especially dealing with human rights abuses in the past, and specifically addressing those who are running for 2014 election. I am afraid that KOMNAS HAM does not take seriously how to investigate and to bring systematic and widespread violence into 'pro-justitia mechanism'. The case of Ogan Hilir in 2012 and Alas Tlogo in 2008 are examples for that. These cases were brought to 'internal' mechanism at police or military institutions, and the result is easily predicted that it would create a more systematic impunity. Hence, KOMNAS HAM failed to bring justice.
- (2) The further Setiawan observation and research on this issue.

Keep struggling for human rights!

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<sup>4</sup> Hafid Abbas, attempts to claim that there are no Indigenous People within the state of Indonesia. Abbas seeks to argue that prior to Dutch colonialism, which introduced the term, Indigenous, -- "to disintegrate the unity of Indonesia as a nation' -- there was a unified Indonesia. That the South Sulawesi independent Kingdom of Bone, neighboring independent kingdom of Gowa, that the many ethnic groups of Papua and those on Timor and the multitude of varied others, along with the dominant Javanese of the Sumatran island, had belonged to a unified national identity of Indonesian. That they were not forced into this situation through colonialism and imperial expansion. Vide: Hafid Abbas, "Some misinterpretations about indigenous people", *Jakarta Post Opinion*, August, 15, 2013. <http://www.thejakartapost.com/news/2013/08/15/some-misinterpretations-about-indigenous-people.html> (accessed on 18 December 2013). Limited capacity and/or competence in articulating or transferring human rights concepts, principles, laws and its mechanism. It is easily found, KOMNAS HAM staffs are more clever and clearly explain human rights strategies rather than commissioners.