

TO PROTECT THE DEFENDERS

Doing The Most Possible, Continuing to Do What Has to be Done¹

Asmara Nababan²

I. Introduction

Allow me to start my lecture by highlighting several important issues from the visit of the UN Special Representative of the Secretary General on the Situation of Human Rights Defenders, Ms. Hina Jilani, during her visit to Indonesia on June 5-12, 2007. After her visit, in a press release, Ms. Hina Jilani stated that the situation in Indonesia has shown the prospect for the promotion of human rights, which in her opinion has vastly developed lately³. Ms. Hina Jilani based her opinion on several positive steps taken to strengthen the legal and institutional framework for the promotion of human rights. In regards to the legal framework, Ms. Hina Jilani specifically mentioned the Constitutional amendments in 2000 which contain stipulations that guarantee the fulfillment of human rights and basic freedoms, the passing of Law No. 39, 1999 on Human Rights and the Law on Witness and Victim Protection namely Law No. 13, 2006. Here I would like to add the ratification of main international human rights instruments, namely the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights⁴. Upon institutional development, Ms. Jilani put forth the establishment of The Commission of Human Rights with a stronger legal basis, namely the Law No. 39, 1999⁵, the establishment of the Commission Anti Violence Against Women , as well as the establishment of Human Rights Court, which was

¹ This paper is written for Munir Memorial Lecture, September 13, 2007, Utrecht, The Netherlands

² The author is The Director Executive of Demos in Indonesia as well as the former member The Task Finding Team for The Murder of Munir

³ Press Release. UN Special Representative of the Secretary General on the Situation of Human Rights Defender Concludes Visit to Indonesia, June 21, 2007,

<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/54B4138C66CE4B53BC12572F8005C4AC8?opendocument>, accessed on July 26, 2007 paragraph 5

⁴ Both Covenants were ratified by law in 2005, see Law of The Republic of Indonesia No. 11 year 2005 on The Ratification of International Covenant on Economic, Social and Cultural Rights and Law of the Republic of Indonesia No. 12 year 2005 on The Ratification of International Covenant on Civil and Political Rights.

⁵ The National Commission of Human Rights was originally established in year 1993 during the New Order Regime, but only by a Presidential Decree as the legal basis, namely Keppres 50 year 1993.

established based on Law No. 26 year 2000 on Human Rights Court⁶ as well as the establishment of the Constitutional Court⁷.

I share Ms. Jilani's opinion that there is a good prospect for the promotion of Human Rights in Indonesia, wherein the abovementioned important developments should be noted. Yet it is my belief that until now there remains to be a lack of fundamental change in the power structure of the state that can provide real promotion, protection and fulfillment of Human Rights. Indeed Soeharto's regime fell, however the abhorrent attacks against human right defenders in Indonesia persist. The absence of a meaningful change is clearly evident in the murder of Munir. The crime, which happened in post-Soeharto era, with strong indications towards the involvement of the National Intelligence Body (BIN) utilizing Indonesia's Flag Bearer Airline, remains to be unsolved despite the public nature of the case due to intense media coverage and international scrutiny as well as assistance for its resolution. It is also evident in the lack of effort to provide restitution and reparation for victims of gross human right violations in Indonesia⁸. If the reform and democratization process in Indonesia fails to alter state power structure into a more democratic one, the potential developments that Ms. Jilani has listed after her visit will remain to be unfulfilled ones.

As we know, the State attains the central position in the concept of international human rights. The contractual relation between the state and its people in the social contract theory is the underpinning concept adopted in the current international law regime. It is the State that bears the main obligation in regards to the upholding of human

⁶ Press release, *op.cit.* 1. See also, as the implementation of the Law, the Republic of Indonesia Presidential Decree No. 31 year 2000 on the Establishment of Human Rights Court in the District Court of Central Jakarta, the District Court of Surabaya, the District Court of Medan and The District Court of Makassar.

⁷ See The 1945 Constitution, The Third Amendment, Article 24C

⁸ International Law stipulates that the victims of serious human rights and humanitarian law violations are entitled to adequate, effective and prompt reparation by redressing gross violations of international human rights law or serious violations of international humanitarian law. The victims are entitled to access to equal and effective justice; adequate, prompt, and effective to their losses, and access to relevant information related to the violation and reparation mechanism. Reparation should be proportional to the gravity of the violations and the harm suffered, and should include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and stated in the UN General Assembly Resolution 60/14. December 16, 2005, <http://www.ohchr.org/english/law/remedy.htm>, accessed on September 2, 2007.

rights⁹. State obligation in relation to human rights consists of the obligation to respect, obligation to fulfill, and obligation to protect¹⁰. The Vienna Declaration states that the promotion, protection of human rights Human rights and fundamental freedoms first and foremost lies in the hand of the Government¹¹. This duty is already adopted by Indonesia by the inclusion of article 28(i) article 4 in the second amendment to the 1945 Constitution in year 2000, which clearly states that “protection, promotion, enforcement and fulfillment of human rights is the obligation of the state, the foremost the Government”¹². Therefore the protection of human rights, including the protection of the defenders of human rights, will remain to be within the interest of the state and therefore will be severely influenced by the changes in the state power structure, especially the transformation or the lack of it in regards to military power. These changes need to be supported by a legal framework that uphold human rights and political system that is accommodative to their protection and promotion, namely a democratic one. It is essential however to ensure that the legal framework and democratic political system to be beyond mere formal policies and extends to real existence and implementation, in other words, a meaningful democracy¹³.

Thus the protection of human rights in general and the defenders of human rights in specific will always be in the midst of the tug-of-war between the interests within the State when the change of State power structure needs long period of time to accomplish. This awareness while on one hand may generate pessimism or even sense of hopelessness, yet on the other becomes the parameter that reminds us to be more realistic to determine the appropriate steps and strategies to ensure that the interests of the states- may it be political, security, or economic- do not continue to be the determinant factors in

⁹ Donnelly, J (2003), *Universal Human Rights in Theory and Practice*, Ithaca and London: Cornell University Press, p. 34. Also see S. K. Zumrotin, *Tantangan-tantangan Penting Pelaksanaan HAM Saat Ini*, unpublished, 2006

¹⁰ See “The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights” *Human Rights Quarterly* 20 (3) 1998 p. 691-704 and Nowak, M (2003), *Introduction to the International Human Rights Regime*, Martinus Nijhoff Publishers. Leiden/London, p.48-51. Also see S. K. Zumrotin, *Tantangan-tantangan Penting Pelaksanaan HAM Saat Ini*, unpublished, 2006

¹¹ Vienna Declaration and Action Program, adopted on June 25, 1993 in the World Human Rights Conference, Paragraph 1

¹² The 1945 Constitution, *op.cit.* (note 7), Second Amendment, Article 28 (i)

¹³ For further information on real democracy as opposed to “check-list” democracy- namely democracy that exists only on its characteristic procedures such as direct election yet remain to empower only the elites- see AE Priyono et.al., *Making Meaningful Democracy: Problems and Options in Indonesia*, Demos, 2007

the upholding of human rights; rather the promotion and protection of human rights should be the underpinning policy of the pursuance of any interest of the State. Therefore, in our effort to change the power structure of the state, we need to continuously analyze the strategies and steps that both must and are possible to be implemented to break through all interests that hinder the protection of human rights and their defenders.

Therefore, allow me to first present an overview on the current situation of the protection of human right defenders in Indonesia, which shall be followed by an outline of the national and international protection mechanisms available for them. I then shall look upon the possible steps to be taken at national and international level to ensure the protection for human rights defenders in Indonesia.

II. The Situation of Human Right Defenders in Indonesia

Violence against human right defenders in Indonesia occurs in various forms, such as arbitrary arrest, assault, forced disappearance, arbitrary killings, disbandment of meetings, harassment, and criminalization¹⁴. An NGO in Indonesia which specializes on the issue of Human Rights defenders, Imparsial, has defined 5 categories¹⁵ of the obstructions and violence against human right defenders in Indonesia, namely the limitation or suspension of rights of human right defenders crucial to their work; misuse of law to violate human rights; arbitrary violation against the right to life and physical and/or mental integrity; intimidation, slander and stigmatization; and the lack of actions against to violations against human right defenders. I shall outline the situation of human right defenders in Indonesia based on these categories.

In regards to the first category, which include the suspension of rights such as association, expression, and so forth, and the second which encompasses arrest, detention, prosecution, and sentencing, these are often conducted based on the articles in the Criminal Code. The articles known to have been misused are Article 134, 136 and

¹⁴ Tim Imparsial, *Perlindungan terhadap Human Right Defenders, Hambatan dan Ancaman dalam Peraturan dan Perundang-perundangan, Sebuah studi kebijakan di Indonesia*, Imparsial 2005, p. 2-5

¹⁵ *Ibid*, p. 6-9

137 on the crime against the dignity of the President and the Vice President, articles that not only failed to be revoked after the fall of Soeharto but have continued to be implemented after¹⁶. Other articles of the Criminal Code that have been abused are Article 510, 160, 155 verse 1 on enticement, Article 214, 55 on obstruction against officials, and Article 154 and 155 on dissemination of contempt against the government. These articles have been used against human rights defenders from Aceh to Papua¹⁷.

The third category, namely the arbitrary violation against the right to life and physical and/or mental integrity takes the form of killing, forced disappearance, torture, assault, and threats of violence. The most prominent example of this is the murder of Munir in 2004, wherein in the same year there has been forced disappearance against 4 human right activists and 6 cases of arbitrary killings¹⁸.

In regards to intimidation, slander, and stigmatization, namely the fourth category, the most apparent example will be the seminar in the Defense Department on August 29, 2006 the chief of Strategic Intelligent Bureau (BAIS) of the TNI, stated in his paper that several non governmental organizations, namely Imparsial, KontraS and ELSHAM are part of another group that threatens the existence of Pancasila and part of several other non governmental organizations who are not satisfied with and disappointed at the government. On February 14, 2007, Imparsial put forth a legal suit against BAIS in South Jakarta District Court after previously, on October 4, 2006, Imparsial had asked BAIS to correct its statement. However BAIS refused.¹⁹

Fifth, the lack of response against violations of rights against human right defenders which resulted in impunity. Again, the case of Munir is the most prominent example of this category.

¹⁶ “Kembali to Orba? Tahanan Politik di Bawah Kepemimpinan Megawati” *Human Rights Watch*, <http://hrw.org/indonesian/reports/2003/07/index.htm>, accessed on August 14, 2006 BAgian II: Penerapan Undang-Undang Kolonial dan Praktik-praktik Era Soeharto untuk Menahan Para Aktivis Politik paragraph 3. See also Indonesia Criminal Code and Antonio Prajasto & Roichatul Aswidah, *The Right to peaceful Assembly and Freedom of Association*, HUMAN Rights Working Group. Unpublished

¹⁷ Al Araf et.al., *Perlindungan terhadap Pemberla Hak Asasi Manusia*, Imparsial 2005, page 58-63

¹⁸ Tim Imparsial, *op.cit* (note 14), p.16 and *ibid*, p. 6-9.

¹⁹ *Ibid*, p. 10-11 and see the Legal Suit by Imparsial put forth to the District Court of South Jakarta, February 14, 2007.

Women human right defenders deserve to be mentioned as its own specific category. Women human right defenders are often exposed to more substantial risks due to the traditional perception in some communities that the role of women should solely be working in the domestic-private arena. They are often targeted as the object of sexual violence and rape.²⁰ The National Commission Anti Violence Against Women has specified two types of violence against women human right defenders, namely vulnerability and general violence, and vulnerability and special violence. The first type consists of various violations subjected to human right defenders regardless of their gender, such as killings, torture, assault, destruction of property, criminalization, arbitrary arrest and detention, destruction of source of income, slander, stigmatization, and other types of intimidation.²¹

In the meanwhile, because of their gender, women human right defenders are also subjected to vulnerability and special violence, namely rape, sexual torture, sexual terror, sexual harassment, sexual stigmatization, attack against their role as mothers, wives, and children, degradation of their credibility by marital status or the lack of it, estrangement and rejection based upon morality, religious, cultural, and family honor arguments, diminishment of capacity and women issues, and exploitation against the identity of women.²²

III. National Instrument: How to protect human right defenders in Indonesia and fight against impunity.

Human rights are guaranteed in Indonesia's Constitution.²³ This constitutional guarantee has to be implemented by the inferior laws in order to guarantee the protection of rights. Yet this has not been reflected in both the current Criminal Code as well as the draft Criminal Code which is in the process of deliberation to replace the old one.

²⁰ UNGA, sixty six session, item 66 (B) of the provisional agenda, promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedom, human right defenders, note secretary general, September 5, 2006, paragraph 72.

²¹ "Perempuan Pembela HAM Berjuang dalam Tekanan" Komisi Nasional Anti Kekerasan terhadap Perempuan, 2007 p.12-15..

²² *Ibid*

²³ See The 1945 Constitution , *op.cit* (note 7), Second Amendment, , chapter XA article 28A – 28C.

The Code still contains various stipulations that can be misappropriated by the power holders to suppress freedom. Several circles have expressed doubt that the draft code can provide better protection for human rights. It is justified to draw the conclusion, when one analyses the current draft, that it was not composed with the right context, namely the political transition through democracy, due to many stipulations therein that indicate the desire to control instead of guarantee freedom.²⁴ It can be seen that the draft has not provided full guarantee for especially civil and political rights, amongst other the right to opinion and expression, the right to political belief, and other rights:²⁵ The human right defenders need to apply pressure and scrutinize the criminal code reform process in order to ensure that the end result shall respect and protect human rights.²⁶ In relation to this, it should be mentioned here that several efforts through judicial review mechanism upon several articles of the current Criminal Code have been successful, with the Constitutional Court revoking article 134, 136, bis and article 137 as well as article 154 and article 155 and stated that the draft Criminal Code shall not bear the same stipulation as contained in article 134 and 136 bis as well as 137.²⁷ As already mentioned above, Article 134, 136 a d 137 are on the crime against the dignity of the President and the Vice President, Article 510, 160, 155 verse 1 are on enticement, Article 214, 55 are on obstruction against officials, and Article 154 and 155 are on dissemination of contempt against the government.

²⁴ Kasim, I., "Pembaruan KUHP menuju ke mana? Tinjauan kritis atas RUU KUHP". The paper was presented in the seminar *Pembaruan KUHP: Melindungi Hak Asasi Manusia, Kepentingan Umum dan Kebijakan Negara*, organized by the National Commission of Human Rights in Jakarta, November 24, 2005. See also Prajasto, A. and Aswidah, R., *Hak Kebebasan Berkumpul Secara Damai dan Hak Kebebasan Berserikat*, Human Rights Working Group, unpublished. As already mentioned above, Article 134, 136 and 137 are on the crime against the dignity of the President and the Vice President, Article 510, 160, 155 verse 1 are on enticement, Article 214, 55 are on obstruction against officials, and Article 154 and 155 are on dissemination of contempt against the government.

²⁵ Executive summary, *Kajian Perlindungan Hak Asasi Manusia dalam Rancangan Kitab Undang-Undang Hukum Pidana*, The National Commission of Human Rights, 2006, p.29.

²⁶ Several NGOs have formed the National Alliance for Criminal Code Reform whereas the National Commission of Human Rights has also conducted a study upon the draft Criminal Code. However, it needs to be determined whether the Alliance or the study by the Commission can influence the Criminal Code reform process.

²⁷ *Revisi KUHP Harus Mempertimbangkan Putusan Mahkamah Konstitusi*, <http://hukumonline.com/detail.asp?id=17411&cl=berita>, accessed on September 2, 2007.

Even though the judgment upon law on the Truth and Reconciliation Commission (Law No.27 Year 2004) has disappointed human right defenders, but the existence of the Constitutional Court itself can be seen as an institutional progress because by its presence it is possible to pursue judicial review against laws considered to be against the Constitution including, in the context of this paper, the stipulation relevant to human rights. Therefore, it can be an arena for indirect efforts to ensure the protection of human rights, specifically for the protection of human right defenders.

However, in relation to institution, I shared the sentiment of Ms. Hina Jilani, who has taken that there is a lack of concrete initiatives and institutionalized procedures that have been committed by several institutions for the protection of human right defenders and the pursuance of the accountability of the perpetrators who committed attacks against them. Ms. Hina Jilani mentioned the National Commission Anti Violence Against Women as the only institution that has the program related to women human right defenders.²⁸ Human right defenders ought to pressurized the National Commission of Human Rights by continuously reporting the cases of violations against human right defenders to the Commission and building the public opinion related to the duties of the Commission towards the protection of human right defenders. This needs to be done because until currently, the role of the Commission is almost negligible in regards to this issue, even for the case of Munir whereas the National Commission of Human Rights is an independent institution that attains substantial potential in the effort to promote the protection for human right defenders.

The need for change in the current state power structure as I have mentioned previously, is especially crucial when discussing about the fight against impunity. Martha Meijer, in her study, on the issue of impunity in Indonesia, has stated that there are four factors that caused the persistence of impunity in this country namely power, legal, culture, and international.²⁹ It is my opinion that power and law are actually one factor, namely power. For decades, the law has been merely a tool for the powerful. The structural change of state power into a more democratic one will result in the cessation of law only as the tool for the power holders and becomes the protector of human rights. In

²⁸ Press release, *op.cit* (note 3), paragraph 7.

²⁹ Meijer, M., *The scope of impunity in Indonesia*, unpublished version, p.167-169..

order to do so, it is absolutely crucial to ensure thorough reform in military and judiciary and this has to be done without delay.

IV. International Instrument: How to protect human right defenders in Indonesia and fight against impunity

On December 9, 1998, the United Nation General Assembly has adopted the rights and obligations of individuals, groups, and societal organs to promote and protect internationally acknowledged rights and fundamental freedoms.³⁰ In a speech, the former UN Secretary General, Koffi Annan stated that the declaration is based on the basic premise that when the rights of human right defenders are violated, then all of our rights are endangered and we are all under threat.³¹ This declaration is indeed the first UN instrument that acknowledges the import and legitimacy of the works conducted by human right defenders.³² The declaration confirms the general obligations of the State to protect, promote, and implement all human rights and guarantee that all people within its jurisdiction shall enjoy their rights.³³ This declaration is a basic and “strong” stipulation within the international human right law regime to support and protect human right defenders and their activities to promote and protect human rights.³⁴ We know that the UN General Assembly consequently passed resolution 58/178 on December 22, 2003 which calls upon member states and UN bodies to take actions to support the implementation of the declaration.³⁵

Even though it is not a legally binding document, this declaration determines the rights protected in human rights covenants are to be implemented in situations pertaining to the defense of human rights and the roles of the human right defenders as well as outlines several specific tasks of the State and the obligations of each individual in

³⁰ GAREs. 53/144, December 9, 1998.

³¹ As quoted in the protecting human right defenders, analysis of the newly adopted declaration on human right defenders, the training program for NGOs, July 27-30, 2000, Era consumer, Malaysia, p.1

³² *Ibid*, p.i

³³ See UN fact sheet number 29, human rights defenders: Protecting the rights to defend human rights. Also see “Informasi berkaitan dengan deklarasi pembela HAM” in National Human Rights Institution and Human Right Defenders Training Course, Bangkok, Thailand, 19-23, February 2007.

³⁴ UN GA 66 section, item 66 (B) of the provisional agenda, promotion and protection of human rights: human right questions and alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, human right defenders, note Secretary General *op.cit.*(note 20), paragraph 3.

³⁵ *Ibid*.

relation to human rights.³⁶ This is especially the case for countries like Indonesia that has ratified the international covenant on civil and political rights, since most of the rights stipulated in the declaration are the rights protected under the covenant and Indonesia as a ratifying country has the international obligation to fulfill them. In conjunction to this, in turn, I would like to call upon the judges in Indonesia to have courage in using various stipulations in the covenant in their judgment and to adopt the position that an international instrument, upon its ratification, has become a part of the national law. Whereas to human rights defenders, I would like to implore them to bring various cases of violations against them upon the court. Therefore, if their case is judged by a courageous judge, the judgment shall be a part of jurisprudence available to be adopted by another judge in another similar case.

In year 2000, the UN Commission of Human Rights decided to elect an independent expert with the mandate to monitor and report the situation of human rights defenders all over the world. The independent expert is named special representative to the Secretary General and he or she shall work independently from the State and also not to be considered as the UN staff. The current special representative has conducted her job well. Yet, as widely known, the special representative, just like any other UN mechanism, can be obstructed by the unwillingness of State to cooperate. In the 2007 report, the special representative reported the communication with the government of Indonesia related to several human right violation cases against human right defenders in Indonesia. Yet the government of Indonesia failed to reply any of the letters of inquiry.³⁷ However, the Government of Indonesia received the request of the special representative to conduct country visit to Indonesia.³⁸

The falling willingness of the State to cooperate has created difficulties, because the special representative cannot obtain the required information. Some states do not respond to communication, as in the case of Indonesia, or refused to receive visit, or to receive

³⁶ *Op.cit* (note 33) and *op.cit* (note 30), p.5

³⁷ See A/HRC/4/37/ADD1, March 27, 2007, Human rights Council, implementation of General Assembly 60/251 of March 15, 2006 entitled "Human Rights Council", report of special representative of Secretary General on situation of human right defenders, addendum, summary of cases transmitted to government and replies received, paragraph 323-326.

³⁸ *Ibid.*

visit yet limit the access to certain sites or groups. Although Indonesia received the visit of the special representative, it is my opinion to pressurize the State to issue standing invitation for all thematic special procedure, thus guaranteeing the continuous access for the special representative or other UN body to monitor the human rights situation in Indonesia.³⁹

The shadow of state interest is also evident in the international scope. As it is widely known, the international mechanism is under the shadow of the principle of state's sovereignty. I am fully aware that international mechanism will always be inferior to the principle of non intervention as stipulated in article 2 of The UN Charter.⁴⁰ This is not always favorable for the cost to uphold human rights. This dark shadow will always emerge when we are trying to fight against impunity. Meijer, as already mentioned above, has correctly stated that the international factor is one of those that perpetuate impunity in Indonesia. Impunity will have direct relation with the power holders or former power holders, and therefore it will bear direct correlation with the political interest of state actors, and thus they will always try to put a lid on the issue to prevent it from becoming a major one. The international community will always take shelter behind the principle of state sovereignty from the moral obligation to pressurize power holders to punish perpetrators of human rights violations, even gross violations. This also applies in bilateral relations.⁴¹

Thus, I would like to implore for the maintenance and development of networking between national and international NGOs to guarantee exposure and extensive pressure in relation to human right violation cases especially those related with human right defenders.⁴² In this context, the networks can utilize the arenas and procedures available, may it be in the UN or several regional organizations, or to establish communication with

³⁹ As in July 27, 2007, there have been 56 States listed as having issued standing invitation and Indonesia is not one of them. See the list of standing invitation in <http://www.ohchr.org/english/bodies/chr/invitations.htm>, accessed on September 2, 2007. And also see human right defenders in Dutch Foreign Policy, recommendation by Amnesty International and Hivos, Hivos and Amnesty International, Amsterdam/The Hague, November 2003, p.12

⁴⁰ See UN Charter 1945, article 2.

⁴¹ *Op.cit* (note 29), p.16-17.

⁴² Wiseberg, Laurie S., (1991), "Protecting Human Rights Activist and NGOs: What More Can Be Done?" in *Human Rights Quarterly* 13 (1991) 522 – 544, p.531

a certain country such as The Netherlands, which attains historical relation with Indonesia.⁴³

V. Closing

The protection of human rights in general and of human right defenders in specific will always be entrenched in the state interests. However, it remains to be our obligation to ensure that the state power structure is built upon the real objective why a state is there to begin with, namely to protect the human rights of its people. Indonesia is still in the midst of its transition to a real democracy. Although, there have been major advancements in regards to the civil freedom in the country compared to the pre 1998 period, but democracy is not only about that. A meaningful democracy amongst others requires the rule of law and the subjection of military to civil supremacy. While it may take a longer time to fully realize this, it is the obligation of all human right defenders to remain doing what they can do in the existing situation and condition in order to protect and promote human rights. As President Susilo Bambang Yudhoyono appropriately stated, the resolution of the murder of Munir is the test of the history. Indeed it is true, the case and how it is handled is a barometer to gauge whether Indonesia has truly reformed in terms of eradicating serious crimes that involve misappropriation of state powers. This is a test that shall show to what extent is the willingness and ability of Indonesia to finally sever the chain of impunity. It is my hope, and I am sure it is a hope shared by anyone who are concerned with the promotion and protection of human rights, where ever they are, that Indonesia shall finally pass the test.

⁴³ *Ibid*

BIBLIOGRAPHY

- AE Priyono et.al, *Making Meaningful Democracy: Problems and Options in Indonesia* (Demos, 2007).
- Al Araf et.al., *Perlindungan terhadap Pemberla Hak Asasi Manusia*, Imparsial 2005
- A/HRC/4/37/ADD1, March 27, 2007, Human rights Council, Implementation of General Assembly 60/251 of March 15, 2006 entitled “Human Rights Council”, report of special representative of Secretary General on situation of human right defenders, addendum, summary of cases transmitted to government and replies received
- Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and stated in the UN General Assembly Resolution 60/14. December 16, 2005, <http://www.ohchr.org/english/law/remedy.htm>, accessed on September 2, 2007.
- Donelly, J (2003), *Universal Human Rights in Theory and Practice*, Ithaca and London: Cornell University Press,
- Executive summary, *Kajian Perlindungan Hak Asasi Manusia dalam Rancangan Kitab Undang-Undang Hukum Pidana*, The National Commission of Human Rights, 2006, p.29.
- National Human Rights Institution and Human Right Defenders Training Course, Bangkok, Thailand, 19-23, February 2007.
- GARes. 53/144, December 9, 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
- Human Right Defenders in Dutch Foreign Policy, Recommendation by Amnesty International and Hivos, Hivos and Amnesty International, Amsterdam/The Hague, November 2003
- Kasim, I., “Pembaruan KUHP menuju ke mana? Tinjauan kritis atas RUU KUHP”. The paper was presented in the seminar *Pembaruan KUHP: Melindungi Hak Asasi Manusia, Kepentingan Umum dan Kebijakan Negara*, Organized by the National Commission of Human Rights in Jakarta, November 24, 2005.

“Kembali ke Orba? Tahanan Politik di Bawah Kepemimpinan Megawati” *Human Rights Watch*, <http://hrw.org/indonesian/reports/2003/07/index.htm>, accessed on August 14, 2006

Law of The Republic of Indonesia No. 11 year 2005 on The Ratification of International Covenant on Economic, Social and Cultural Rights

Law of the Republic of Indonesia No. 12 year 2005 on The Ratification of International Covenant on Civil and Political Rights.

List of Standing Invitation in <http://www.ohchr.org/english/bodies/chr/invitations.htm>, accessed on September 2, 2007.

Meijer, M., The scope of impunity in Indonesia, unpublished version

Nowak, M (2003), *Introduction to the International Human Rights Regime*, Martinus Nijhoff Publishers. Leiden/London,

Press Release. UN Special Representative of the Secretary General on the Situation of Human Rights Defender Concludes Visit to Indonesia, June 21, 2007, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/54B4138C66CE4B53BC12572F8005C4AC8?opendocument>, accessed on July 26, 2007

“Perempuan Pembela HAM Berjuang dalam Tekanan” Komisi Nasional Anti Kekerasan terhadap Perempuan, 2007

Prajasto, A. and Aswidah, R., Hak Kebebasan Berkumpul Secara Damai dan Hak Kebebasan Berserikat, Human Rights Working Group, unpublished.

Protecting Human Right Defenders, Analysis of the Newly Adopted Declaration on Human Right Defenders, the training program for NGOs, July 27-30, 2000, Era consumer, Malaysia

Revisi KUHP harus mempertimbangkan putusan Mahkamah Konstitusi, <http://hukumonline.com/detail.asp?id=17411&cl=berita>, accessed on September 2, 2007.

Second amendment, 1945 Constitution, opcit 4, chapter xa article 28A – 28C.

S. K. Zumrotin, *Tantangan-tantangan Penting Pelaksanaan HAM Saat Ini*, unpublished, 2000

The Republic of Indonesia Presidential Decree No. 31 year 2000 on the Establishment of Human Rights Court in the District Court of Central Jakarta, the District Court of Surabaya, the District Court of Medan and The District Court of Makassar.

The Third Amendment of The 1945 Constitution, Article 24C

“The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”
Human Rights Quarterly 20 (3) 1998

Tim Imparsial, *Perlindungan terhadap Human Right Defenders, Hambatan dan Ancaman dalam Peraturan dan Perundang-perundangan, Sebuah studi kebijakan di Indonesia*, Imparsial 2005,

The Legal Suit by Imparsial put forth to the District Court of South Jakarta, February 14, 2007.

UNGA, sixty six session, item 66 (B) of the provisional agenda, promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedom, human right defenders, note secretary general, September 5, 2006,

UN fact sheet number 29, Human Rights Defenders: Protecting the rights to defend human rights.

UN Charter 1945

Vienna Declaration and Action Program, adopted on June 25, 1993 in the World Human Rights Conference

Wiseberg, Laurie S., (1991), “Protecting Human Rights Activist and NGOs: What More Can Be Done?” in *human rights quarterly* 13 (1991) 522 – 544, p.531
