

Martial Law in Aceh After Two Months: The Sufferings of Aceh, The Burden of Indonesians

Introduction

Only two months after the Martial Law was implemented in Aceh there are already 215 casualties from civil side, 42 of TNI/POLRI and 416 of GAM. Violence against women was recorded to amount to 22 cases spread in North Aceh, Aceh Besar, Pidie, East Aceh and Aceh Jeumpa. Violence against women usually took place during arrests by the security. Victims were taken for examination excuses. The provincial Office for Education recorded 507 school buildings were burnt down, comprising 4 kindergartens, 361 elementary school buildings, 60 *Madrasah Ibtidaiyah* (Islamic Primary School), 52 Secondary school (SLTP), 12 *Madrasah Tsanawiyah* (Islamic junior highschool), Senior high school (SMU), 5 *Madrasah Aliyah* (Islamic Senior Highschool) and 1 SKB Building. Entering the second month, there was more school buildings burnt down, amounting to 576. Records on refugees showed that 16,664 IDPs are under shelters in Bireuen, 4,099 in East Aceh, 10,000 in South Aceh, 4,000 in West Aceh, 2,000 in Aceh Tamiang, 1,000 in Pidie. Facts on civil casualties and other impacts of martial law on humanity were obviously reflected on government's official data.

Those are brief notes on the two-month implementation of martial law in Aceh. It has been press' major focus recently. Printed and electronic media present special page for various reports on martial law, including the statements made by both army and civil high-rank officials who hold authority in the region and in Jakarta. The reports often placed as the headline news or editorial, focusing on troop movements, military heavy-duties used, maneuvers made, number of casualties both from the army and adversary, arrests and those who surrendered. All of this coverage undeniably reflects nothing but a war in Aceh.¹

It is indeed a war as we may judge it through the heavy duties, number of troop and how they were deployed. Military officials planned to deploy 50,000 personnel supported with 13 Scorpion tank, 23 amphibious tank, 12 regular ones, 2 jet fighter F-16, 4 jet fighter Hawk-200s, 6 Hercules launcher, 5 Twinpack Choppers, 1 Superpuma chopper, 6 light bombers OV-10 Bronco.² These include the confirmation made by the Army Chief of Information Center Sjafrie Syamsuddin stating that combat operation is the core in recovering Aceh security, supported with territorial, intelligent, and police.³ The war is targeted at banishing GAM that is estimated to have 5000 members armed with 2,000 weapons.

The total cost of war amount to Rp. 1.7 quintillion, of which 1.2 quintillion was allocated for the army and 500 billion for the police. This huge money was to fund the six-month mobilization and logistics of security personnel, war ammunition, mobilization of weapons and armaments and operational cost in the field such as Inspection of Commander, Chief Army, Chief Police and intelligence operation. The funding was taken from state devisa for emergency programs including natural disaster, social conflict and possible additional fund taken from oil fund.

¹ Although the government refers to it as an integrated operation that comprises of security recovery operation, humanity, law enforcement and recovering stability of civil authority, what appears in the site is the execution of Presidential Decree (Keppres) No. 28/2003 representing a declaration of war and is pursuant to the president's authority based on article 12 of the 1945 Constitution, which was used as the clause on consideration in the decree.

² Jakarta Post, 22 May 2003.

³ Serambi, 20 May 2003.

Tabel 1
Regional Budget (APBD) of NAD

| No | Spending Posts | Amount |
|------|--|------------------------|
| I | REGIONAL APPRATUSSES | Rp. 334.935.357.973,- |
| 1.1. | General Administration (5 sectors) | Rp. 221.351.505.197,- |
| 1.2. | Operation and Maintenance Spending | Rp. 69.913.884.916,- |
| 1.3. | Capital Spending | Rp. 43.669.967.860,- |
| II | PUBLIC SERVICE | Rp. 837.307.155.000,- |
| 2.1. | General Administration; civil servants, goods, services, office travels, maintenance and stimuli | Rp. 56.247.088.020,- |
| 2.2. | Operation and Maintenance Spending; civil servants, goods and services, office travel, maintenance and stimuli | Rp. 378.967.483.760,- |
| 2.3. | Capital Spending | Rp. 402.092.583.220,- |
| III. | Unspent budget, 2002 | Rp. 103.043.481.870,- |
| IV. | REVENUE SHARING AND FINANCIAL ASSISTANCE SPENDING | Rp. 332.405.892.000,- |
| V. | UNEXPECTED SPENDING | Rp. 4.866.976.944,- |
| | TOTAL | Rp.1.612.558.863.787,- |

Source: RAPBD NAD 2003 (compiled by JARI Indonesia and SAMAK Aceh)

This costly war was declared through a decree enacted by President Megawati No. 28/2003 which states Emergency Situation with Martial Law Degree throughout Nanggroe Aceh Darussalam. Based on this decree, all state regional administration in Aceh was to be executed in military manners. Civil authority and all law enforcement in Aceh are subject to the authority hold by the martial law regional authority (PDMD). This has been obviously envisaged in the decree that stipulates Governors, Chief of regional Police and Head of Higher Court act as assistants to the Martial Law Regional Authority. The military as the extension of central hands takes full control in Aceh to run regional administration and put law enforcement institution to function.⁴

This paper is a review of how the martial law is implemented as seen from the perspectives of human rights and humanitarian laws, to present a number of deviance as the negative impacts of the Aceh war by analyzing the problems incurred, and to suggest some recommendations.

The Importance of Human Rights Protection

In any situation, including a situation under martial law, there is an exception concerning deprivation of delay of human rights fulfillment. This includes the right to life, the right to be free from torture; the right to be free from non-retroactive prosecution, the right as a subject to law, the right to think, belief and faith, and the right to be free from arrest due to failure to fulfill agreement (debt). All of these rights were on the 1945 Constitutions, Article 28 i that says “...*the right to life, the right not to be tortured, the right to freedom of ideas and consciences, the right to faith and the right to acknowledgement and the right as individual before the law are non-deprivable under any circumstances*”.

These are *non-derogable rights* that are not deprivable even under martial law in Aceh. Any deprivation or violation is against international constitution and legal norms.

The Indonesian government must be able to prevent attack on civilians by acknowledging the provisions under law No.26/2000 on human rights court. Any attack on civilians either upon

⁴ See statement of the Minister of Justice and Human Rights Yusril Ihza Mahendra, *Koran Tempo*, 19 May 2003.

command or failure to act can be categorized as crime against humanity and the perpetrator must be examined before the Human Rights Court. It may include an individual who effectively acts as a military or civil command. In Aceh context at present, the Martial Law regional Authority is responsible for any gross violation against human rights committed by the troop under his command.

The Importance of the International Humanitarian Law

The most important principle of the international humanitarian law is the *distinction principle* i.e. the tenet to distinguish populace of a given arm conflict area into two categories namely the *combatant* and the *non combatant* (civilian). The imposition of martial law in Aceh with the emphasize on combat operation has created arm disputes in Indonesian territory that involves two poles : Indonesian army and Aceh Movement for Freedom (GAM).

From the humanitarian law perspective, the imposition of martial law in Aceh and the deployment of Military Operation in the province accomplish the conditions of *non-international armed conflict*. In such situation, *common article 3* of the Geneva Convention 1949 concerning minimum situation of a non-international arm conflict should be implemented, including the principle of protection to those involve in the combat. As such, the combatants are given protection and a status of war hostage, and there is a ruling-out of attack on civilians.

The enactment of Law No 59/1958 presents Indonesia's adoption of the four Geneva Conventions 1949⁵ to which it is a state party. Accordingly, Indonesia and all its apparatuses are duty bound to execute the provisions under Article 3 of the Geneva Conventions 1949 in dealing with arm conflict in Aceh⁶. The substance in this article is complemented by other articles adopted from the Geneva Convention IV concerning Protection to Civilian under War Circumstances⁷.

Civil protection according to this convention is prioritized for all individuals (both combatant and non-combatant) who are injured and sick, civilians who are not part of the conflict and have no involvement with military-related activity during their residence within the territory of the conflict area (*Article 15*); more specifically women who are pregnant, breastfeeding and taking care of babies, children and the elderly (*Article 16*). The martial law regional authority should comply with the Geneva Convention when treating a war hostage. Combatants who turn themselves in or are physically paralyzed shall be treated as war hostages who should be free from torture and murder⁸.

Protection to IDPs

The martial law regional authority (PDMD) must protect and give proper treatment to civilians who are on refuge due to the arm conflict in their homes of origin or taking refuge out of fear. The government is obliged to provide at least facilities and infrastructure in the shelters, which shall

⁵ When ratifying the Geneva Convention in 1958 and adopted it through Law No.59/1958, Indonesia made no reservation on all the provisions. It can be said that Indonesia is fully bound to the Convention. For further information on this, see Prof. Dr. Mochtar Kusumaatmadja, *Konvensi-konvensi Palang Merah th. 1949*, Binacipta, Bandung, 1986 (fourth edition) p. 7.

⁶ "In a non-international arm conflict that took place in the territory of one of the state parties to the convention, the state party is obliged to exercise the following provisions: 1) People who are not part of the conflict, including members of arm forces who are no longer active due to sickness, injuries, etc should in any circumstances be treated humanely, without any discrimination against skin color, ethnicity, faith, gender, prosperity or any other similar criteria. 2) For this purpose, the following acts are prohibited and will remain outlawed under any circumstances; a) violence against physics and psyche, particularly any kind of killing, detention, maltreatment and mean treatment; b) hostage taking; c) rape against personal deference, particularly degrading and humiliating conduct; d) sentencing or taking a death sentence without a verdict made by a court which was established fairly to provide all court assurance of a civilized nation."

⁷ Articles 27-34 of the Geneva Convention 1949 concerning the Protection to Civilians during War: physical and mental coercion to gather information (Article 31), conduct that causes physical affliction (Article 32), giving collective punishment (Article 33), committing terrors, intimidation and robbery (Article 33), committing reprisal (Article 33), taking hostage (Article 34), committing acts that cause physical affliction or hostile against those protected (Article 32).

⁸ Articles 13, 14, 15, 16 of the Geneva Convention 1949 concerning Treatment to War Hostages.

include health care, medicines, food, proper shelter particularly for children and the elderly and arrange local hospitals for health care and 'safe haven'⁹.

According to humanitarian law, the arm conflict in Aceh cannot be categorized as a "war" Organically and objectively, however, war situation did occur. The task of the government and the martial law authority in particular is to secure individual basic rights and give essential legal protection where laws can be the railing that prevents arbitrary acts by either military or civil authority. Therefore, basic rights and assurance should be maintained under any circumstances including emergency or arm conflict in order to protect all elements of the society¹⁰.

In brief, protection to civilian who are not part of the dispute (*non-combatant*) and those who were but had turned themselves in (*hors de combat*) is important to achieve a condition of war that pay respect to the dignity of humanity. Humanitarian law is part of a norm to protect human rights in an arm conflict area. With respect to the rights of the war hostages and civilians in the conflict area, article 3 of the Convention also stipulates that the situation mentioned before does not change the legal status of the parties in internal conflict. It implies that by imposing the provision of the Geneva Convention, article 3 in particular, does not mean acknowledgement to GAM or give it an international status.¹¹

In order to monitor respect to the above rights, an independent institution like Komnas HAM is needed to supervise the execution of martial law. The supervision should comply with Law No 39/1999 Article 89 (3) and any investigation made should comply with Law No UU 26/2000.¹² Hence, the legal norms of human rights in written underlines the importance of protection to civilian during war or emergency, including the arrangement of rights that should be protected and prosecution to the perpetrators and the relevant instances and procedures.

Problems and Tendencies in Aceh

The military's control over civil authority reflects its significant power in national political area of interest. Jakarta should have been able to develop a clear set of *rules of engagement*.. This shall begin from determining the objective, orders and restraints that serve as the rules guiding the whole chains of military command in Aceh. In other word, the clear rule of the dos and the don'ts under a given martial law is poorly provided for in the Presidential Decree No.28/2003. In fact, the decision on military operation in the system of democratic country is resulted from the negotiation made between the political authorities with the arm force, which is then transpired into *rules of engagement*.

Another loophole is that the decree does not oblige the martial law regional authority to comply with a given legal product that is supposed to be the rule of the ground. It can be said that the decree neglects other rules such as the Law on State Defense, Law on Human Rights Court, and Law No.58/1959 on the ratification of the four Geneva Conventions 1949. This loophole concerning political authority

⁹ Articles 18 and 19 of the Geneva Convention on the Protection to Civilians Under War Circumstances.

¹⁰ State Emergency and Humanitarian Law, article 75 of the Additional Protocol I of 1977. Additionally, Protocol II, additional provision of 1977 should also apply to Aceh situation. As stipulated under article 1, paragraph 1 of this protocol, the subjects of law are (1) The Armed Forces of the State Party; and (2)The *dissident armed forces*; or other organized armed forces under a liable command, which take control of an area that enable sustainable and massive military operation. Therefore, Protocol II of 1977 should also be considered by the regional martial law authority, even though Indonesia has not ratified it. It is notable, however, that this protocol has been ratified by 155 states (some 80% of the world community), hence is categorized as an international customary law. Based on this, Indonesia as part of the international community should apply protocol II for a better protection to the non-combatant civilians.

¹¹ Furthermore, see Kusumaatmadja, ibid. and Arlina Permanasari, et.al., *Pengantar Hukum Humaniter* (Introduction to Humanitarian Law), ICRC, Jakarta, 1999.

¹² Only Komnas HAM has the authority to investigate gross violation against human rights. In order to exercise the authority, Komna HAM may establish an ad hoc team comprising of its members plus members of society. This ad hoc monitoring team chaired by MM Billah currently is executing the duties stipulated in the Law.

results in the military itself determining the duration of the operation, number of troops, types of weapons and budget.¹³

The role of political authority in imposing martial law in Aceh finally goes as far as the parliament's perusal to the imposition of martial law. Other than that, there is no further political authority but military's control. The huge number of casualties among civilians since the military operation was imposed presents poor *rules of engagement* concerning the objectives of war, the dos and the don'ts based on the approval of the higher authority.

Absence of *rules of engagement* makes it difficult for us to understand if the military operation deployed in Aceh was indeed a political agreement towards peace building. One thing for sure is that the operation seems to be made as the sole "peace" resolution for Aceh as seen from the limitation set for civil actors in creating spaces for dialogue. The military seems to be the sole way out of the complicated problem.

Respect to norms of human rights and humanitarian law as described above should be reflected on the imposition of martial law in Aceh. In about one month or so after the imposition of the martial law, those norms have been violated by both parties. Such tendencies were recorded by mass media at large.

Before the enactment of the Presidential Decree No.28/2003, President Megawati has enacted Instruction No.7/2002. Instruction No.7/2002 verifies Aceh problems to consist of two main issues namely separatist movement and social dissatisfaction. The Presidential Instruction also shows government's awareness of local dissatisfaction concerning various issues on one hand and separatist movement on the other. It can be said that both main issues completing each other.

However, when we see the content of the Presidential Instruction, the martial law is an issue to be settled based on local issue, i.e. to break separatist movement by means of military approach in a non-extendable period of 6 months. Hence, it is understandable if many people concluded the decree No.28/2003 more to be President's permission to settlement of Aceh already complex problems after the Military Zone imposition in military manners. Therefore, it is of no surprising that the measures used in evaluating success of resolution efforts during Military Zone imposition were military measures.

Verification concerning military resolution was declared by the Army Commander Endiartono Sutarto by corroborating that the army's duties in Aceh are to banish GAM. The task was further confirmed by Army Chief (KASAD) Ryamizard Ryacudu through his statement that the army's task is merely maintaining the unity and decorum of the United Nation of the Republic of Indonesia. The Army Chief further more stated that "issues on dislike, starvation, and education are not the army to take care of."¹⁴ Based on the two statements, we can conclude that the Indonesian army (TNI) is not the institution to solve Aceh problems. It might be other instances. In Aceh war nowadays, the role of that other instance is invisible and therefore caused inclination of the war.

The first inclination is making most people of Aceh as suspects. The governor of the National Defense Institution Ermaya Suradinata stated that some 40% or local populations are supporters to GAM.¹⁵ Statements made by the army high-rank officials declared that GAM had 5,000 members – spread in a

¹³ The budget, according to the Parliament, need not to be accounted for.

¹⁴ See *Kompas* daily, 20 May 2003 and *Sinar Harapan* daily, 23 May 2003 regarding the statement made by the Army Commander and Chief Army.

¹⁵ See *Media Indonesia*, 20 May 2003. It should be remembered that The National Defense Institution (LEMHANAS) is the government's think tank that has tremendous impacts on the policies taken by military and defense instances.

number of regencies -- at the time the martial law was imposed. Bearing this in mind, the governor of LEMHANAS obviously overestimated. This implies a construction of policy that interprets local hostile as more than just GAM-related and hence, military operation is not merely targeted to those who raise guns but also to any one who are suspected to have any connection to the separatist movement.¹⁶

Evidently there is an effort made to manipulate the past, i.e. the brutal Military Zone imposition that has never been accounted for nor put to trial. Local empathy to GAM during the last two years was deemed to have risen from other reason but the army's brutality under DOM (Military Operation Zone). Apart from all justice and social issues brought in by militaristic-corrupt reign of the New Order, GAM is admitted as if new to the state.¹⁷

The martial law regional authority strengthened local hostile by obliging local population to have 'Merah Putih' ID cards. At the same time, provincial civil authority agreed upon Jakarta's imposition of special research on civil servants throughout Aceh.¹⁸ A lot of local residents complained about the procedures they have to do through in getting the Merah Putih ID card since it requires the perusal of District Military Command, District Chief Police and District head. This ID card has been interpreted as an official re-registration as Indonesian citizen. Those who have no Merah Putih card will be considered non-Indonesian citizens or GAM and therefore must be arrested and due to vanish.

The special inquiry on civil servants in Aceh was conducted by the Ministry of Domestic Affairs along with the national registration. According to the Directorate General of General Administration of the Ministry Progo Nurdjaman, the inquiry was aimed to measure degree of involvement in and partiality to the freedom movement. According to Progo, partiality will be classified into two categories: direct (as active members or management) or indirect (supporting GAM actions or participants to their efforts).¹⁹ During these inquiries, all civil servants were asked to fill in questionnaires prepared by a joint team comprising of elements from the Ministry of Domestic Affairs, BKN, Martial Law Regional Authority and the Governor of NAD. The inquiries range from province to village levels and was applied on both local executive and legislative.²⁰ It is funny that the chairman of the Aceh Desk, Commission I in the parliament supported this policy.

Local civil and police officials of other provinces then tried to adopt similar but modified policy by examining Acehnese transmigrants in their regions (eg Java and Sumatra). Police in other provinces search people's ID due to suspicion against Acehnese. The governor of Jakarta stepped up further with put the Acehnese under surveillance by registering their whereabouts while asking others to keep an eye on everyone who comes from Aceh. The same practices also take place in Bandung – West Java and Malang – East Java. Chairperson of Muhammadiyah - Aceh Iman Sudja hoped that martial law will cause no trauma on the Acehnese as it happened during the imposition of DOM.²¹

¹⁶ The arrest and examination of a number of NGO activists present this construction. Local police suspected Imam Sudja of being connected to GAM.

¹⁷ See Otto Syamsudin Ishak, *Dari Maaf ke Panik Aceh*, Yappika, Jakarta, 2000 on the sociological sketches of GAM relation to local people and the raising empathy to GAM among the young people in the region. Their adherence to GAM owes to government's failure in handling local social-political problems and call for justice for victims of DOM (see the report made by the Independent Commission for Violence Investigation in Aceh, 1999). This commission was established based on Presidential Decree No.88/1999. Until recently, the government never officially pay any attention to the Commission's report.

¹⁸ After the inquiries to civil servants in Aceh were argued by many, the government made excuse by declaring it a routine in order to ensure all civil servants in the country.

¹⁹ Compare with the treatment given to communist suspects in the past.

²⁰ *Kompas* daily, 17 June 2003.

²¹ *Serambi*, 20 May 2003.

Meanwhile, GAM also seized IDs and intimidated civilians in their efforts to get rid of TNI and Police's quest.²² Under such situation, civilians in Aceh are the non-combatants trapped between the two conflicting parties, while protection is the least to find. Bachtiar from Bireun, representing local people said "We are ensnared in a dilemma. At nights GAM comes and intimidates us under guns not to obey TNI rules. A single smile to TNI members can mean no sunshine the day after (=death), but if we obey GAM, we will surely suffer also." About local fear, Bireun police chief Police Commander Laksawidiana briefly commented "It is all the risk; they have to take side with NKRI or GAM." It is evident that the security apparatuses provide no protection to local people. The above statement can also be interpreted as threat to them.²³

Lack of protection makes civilians easy targets of both parties. TNI can anytime accuse them as members of GAM,²⁴ while the latter abduction or kills civilians out of suspicion for their being spies of TNI or non-cooperating.

The second tendency i.e. vast number of victims among civilians resulted from this situation. Until today there is no fix number of victims but for sure, number of civil casualties is quite high. There seems to be an effort to conceal the actual statistics. In fact, way before martial law was imposed in Aceh, a lot of parties had reminded the government to avoid casualties for it may cause negative precedents to humanity and revive local trauma of DOM. It will ruin the legitimacy of martial law itself and local trust to Jakarta, particularly TNI.²⁵

Table 2
Number of Victims among TNI, GAM and Civilians

| Category | Casualty | Total |
|----------|-----------|-------|
| Death | TNI/Polri | 42 |
| | GAM | 416 |
| | Civilians | 215 |
| Injured | TNI/Polri | 99 |
| | GAM | ? |
| | Civilians | 115 |

Adopted from government official data per 19 July 2003

The table above shows that the current war has no difference in quality, tactics and maneuvers from the past Military Operation Zone (DOM). Moreover, the indicator of success set for this war is the number of GAM members that were arrested and murdered. Regarding the high number of victims from civilian side, ironically, TNI commander made excuse in his statement, "the bodies recovered by local residents cannot be identified as GAM. It could be recorded by local institution as civilian."²⁶

The high number of civil victims correlates with the third tendency, i.e. making civil/public facilities targets of attacks. This includes school buildings, health care, and civil administration offices, public transportation and basic commodities. Smoldering took place since the first day of the implementation of martial law, where over 80 school buildings were burnt down. It continued in some regency, totaling to 500s, most of them located in Bireun regency, North Aceh, East Aceh and Pidie. These four regencies are the focal point of war. In addition, 38 public transportation, trucks and houses were also burnt down. Regional martial law authority officially declared GAM to be responsible for these.

²² Reference: *Suara Pembaruan* daily, 24 May 2003.

²³ *Suara Pembaruan* daily, *ibid*.

²⁴ Reference: the report prepared by the Independent Team of Aceh, *ibid*.

²⁵ Similar opinion stated by the Chairman of Central Board Management (PP) Muhammadiyah, Prof. Dr. Syafi'i Ma'arif, see *Sinar Harapan* daily, 22 May 2003.

²⁶ Reference: *Suara Pembaruan* daily, 20 June 2003.

However, the wide-spread and duration of the repetitive burnings has been in question, considering the number of security personnel deployed is 30,000.

The Army Chief stated that from 30,000 personnel deployed in Aceh, ¾ assigned to protect and maintain Vital Object, public facility and the people. Only ¼ assigned to chased GAM armed members. Considering the extensive burning, TNI method of protecting public facility that should not be target of attacks is in question. The smoldering had raised panic and negative impacts on the people in the region at large, particularly in high arm-contacts/GAM concentration areas. Earlier after the imposition of martial law, the Chief of Army Information Center May. Gen. Sjafrie Syamsuddin declared that the martial law status would not affect local daily routine.²⁷ It can be said that poor supervision and protection had resulted in damages of public facilities by TNI,²⁸ and GAM's run amok to cause public chaos and fear.

Table 3
Statistics on Shools and Houses set on fire²⁹

| Category | Total |
|---------------------------------|-------|
| Kindergarten | 4 |
| Elementary school | 361 |
| Islamic elementary school (MI) | 60 |
| Junior Highschool (SLTP) | 52 |
| MTS (Islamic junior highschool) | 12 |
| Senior highschool (SMU) | 12 |
| MA (Islamic senior highschool) | 5 |
| SKB building | 1 |

The unavoidably fourth tendency is huge number of refugees and local residents trapped within the operation zone, due to insecurity in villages. *Kompas'* polling conducted in seven towns in Aceh revealed 82% of the respondents feared of becoming victims of the intended war. Such anxiety is understandable considering the large number of victims among civilians who lived in the armed conflict areas after failure to survive due to lack of transportation facility and lack of basic commodities.³⁰ Refuge was also triggered by other problems such difficulties to till the land or take care of the cattle. Number of IDPs after the imposition of martial law increased to over 50,000 spread in different regions. Some 24% of the total comprises infants, babies, children, pregnant women and the elderly.³¹

The government had actually anticipated IDPs as seen from the huge fund concentration and instances that were mobilized in dealing with it. The Coordinating Minister for Social Welfare Yusuf Kalla in different occasions said that the government had allocated Rp. 400 billion for schools renovation, rice for people, IDPs living costs, shelters and medications. The Minister of Health Ahmad Sujudi explained that medical aid has been deployed to Aceh, comprising 750 doctors and 2,500 nurses (in addition to the 500 doctors and 2500 nurses already in teh region) to assist with IDPs health care. The Ministry of Health has deployed medical support of Rp.28 billion and made several hospitals in Bireuen, North and South Aceh, East Aceh, Aceh Besar and Pidie as health care posts.³² Meanwhile, Head of Distribution of regional logistics office (Dolog) declared to have distributed 651 tons of rice,

²⁷ *Serambi*, 20 May 2003.

²⁸ Army Commander admitted this loophole as TNI weakness. See *Serambi*, 21 May 2003.

²⁹ Statistics obtained by Regional Education Office of NAD as of 28 June 2003. As the result of the smoldering, 40 thousands school children lost their education facilities. In the second month, the number increased totaling to 576 school buildings.

³⁰ See *Kompas* polling, 26 May 2003.

³¹ *Kompas* daily, 28 May 2003.

³² *Media Indonesia*, 28 May 2003.

500 of which was from the Ministry of Social Welfare.³³ *Tempo* magazine once indicated that a bigger amount of Rp 500 billion for IDPs has been allocated and taken from the Rp.1.7 trillion that had been approved by the Parliament for martial law imposition in Aceh.³⁴

If we pay closer attention to these issues, obviously the government paid more attention to the IDPs coming from villages upon military order or Pemda (Local authority), while those seeking refuge in smaller groups to other villages are less cared.³⁵ One of the IDPs named Sarifuddin who is a teacher of MIN Bantayan, Bireuen explained that they have not received the medical supply and logistics support from the government. Local chief district Ridwan Ismail justified his explanation.

Those who were trapped in the arm contact areas got the least attention from the government due to lack of transportation and communication facilities. This makes all government efforts an irony.

Table 4
Statistics of IDPs and Their Situation in some regencies³⁶

| Regency | Total |
|--------------|--------|
| Bireuen | 16,664 |
| North Aceh | 4,099 |
| South Aceh | 10,000 |
| West Aceh | 4,000 |
| Aceh Tamiang | 2,000 |
| Pidie | 1,100 |

It seems that humanity operation in Aceh is aimed at addressing impacts of war alone. Consequently, various humanity problems that present the roots to social dissatisfaction hardly got attention.

The last tendency is abuse of power as reflected in the military's acts such as exhuming several locations alleged to be mass graves. This was a reaction to Komnas HAM media release that declared the existence of several mass graves in Aceh³⁷. The exhumation continues. On Monday noon, 7 July 2003, security force with a number of local people and medical assistance exhumed a mass grave in Bener Kelipah village, Bandar District, Cenrtal Aceh. Two weeks before (Senin, 23/6), TNI personnel and local people exhumed two locations in Central Aceh, and recovered 20 bodies.

Since the beginning, these acts were protested by various elements for lack of legal procedures including the involvement of experts. These were neglected. In Lumajang, Chief of Army Center of Information declared that the exhumation is the army's right and therefore need no approval from other institution such as Komnas HAM³⁸.

This is an act of spoiling evidences of crimes and effort against legal process for justice. Law No 23/1959 and presidential Decree No. 28/2003 gives no authority to the martial law authority to exhume mass graves. According to KUHAP and Law No.2/2002 re. Indonesian Police, police investigators or authorized civil officials determined by the law can do the task³⁹. Yet, the forensic identification must be done by an expert officially requested by the investigators⁴⁰. Law on Indonesian

³³ *Serambi*, 28 May 2003.

³⁴ *Tempo*, No.13/XXXII/26 May - 1 June 2003, Rp.1.2 quintillion was allocated for TNI six-month operation. The figure exceeded Aceh regional budget per year.

³⁵ See explanations of some IDPs under shelter in Pandrah district, Bireuen regency posted in *Republika* daily, 28 May 2003.

³⁶ *Kompas* daily, Friday, 20 June 2003, 22:59 WIB (local time).

³⁷ *Suara Pembaruan* daily, 18 June.

³⁸ *Waspada*, 29 June 2003.

³⁹ See article 6 of the Law of Criminal Procedure (KUHAP), Article 14 letter h of Law No.2/2002.

⁴⁰ See Article 133 of the Law of Criminal Procedure (KUHAP).

Police has to be made the base considering the Presidential Decree No.28/2003. When gross violations against human rights are found, pursuant to Law No 26/2000 re Human Rights Court, the authorized institution to address the issue is the Attorney General Office to investigate following initial investigation by Komnas HAM. Secondly, there should be rules of evidence applied to the preliminary investigation, exhumations of mass grave, laboratory works, and referral to the court to the reburial of bodies. These frameworks present an important factor to judge the credibility of evidence of crimes. Thirdly, exhumation should involve local residents, victims' families, eye witnesses and special witness such as archeologist, anthropologist, pathologist, deontologist, genetics and ballistics⁴¹. These experts will judge the age, gender and how the bodies were murdered. Information from a number of parties will determine objectivity of a collecting procedure and value of the evidence. The exhumation itself should respect the rights of victims and their families that should be notified on the exhumation.

Conclusion and Recommendation

From the above tendencies above, we can conclude that negligence of the above mentioned obligations had taken place and therefore we can say that the military operation and other operations that followed it were implemented incompetently and without proper preparation in term of social-economic impacts on civilians. These have been reflected in poor protection to public facilities, health care, schools and transportation, including burnings of villages. There is no effort made to help local residents in the focal areas of armed conflict. Civilians are without protection, causing high rate of death toll. Those on refuge have no proper facilities (food and health care). All of these had tremendous impact on social, cultural and economics well being of the local people.

Other than that, the government and the implementing institutions of the military operation under martial law should not merely be interpreted based on the authority of both central and regional martial law authority as stipulated under Law No. No.23/Prp/1959. The authority also has legal dues that should be taken into account in a military operation. Specifically, the dues are stipulated under Law No.59/1958 re ratification of the Geneva Conventions 1949.

These conventions provide for treatment for civilians, injured persons and war hostages. In addition, Indonesia's 1945 Constitutions oblige everyone including the military to, under any circumstances, protect the right to live of every resident, ban torture, punishment and other mean, inhuman and degrading treatments. Further explanations on constitutional obligations are stipulated under Law No No.39/1999 re. Human rights and Law No. 26/2000 re. Human Rights Court.

Both laws provide for mechanism and procedure of addressing human rights issues by state-assigned institutions. Therefore, in executing the operations should respect the procedure maintained by human rights institution such as Komnas HAM. Another thing that the officials in Aceh and Jakarta should respect is the stipulation that obliges all commands in the military and the government to prevent crimes against humanity from taking place in Aceh. Should they occur, TNI officials are bound to respect legal measures taken by Komnas HAM as the investigating body to gather evidences and other information, witnesses and the alleged perpetrators for legal processing.

Integrating authority with obligations based on the Law can prevent allowance, conspiracy or ill-will against civilians in regions under military operations. Obligations can prevent crimes or negligence or protection to guilty peers. All, particularly the TNI and GAM, should always bear the obligations set by the law in mind, in order to prevent repetition of crimes against humanity in the past (during DOM) in 1989-1998, and to prevent further military operations.

⁴¹ Experts usually use techniques and methods of this field to find out causes of death and identify victims of human rights violations.

Once again, we can clearly observe fundamental loopholes concerning the imposition of martial law in Aceh, such as absence of *rules of engagement* regarding political decision making process on military operation that unable effective control on the implementation; lack of determined directives concerning mechanism and procedure of protecting human rights that had caused failure in sustaining number of civil casualties lowest and various human rights violations. In addition, poor coordination in problem resolution resulted in huge number of IDPs. Some local residents had to leave their homes or struggle for survival without protection or back-up. Finally, transparency and public accountability concerning the use and management of state budget allocation for the whole operations seems to be in question.

Considering the above serious emerging issues, we can hardly say that the military operation has been successful. Therefore, we deem necessary to bring up the following recommendations:

1. To urge the implementation of comprehensive evaluation on the imposition of martial law in Nanggroe Aceh Darussalam. It is important in order to measure the efficiency of the operations for the recovery of, security, humanity, law enforcement and civil administration stability based on the principles of humanitarian law and human rights, and the financial accountability of the four operations.
2. To demand the central and regional martial law authority to give necessary protection to humanity workers/activists, journalists, and human rights defenders, to open access to information, secured protection to distribution of humanitarian aid and take action upon every violation and abuses of power during the imposition of martial law.
3. To urge the Freedom Movement (GAM) to obey the Geneva Conventions 1949 regarding minimum requirements under non-international armed conflict situation, with a highlight on non-combatants civil society.
4. To urge the judiciary institutions such as the police, courts and attorney office to execute their functions in law enforcement on any violence and human rights violation in Aceh, based on the prevailing law and regulations.
5. To urge Komnas HAM and the Attorney General Office to take pro-active stand in dealing with any allegation of gross violation against human rights in Aceh and to further bring the case before the court.
6. Without necessary good will to develop a control mechanism on the martial law in Aceh, to maintain law enforcement and humanity functions and to comply with both national and international rules of law the current military operation should be put to end to avoid more casualties.

Jakarta, July 2003

Institutions:

CETRO, DEMOS, ELSAM, JARI, Kalyanamitra, KONTRAS, IDE, IMPARSIAL, INFID, PBHI, PRAXIS, SAMAK, WALHI, WORKING GROUP ON ACEH, YAPPIKA, YLBHI.