

HUMAN RIGHTS DEFENDER AND HUMANITARIAN WORKER IN ACEH UNDER THE MARTIAL LAW

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I. Introduction

The imposition of martial law in Aceh effective on 19 May 2003 has brought in significant impacts on the activities of human rights defenders and humanitarian workers both in and off Aceh, particularly in Jakarta. Terrors, threats, intimidation, arbitrary labeling and stigmatization addressed to – and particularly to – human rights defenders, their attitudes, activities, and works for advocacy, protection and campaign of human rights.

This briefing paper is attempted to generally view the condition of human rights defenders working in and outside Aceh in relation to the government's policies concerning the imposition of martial law in the province. It also aims at analyzing the government patterns of pressuring human rights advocacy, protection and campaign works in Aceh. The passing out of Presidential Decrees (Keppres) Nos. 28/ 2003 re the Imposition of Martial Law status in the Aceh province, and 43/2003 re. Provision on the activities of Foreign Citizens', NGOs and Journalists organizations in Aceh present institutional limitation and control to humanitarian works, humanitarian aid and human rights advocacy at regional, national and international levels. The general aim of the decree No. 43 is to control humanitarian activities, humanita-rian aid and journalism, since permits should be obtained from a number of state ministries and departments (Ministry of Foreign Affairs, Ministry of Justice and Human Rights, Coordinating Ministry of Politics and Security, and National and Regional Martial Law Authorities. Permits for coverage and distribution of security is fully controlled by Jakarta.

In general, this briefing paper consists of four sections. The first section covers construction of stigmatization and labeling to human rights workers/defenders in doing advocacy on human rights violations in Aceh in particular, the military operation and the imposition of martial law in the province in general. The second section covers and describes threats and hurdles faced by human rights defenders under martial law imposition. The third section, analyzes human rights defenders' capacity and the provisions that protect them under the situation. The last section presents the concluding analysis of the whole clarification in the previous sections.

II. Threats and Challenges Faced by Human Rights Defenders Under Martial Law in Aceh: Stigmatization, Criminalization, Arbitrary Arrests and Detention

Stigmatization and labeling often set off in criminalization against individuals, institutions and entities working on human rights and humanitarian aid under martial law situation in Aceh. These have been continuously addressed to those entities in and outside Aceh (Jakarta), and at international level. The most recent stigmatization and labeling are linked to the Free Aceh Movement (GAM) – directly and indirectly – and alleged tendency of being anti nationalist. In general, this model of labeling is an old practice in Indonesian politics and social affairs and the patterns are those used to be applied by the New Order reign.

The labeling practice includes criminaliza-tion against human rights advocacy works on human rights violation in Aceh, assuming it directly correlated to separa-tism (GAM). Such

practice always follows any political activity that is alleged to be agitating government's sovereignty by resisting martial law. A number of subver-sive cases present good examples of the New Order's mischief that is currently re-flected in Aceh's martial law. For instan-ce, the Regional Martial Law Authority declared SIRA (Aceh Information Center), SMUR (Students Solidarity for the People and Kontras ACEH (Commission for the Disappearances and Victims of Violence) GAM links.

Before the martial law was imposed, a number of human rights defenders and activists were killed, disappeared or arbitrarily arrested/detained. The body of Jaffar Siddiq Hamzah, chairperson of the *International Forum for Aceh* (IFA), was recovered on 3 September 2000 in Medan; Musliadi, coordinator of Students and Youth Movement of West Aceh, was found dead on 3 December 2002 at Sunapet Bridge, Aceh Besar, after being kidnapped. Mukhlis and Zulfikar, both were staffs of Link for Community Deve-lopment (LCD) were kidnapped on 25 March 2003, their whereabouts are not known until today. LBH Banda Aceh has reported their disappearances to the *Joint Security Committee* (JSC), the responsible institution for security at time of reporting, as mandated on *Cessation of Hostilities Agreement* (CoHA). However, until recently there is no clarification about their whereabouts.¹ Human rights defenders are key targets during present military operation in the province. This paper is intended to analyze the questions related to the issue.

II. 1. Aceh-Related Cases

Government/TNI/POLRI's stigmatization and labeling against human rights defenders in Aceh today seem to follow particular pattern, methods, and ways of thinking of the New Order in labeling practice. Banda Aceh police arrested chairwoman of Srikandi Aceh Foundation, **Cut Nur Asikin**, on Tuesday, 20 May 2003, only one day after the martial law was imposed. Police Chief of Namda Aceh AKBP Alfons explained that Cut Nur Asikin was accused of agitation and terrorism. The foundation has been working for the rights of women and alleged to have link with GAM, and therefore was committed to articles 106, 107, 108, 109 and 110 of the Criminal Codes on agitation, and Government's regulation No. 1/2001 re. "Terrorism and the Combat against the Crime of Terror" with death penalty as the maximum charge.² Cut Nur Asikin is still under arrest today, after being picked up at her residence in Lampulo, Banda Aceh.

The Police of North Aceh also arrested **Sheny Angelina**, staff of Henry Dunant Center on 21 May 2003. She was picked up at Medan airport, Polonia when transiting for Banda Aceh. According to Chief of Police PR Division, Brig. Gen (Pol) Edward Aritonang, Angelina was arrested for an alleged link to GAM. Angelina was a HDC delegation member during the meeting between GOI and GAM in Tokyo.³ Sheny was released shortly due to absence of evidence of the allegation.

¹ See LBH Banda Aceh report of 27 March 2003 on "Recent Progress of Abduction Cases: Record of Incident Found." See also LBH Banda Aceh's letter No.13/SK/LBH/III/2003 of 26 March 2003 addressed to the *Joint Security Committee* (JSC).

² "Police Round Up Activists, Claiming GAM Link", *Jakarta Post*, 22 May 2003. "Seorang Aktivis Perempuan Ditangkap", *Republika*, 21 May 2003, also see "PDM Berlakukan Tembak di Tempat", *Republika*, 22 May 2003

³ "PDM Berlakukan Tembak di Tempat", *Repu-blika*, 22 May 2003.

Separatism issue has placed human rights activists in Aceh on a par to GAM political position. Such over-generalization was obvious on the arrest of Nur Asikin and the other 29 people who were accused as GAM links and adherents. Formerly, the police had arrested 5 GAM negotiators who were to depart for a negotiation with RI Government in Tokyo, and 13 students of IAIN Ar-Raniry.⁴ Such construction becomes a means to building a more controlled “execution” space in order to pressure different kinds of criticism and resistance to the deployed military operation. It has narrowed down the space for human rights monitoring and protection under martial law, and minimizing potential criticism to the operation.

On the first week of the martial law imposition, a number of human rights defenders had been arrested. Adding to Cut Nur Asikin, on 27 May 2003 at 2330, four members of Human Rights NGO Coalition were arrested at their office at Jalan Jenderal Sudirman. Formerly in the afternoon, the office had been search for no reason. The four people were **Halim al Bambi**, **Surip**, **Jumiran** and **Nandi**. They were released after a series of investigation, inquiries including questions on the whereabouts of specific target of operation.⁵

As the result of the labeling practice KontraS Aceh temporarily ceased activities following stigmatization⁶ against the organization and to avoid more serious threats on its volunteer who were active in monitoring activities. One of KontraS volunteer, **Nuraini** (25 y.o.), was arrested by TNI/POLRI joint team comprising Team 4 of Yonif-315/JRD, Koramil-5/Delima, Yonif-642 and Local Police under Second Inspector Popon Melaks on 19 June 2003 at 0500 in Delima district, Pidie. Nuraini’s father, **Zakaria** (72 y.o.) and neighbor, **Zulkifli**, were also arrested. During her detention, her legal counsel from LBH Banda Aceh was not allowed to visit her.⁷ She was then released after a few days being detained in the Regional Police headquarter.⁸

Another human rights activist **Muhammad Yusuf**, chairperson of Human Rights and Legal Aid Post (PB HAM) of East Aceh, **Nursyamsiah**, Chairperson of PHIA (Empowerment of *Harkat Inong Bale*) and two staff members namely **Nazaria** and **Fitriani**. Muhammad Yusuf, Nursyamsiah and Nazaria were picked up following police search into PB HAM office in Langsa. There was no explanation on the search and arrest.

Fitriani, on the other hand, managed to escape immediately once she noticed the approaching police/TNI gray minibus to her residence. She had heard of Police/TNI list of wanted people (DPO) that consists of names of human rights activists. The list (DPO) itself has never been officially clarified. Therefore, most human rights activists decided to “run for life” although they were not sure if their names were on the list. When the police could not find Fitriani at her residence, they intimidated her family to make her surrender, other wise she will be included in the list. The day after, on 8 June 2003, Fitriani showed up at the Police Resort of East Aceh and was immediately arrested.

⁴ “Polisi Tahan 29 Tersangka Makar”, *Kompas*, 26 May 2003

⁵ Report made by *Civilian Peace Monitoring Team for Aceh* (CPMTA), Aceh.

⁶ Interview with activist of KontraS Aceh

⁷ LBH Banda Aceh’s report

⁸ Information given by Afridal Darmi, Director of LBH Banda Aceh

**List of Human Rights Activists in Aceh
Who have been arrested under the Military Operation**

| Name | Title | Date of Arrest | Perpetrator | Remark |
|-----------------|---|------------------------|--|---|
| Cut Nur Asyikin | Chairwomen, Srikandi Aceh Foundation | Tuesday, 20 May 2003 | Members of Banda Aceh Police Headquarter | On 20 May 2003 at 1700, the apparatuses came to Cut Nur Asyikin's residence located at Jl. Flamboyan, Lampulo Banda Aceh. Victim was picked up and arrested at the police headquarter in Banda Aceh. Until the third day, she was not allowed to see her legal counsel. |
| Halim al Bambi | Staff member of the Human Rights NGO Coalition of Aceh | Tuesday, 27 May 2003 | Police apparatuses | On 27 May 2003 at 1600 and 2320, the Coalition office, located at Jl. Jenderal Sudirman, were search by the police. Four staff members who were staying overnight in office were arrested on the second search. There was no explanation on both searches and arrest. |
| Surip | Staff member of the Human Rights NGO Coalition of Aceh | Tuesday, 27 May 2003 | Police apparatuses | Idem |
| Jumiran | Staff member of the Human Rights NGO Coalition of Aceh | Tuesday, 27 May 2003 | Police apparatuses | Idem |
| Nandi | Staff member of the Human Rights NGO Coalition of Aceh | Tuesday, 27 May 2003 | Police apparatuses | Idem |
| Muhammad Yusuf | Chairperson of Humkan Rights and Legal Aid Post (PB HAM) of East Aceh | Saturday, 7 June 2003 | East Aceh Police | On 7 June 2003 at 1700, a number of police officers came to PB HAM office in Langsa, East Aceh and arrested the victim and another two member of PHIA, Nursyamsiah and Nazaria. |
| Nursyamsiah | Chairperson of PHIA | Saturday, 7 June 2003 | East Aceh Police | Idem. Arrested together with Halim al Bambi at PB HAM office |
| Nazaria | Staff member of PHIA | Saturday, 7 June 2003 | East Aceh Police | Idem |
| Fitriani | Staff member of PHIA | Sunday, 8 June 2003 | East Aceh Police | On 7 June 2003 at 1800, noticing the approaching police minibus, victim managed to take a flee out of fear. She turned herself in the day after, after the police intimidated her family. |
| Nuraini | Kontras volunteer | Thursday, 19 June 2003 | TNI/Police Joint team, comprising of Team 4 Yonif 315/JRD, Koramil-5/Delima, Yonif-642 and police mem-bers under Ipda Popon Melaks | On 19 June 2003 at 0500 TNI/Polri joint team arrested Nuraini, her father and her neighbor Zulkifli . Nuraini was alleged to be GAM link because she often publicizes the apparatuses' violations to Human Rights institutions in Banda Aceh. |

Source: YLBHI, based and processed data and information.

Regional Martial Law Authority Maj. Gen Endang Suharya also “unofficially” issued a list of wanted people (DPO) that consists of names of GAM members, student activists and human rights workers. Those names were obtained from police/TNI inquiries during their search through NGO offices.⁹ On Saturday, 28 June 2003, for instance, Kontras office was searched by a number of police officer in civic attire for Asiah, Kontras staff member who are on the list and currently wanted. They raid the office that was attended by an office aid at that time.¹⁰

⁹ Interview with Kontras activist

¹⁰ Interview with Afridal Darmi, Director of LBH Banda Aceh

Police list of wanted people has actually never been made public. However, considering the questions addressed during interrogations to those who were arrested, it is believed that the human rights activists are on the list.¹¹

Asiah and **Tarmizi** (a staff member of LBH Banda Aceh) are still wanted for no reason. Police raid LBH Banda Aceh office on 28 June 2003 in search for Asiah and Tarmizi, for they believe that both were hiding or sheltered by LBH Banda Aceh. Leaving LBH Office without luck, they were heading to Kontras office only to find the office closed due to activities cease.¹² This action was taken following the accusation made by the Regional Martial Law Authority Maj. Gen. Endang Suharya of similar institutions to be GAM adherents.¹³ TNI higher-ups also claimed actions will be taken on those institutions (SMUR, SIRA, Kontras, etc) and other GAM adherents both individuals of institutions. This is part of their effort to ban support to separatist movements and martial law imposition.¹⁴

Some people acknowledged the search for a number of activists and human rights defenders who are still working in the field and monitoring related violations under martial law. Afridal Darmi, Director of LBH Banda Aceh, justified the raids and searches to NGO offices and activists residences by TNI/police members. A human rights activist currently on hide said that police and SGI (intelligence) members came to his house and he decided to hide for life, knowing the SGI members were looking for him.¹⁵ Human rights activists left Aceh, keeping themselves away from political mischief of *labeling*, stigmatization and criminalization.

Andi Rizal, Coordinator of Kontras Aceh explained that such fear is understandable. SGI is said to have maintained a list of wanted people and on the other hand, there are terrors and intimidation by the militia. Human rights activists who are still working in the province are subject to nerve-racking threats such as “kill”, “shoot”, “arrest”, “kidnap” when they are doing advocacy to detainees at police or military detention.¹⁶ Afridal also confirmed that one of his staff is on the police list as reflected on the questions addressed to NGOs and individual houses being searched.¹⁷

Until recently, a number of human rights defenders in Aceh prefer hiding and reducing advocacy activities due to hazards to their safety. The arrest and detention made was mostly based on alleged link to GAM/separatist movement. This is in contradiction of the universal principles of human rights that allows every individual the rights to freedom and security, and against the UN Covenant on Civil and Political Rights that secure every individual’s rights to freedom from fear.

In order to control NGOs’ activities in human rights advocacy and promotion, the Regional Martial Law Authority HAM, passed out an arrangement that entails NGOs and CBOs

¹¹ Interview with Andi Rizal, Coordinator of Kontras Aceh

¹² Interview with Afridal Darmi

¹³ “Police Round Up Activists, Claiming GAM Link”, *Jakarta Post*, 22 May 2003

¹⁴ *Ibid.*

¹⁵ Interview with one of human rights activists who have escaped Aceh.

¹⁶ Interview with Andi Rizal, Coordinator of Kontras Aceh

¹⁷ Interview with Afridal Darmi, Director of LBH Banda Aceh

(Community-Based Organization) register themselves, including activities and members. The Martial Law Authority also produced identity cards and required each NGO and CBO member to have it. This presents more control on any institution that “speak too much” on human rights violation that occurred under the martial law in Aceh. Intimidation, labeling, threat and possible arrests preoccupy human rights activists on their advocacy works.¹⁸

Being the main targets on the wanted list significantly affects all human rights activists and their families/relatives.¹⁹

There are arguments concerning the “cleaning” efforts made by the martial law authority in the province against monitoring and advocacy workers: 1) it is aimed at waning intensity of monitoring activities; 2) to isolate human rights workers from common dweller; 3) to limit advocacy process to victims of human rights violations under the martial law; 4) to cut information line between institution and human rights workers in and outside Aceh. “Human rights activists are even more wanted than HAM members”, an activist said.²⁰

II. 2. Labeling as “A-Nationalist” and Terror: Jakarta Cases

NGOs, human rights institutions outside Aceh, particularly in Jakarta are not luckier than their Aceh counterparts. Stigmatization as part of separatism has long been addressed to them before the imposition of martial law, which later became an official umbrella for arbitrary execution, arrest or detention of alleged people.²¹ A few months ago, for instance, Army Chief of Staff Gen. Ryamizard Ryacudu declared the existence of “white collar” members of GAM in Jakarta, whose maneuvers are far more hazardous compared to the guerillas in the battlefield. These are the moneymakers that significantly provide financial support to the whole movement. Ryacudu indicated that these “white collar” members of GAM are the Aceh parliamentarians sitting in Jakarta office that often criticized TNI policies regarding the province.

The impact of the General’s statement was quite significant: a number of Aceh parliamentarian gradually decreased intensity of their criticism against the central government and TNI. Obviously, no matter hard the parliamentarians attempted to control – as they are supposed to – the government’s practices and policies, they would be considered to have symbolic interaction with the separatist movement, or its elements. This kind of stigmatization, according to Herbert Mead, does not need identification because it is already identical in form; and is considered as identical to separatism point of view.²²

Military operation under martial law also affected some institutions that have been consistently making advocacy works on human rights violations in Aceh in particular. Some of these institutions had already resisted the idea of martial law. They had also expressed their resistance before the Commission I of the Parliament, and called for the government to

¹⁸ Interview with human rights workers in Aceh

¹⁹ Interview with a human rights worker in Aceh.

²⁰ Interview with a number of human rights and humanitarian activists in Aceh. Their names are kept confidential.

²¹ See Law No.23/Prp/1959 on Emergency Situation

²² George Herbert Mead, (1962, 2nd edition), *Mind, Self and Society: From the Standpoint of a Social Behaviourist*. Chicago: Chicago University Press, page 167

remain on CoHA (*Cessation of Hostilities Agreement*) track.²³ Opposition continued until the stipulation of Presidential Decree No.28 on the Martial Law in Aceh.²⁴ Therefore the resistance directly opposed the discourse expelled by TNI and parliament (MPR and DPR) that gave their total support to military operation and martial law.

Support also came from the community as reflected in a number of polling conducted by mass media, be it based on random or non-random sampling. It revealed that more than 60% respondents approved the deployment of military operation.²⁵ Such polarization segregated the community into two poles: pro and cont. The pro group presents its nationalism spirit while the other present its separatist spirit and tend to create segregation of this nation.²⁶

Resistance against military operation is no longer seen based on humanity consideration, social-political stability of the province or human rights. Instead, it has been labeled as treasons.²⁷ Similar argument was also addressed to mass media as Commission I of the Parliament, in a work meeting with the State Minister for Communication and Information plead “all national mass media to objectively report based on patriotism and nationalism”.²⁸

The most obvious effect was the raid against Kontras office in Jalan Cisadane Jakarta Jakarta Pusat, which was followed by maltreatment and violence against its 5 members by Pemuda Panca Marga (PPM), on Tuesday, 27 May 2003. The mass also destroyed the office building, facilities and damages some others.²⁹

Leaving Kontras office, PPM mass moved towards PBHI (Indonesian Association of Human Rights and Legal Aids) office nearby. They did not raid the office but hurt one staff of PBHI because he failed singing “Indonesia Raya” properly

²³ “LSM Tolak Operasi Militer di Aceh”, *Kompas*, 6 May 2003

²⁴ “Ormas dan LSM Asing Protes Operasi Militer, 1 Ditangkap”, *Warta Kota*, 22 May 2003

²⁵ *Media Indonesia*, Polling 24 April-1 May 2003, *non-random sampling*, 569 respondents (53,25% reminded GAM to surrender or be attacked); *Detik.com*, polling 10-15 April 2003, *non-random sampling*, 4782 respondents (Agree with military operation to be deployed 71%); *Tempo*, polling 11-18 April 2003, *non-random sampling*, 1634 respondents (Agree with military operation 76,7%); *Kompas*, polling 9-10 April 2003, *random sampling* (via telephone), 1196 respondents (207 respondents were Acehnese) (non-Acehnese respondents 79,6% supported military operation, respondents in Aceh 54,6% supported the military operation)

²⁶ In average, discourses developed around extent of nationalism, allegation was addressed to the separatist polar. One serial article written by Suwarno Adiwijoyo, former Assistant to the Army Chief for Social and Political Affairs who is one of the chairman of DPP *Partai Amanat Nasional* (PAN) entitled “Menyiasati Separatisme GAM”, *Republika* 26 May 2003 and “Strategi ‘Menghancurkan’ GAM”, *Republika* 27 May 2003, concluded that TNI/POLRI should beware of the global conspiracy *the dead of the Nation State*, aiming at segregating nation states and not to let it be strong and spring (See: Suwarno Adiwijoyo, “Strategi ‘Menghancurkan’ GAM”, *Republika*, 27 May 2003). Adiwijoyo further concluded that separatism in Indonesia “[...] maintained by Socialism/Marxism-Leninism-Communism cadres, whose actions tend to create radicalism, anarchism and chaos, or even social revolution” (See: Suwarno Adiwijoyo, “Menyiasati Separatisme GAM”, *Republika*, 26 May 2003)

²⁷ See argument in the article written by Laksda TNI (Purn) R. Mangindaan, “Aceh, Awal Distinegrasi NKRI?” (First Series), *Sinar Harapan*, 27 May 2003

²⁸ “Batasi Pers, Itu Paradigma Lama”, *Kompas*, 27 May 2003

²⁹ “Kantor Kontras Dirusak Massa PPM”, *Kompas*, 28 May 2003

The attack to Kontras and PBHI offices was based on the allegations that individuals involved in the organizations do not have the sense of nationalism and tend to take side to GAM. Kontras was also accused of segregating people using human rights issue.³⁰ According to PPM mass chief Helmi Sutikno, “We were only expressing objection to Kontras’ state-ments that have been cornering TNI-POLRI” he also added, “Ori Rahman, who claimed himself an Indonesian was unable to sing the State National Song”.³¹ That was such a deficient measures to value one’s being a nationalist or not. Unfortunately, a lot of people share the way of thinking, including state higher-up and TNI high-rank officials. How could we judge someone anti-nationalist based on his/her criticism to the state army in human rights context? How come nationalism grows by memorizing the state song? Do foreigners become Indonesians once they are able to sing *Indonesia Raya* (the national theme song)?

Such way of thinking was reflected in several TV talk shows when audience shared their opinion through telephone line. The Governor of DKI Jakarta Sutiyoso, considered important to keep an eye on every Acehnese living in Jakarta. People in Jakarta were also asked to be alert of GAM terrors in the city.³²

In general, such political mischief only goes to one direction: not only labeling humanitarian and human rights workers, but also all Acehnese who were born, raised and live in the capital. In brief, there is a stigma shared among state officials, parliamentarians and the Uniformed Services: “All Acehnese are GAM members; should they declared themselves otherwise, they must be able to prove it”.

II. 3. Presidential Decree No. 43/ 2003: Legalization of Labeling and Criminalization Politics

One month after the initiation of the military deployment, on 16 June 2003 the President of RI stipulated the presidential decree No. 43/ 2003 on “Control on Foreigners’ and foreign NGOs and journalists’ activities in Aceh”. In an argument, the Coordinating Minister for Politics and Security Susilo Bambang Yudhoyono said that explicitly the decree was issued following the shooting of a German tourist Lothar Heinrich Albert, and US journalist William Nessen who happened to be among GAM members. The Decree was aimed at controlling international NGOs’ and journalists’ activities in the province.³³ Both national and international NGOS should coordinate their activities in Aceh with the Coordinating Minister for Social Welfare on behalf of the president as the central martial law authority.³⁴ Any humanitarian aid should be in accordance to that attempted by the Regional Martial Law Authority.³⁵

³⁰ “Komnas HAM Pertanyakan Larangan LSM Asing Ke Aceh”, *Sinar Harapan*, 27 May 2003. This accusation was reflected on the posters carried by the attackers that said: “Don’t talk about human rights only, ponder on Pancasila if you still have the moral for *Merah Putih*”, “Human Rights belong to us, the children of the nation, not the traitors”, “Don’t sell my country! Don’t use human rights as the umbrella! We’re going to hang you”, etc. See Kontras release on 27 May 2003

³¹ *Ibid.*

³² “Warga Jakarta Diminta Waspada Teroris”, 22 May 2003; “Jakarta Siaga Satu”, *Republika*, 22 May 2003

³³ “Wartawan Asing Harus Izin Menlu”, *Koran Tempo*, 18 June 2003

³⁴ See Decree No.43/2003, Article 3 paragraph 2

³⁵ See Decree No.43/2003, Article 3 paragraph 3

Decree No 43 serves as the martial law authority's means of control on all journalism activities, advocacy to victims of human rights violations, and any humanitarian aid addressed to Aceh. Article 2 paragraph 1 of the decree mentions: "Civil Society Organizations, national and international, are not allowed to have any activity that contradict the situation under martial law in Aceh Darussalam". To this extent, this article is confusing because Presidential Decree No.28/2003 on "the Martial law in Aceh" states that the goal of imposing martial law in the province is to maintain the unity of NKRI,³⁶ and because GAM has "spoiled rule and order and public comfort, disturbed state administration process, impeded the execution of development programs".³⁷ The objective "to maintain the unity of the NKRI" is abstract and vulnerable since any action is subject to allegation. There is no clear explanation regarding the criteria of "harming the unity of the NKRI".

Decree no.43/2003 enables political authority in Aceh (in this context, the regional martial authority) to draw subjective conclusion upon any activity. Charmaen Mohamed, a Human Rights Watch (HRW) activist was not allowed to visit Aceh to do monitor and provide human rights aid and protection.³⁸ There has been an assumption that foreign NGOs will internationalize the Aceh issue. Professor Azyumardi Azra highlighted the importance of travel ban to foreigners to Aceh in order to avoid internationalization of Aceh conflict, and possible penetration to GAM's dents.³⁹

Deputy Minister Alex Bambang Riatmojo said that any violations of the regulation would result in repatriation".⁴⁰ Amien Rais even said that those activists could be external agents recruited to spoil the unity of NKRI".⁴¹

To some extent, this Decree seems to be stipulated to anticipate foreign NGOs' mobility, foreign journalists' report that will likely bring Aceh conflict to the international community. Such fear was reflected on a number of official statements made by state officials, the military higher-up, parliament and the executive: avoid internationalization of martial law in Aceh, following a number of international coverage – such as AFP – on Aceh, which was considered to have affected the martial law. Journalist William Nessen was allegedly involved in the reporting.

Others see Decree No.43 as a means of control on national NGOs that have been paying close attention on human rights violation since DOM. It likely serves as a legal base to arrest a number of activists for the sake of "the unity of NKRI". Sociologist and Human Rights worker Otto Syamsuddin said that criminalization to human rights defenders is the army's old practice. He further said that TNI has been reluctant to undertake an investigation into human rights violations. He considered the arrests of human rights activists the only strategy to limit activists' movement and investigation on the violations in the province".⁴²

³⁶ See the ground provision on Consideration, Article C, Decree No.28/2003

³⁷ See the Consideration provision, Article B, Decree No.28/2003

³⁸ Interview with Charmain Mohamed, Researcher of Human Rights Watch (HRW).

³⁹ "Wartawan Asing Harus Izin Menlu", *Koran Tempo*, 18 June 2003

⁴⁰ "Presiden Keluarkan Maklumat Bagi WNA dan Pers Asing", *Serambi*, 18 June 2003

⁴¹ "Panglima TNI: Keselamatan WNA Resiko Pribadi", *Republika*, 19 June 2003

⁴² "Arrest of Rights Activists Condemned", *Jakarta Post*, 27 May 2003

III. Political Authority's Responsibility Regarding the Protection of Human Rights Activist Under the Martial Law

III. 1. Human Rights Activists and the National Legal Frameworks that Protect Them

One of the weaknesses, if we may call it so, of Decree No.28/2003 as the base of the stipulation of Law No.53/Prp/1959 is the exclusion of Law No.39/1999 on Human Rights or No.26/2000 on Human Rights Court and Law No.59/1958 on the ratification of the four Geneva Conventions 1949 (the so called humanitarian law) as a ground clause decree. The ground clause in the 1945 Constitution only include article 4 paragraph 1, articles 10 and 12 as amended on the fourth amendment. It is obvious that human rights enforcement and protection has not been made as the grounds to the operation.

Article 28(i) of the 1945 Constitution, 4th amendment definitely mentions the importance of protection to the basic rights of man, especially the right to live, the right not to be tortured, the right to freedom of expression, the right to religion and the right to individual acknowledgement before the law. Based on these, the state should acknowledged human rights advocacy and protection in Aceh since Indonesian constitution had laid it down. The martial law authorities should base their power on the constitutional grounds (although Decree No.28/2003 does not include it as the ground rules) that bind everyone including the President as the martial law ultimate authority.

Article 4 of Law No.39/1999 clearly states that human basic rights i.e. the rights to live, be free from torture, to individual freedom, to religions, to be free from slavery, to equality before the law and not to be put to trial based on a retroactive law are human rights that are non-derogable under any circumstances. This article strictly and definitely shows that even an imposition of martial law those rights shall not be reduced. On top of that, human rights activists also has the rights to work and participate in human rights protection and promotion as stipulated under article 100 of Law No.39/1999 i.e.: "Any individual, group, political organization, community based organization, Civil society organization or any other similar institution has the right to participate in the protection, enforcement and promotion of human rights".

Stigmatization, labeling and criminalization against human rights activists in Aceh in particular, and in Indonesia in general, are contravening Law No.39/1999 article 18 paragraph 1. This article stipulates that presumption of innocence should be applied after the arrest or detention of any individual until an official trial has proved his/her crimes. On paper, the national laws legally and normatively protect any individual working for human rights and humanitarian enforcement under any circumstances.

III. 2. Law No.26/2000: Binding to the Authority of Military Operation

This law stipulates the dos and the don'ts of a military operation. Articles 4 and 7 of the law stipulate that gross violations against human rights include: (a) crime of genocide and (b) crime against humanity, which shall be examined and decided by the human rights court.

The two crimes, including killings, elimination, eviction or involuntary displacement of people, taking of individual freedom, or other physical freedom, maltreatment to a particular group because of political adherence, races, nationality, ethnicity, culture, gender and religions are categorized as crimes against humanity. The perpetrators are therefore shall be examined and convicted before the human rights court.⁴³

Investigation into gross violations against human rights is under the authority of the National Commission on Human Rights (Komnas HAM).⁴⁴ Under martial law in Aceh, Komnas HAM functions are quite definite, i.e. to conduct investigation on serious human rights cases. Human rights and humanitarian workers in Aceh are currently facing potential killings, stigmatizations, prejudice based on ethnicity and race that caused many of them leave Aceh for safety interest.

All the above crimes should become the focus attention of Komnas HAM so that human rights activists can continue their works in controlling human rights enforcement under the martial law. Such works must be protected and any intrusion to these works (intimidation, threats, stigmatization, criminalization, torture and killings) shall be considered as crime against humanity and shall be committed to trial.

III. 3. International Provisions: Protection to Human Rights and Humanitarian Workers

Protection to civilians must be of priority in a situation under martial law. Humanitarian and human rights workers are civilians working under martial law in Aceh. Under the humanitarian law or Geneva Conventions 1949 on "Protection to Civilians during War", articles 27, 28, 29, 30, 31, 32, 33 and 34 in particular, stipulates the principles of protection that should be obeyed by Martial Law authority. Those articles also mention that the following act shall not be conducted⁴⁵ :

- a) Committing physical and mental violence in eliciting information (Article 31)
- b) Taking actions that cause physical sufferings (Article 32)
- c) Causing physical pain or hostile against those being protected (Article 32)
- d) Committing people to collective punishment (Article 33)
- e) Committing terrors, intimidation and robbery (Article 33)
- f) Committing reprisal (Article 33)
- g) Taking hostages (Article 34)

Article 15 provides for protection to non-combatants in conflict areas. Based on Geneva Convention as adopted in Law No.59/1958, all acts of stigmatization, labeling, arbitrary arrest and detention, terrors, intimidation to civilians/non combatants are against Geneva Convention and its delegated national law.

⁴³ See Articles 8 and 9 of Law No.26/2000

⁴⁴ See Articles 18, 19 and 20 of Law No.26/2000

⁴⁵ See Mochtar Kusumaatmaja, *Konvensi-konvensi Palang Merah Tahun 1949*. Bandung Binacipta, 1986.

Based on the above, investigation and examination on the violations by authorized institutions should be promoted. On the other hand, protection should be reaffirmed, and criminalization, labeling practices against human rights workers should stop.

Another international law that provides for protection to human rights and humanitarian workers is the “Declaration Of The Rights And Responsibilities Of Individuals, Groups, And Other Community-Based Agencies For The Promotion And Protection Of Human Rights And Basic Freedoms That Has Universally Acknowledged”.⁴⁶ Article 1 of the declaration mentions that, “Every individual has his own way, collectively or individually, to promoting and attempting human rights and basic freedom at both international and national levels”. This article definitely legalizes and protects humanitarian activists, and every effort aims at gaining, collecting and recording information on human rights, and to disseminate the information as part of the effort to protecting and fulfilling those rights (Article 6). The most important thing to note on this declaration is the activists’ right to legal protection (Article 9).

In current situation in Aceh, humanitarian and human rights workers are facing perilous threat due to the job they are doing. This is a homework the Indonesian government and other related institution must accomplish, to provide an open and transparent space for the public (humanitarian and human rights worker in Aceh, in particular) to controlling and monitoring human rights situation under the martial law. Political authority’s incapacity in exercising the functions shall be considered indicators of failure of the military operation and therefore should be ended.

III. 4. Political Authority and Its Responsibilities to Protect Human Rights Activists

The whole military operations project deployed by the government is subject to control by the political authority responsible for the whole operation (i.e. the civilian government), and by the political authority responsible for the supervision of project executor (i.e. legislative body/parliament). Government military operation should be totally controlled by the executive civil political authority (the government), legislative (the parliament), judicative (the court) and the public at large.

However, following the investigation and monitoring conducted by humanitarian workers in Aceh, the government and the parliament were proven to be political and legally biased. Humanitarian workers in Aceh are working under intimidation, terror and threats. In this context, political authority should exercise its responsibilities to protecting the society in general, as well as humanitarian workers.

The executive, legislative and judicative elements of the state must all protect the citizens as stipulated in article 71 of Law No.39/1999 on Human Rights. It mentions that, “State government is obliged to and is responsible for respecting, protecting, enforcing and promoting human rights as provided under this law, other related acts and international law adopted by the state”.

⁴⁶ This is the translated version published by ELSAM under the title *Deklarasi Pembela Hak Asasi Manusia*, Jakarta: ELSAM, 1999.

The above law is also binding to Komnas HAM, of which objectives and functions are provided under Law No.39/1999, i.e. to increase protection and enforcement of human rights. This function has become very significant following the imposition of martial law in Aceh.

As Komnas HAM has the authority to conduct investigation into gross violation against human rights (Article 18 of Law No. 26/2000 on human rights court), it is duty bound to enforce human rights under military operation. Its' authority for investigation is important to controlling the regional martial law authority's mandate and to supporting and protecting humanitarian and human rights workers. In relation to the above concern, Komnas HAM established an *ad hoc* monitoring team for Aceh. The team is chaired by M.M Billah and based in Komnas representative office in the province. In the first week of the military operation deployment, Komnas HAM had urged both the government of Indonesia and GAM to explore possibility of negotiation since it is the best solution for both.⁴⁷

According to a number of human rights workers in the province, currently only Komnas HAM has the access to information, data and reconstruction of violation in the field. Other related institutions had long ceased from field monitoring and investigation following the terrors, intimidation and arbitrary arrests.⁴⁸ Considering the fact, Komnas HAM's intensity in the work should be increased.

The parliament, on the other hand, has the obligation to exercise its monitoring function on government policies and acts. DPR has established the *Aceh Desk* under Commission I, chaired by Second Admiral Franklin. W. Kayhatu. This desk aims at monitoring the progress of military deployment and accommodating public complaints regarding the security apparatuses' arbitrariness. This desk is also supposed to periodically monitor the situation, including threats, restrictions and intimidation addressed to humanitarian and human rights workers in Aceh. A number of complaints that have been submitted to the Aceh Desk must be followed up immediately and the parliament must exercise its authority to evaluating the military operation comprehensively.

Until recently, unfortunately, there has been no significant action taken to evaluating and making recommendations on the whole military deployment. As long as DPR does not improve its poor exercise of authority in controlling the operation, there will be ultimately biases in the martial law. Once this take place, DPR should make a political decision and call the government for revoking the martial law status, stop the military operation and start a negotiation. Without strong control, military operation will become a boomerang for the future of Aceh and Indonesia.

IV. Analysis and Summary: Mar-tial Law in Aceh: Reviving Old Practice of "Labeling" and Crimi-nalization

Some basic arguments could be proposed in a comprehensive explanation of empiri-cal data and facts concerning problems faced by humanitarian and human rights workers in Aceh. Analysis on *labeling* politics carried on by New Order regime, which has been continued

⁴⁷ "Akhiri Operasi Militer", *Kompas*, 27 May 2003

⁴⁸ Interview with a number of human rights workers in Aceh

current government under Megawati's leadership will be used as one of basic analysis in this report.

In general, theoretical description on labeling and stigmatization models in a state-society political area is quite obvious.

This theoretical analysis aims at helping us in generally and historically reviewing construction of labeling, stigmatization and criminalization practices in Indonesia's political culture as a political nomenclature that needs to be considered.

IV. 1. Symbolic Interactionism Analy-sis Model

One of the theoretical models in observing such labeling is the *symbolic interactionism* approach developed by Chicago School academicians, namely George Herbert Mead, Herbert Blumer, and Erving Goffman. Herbert Mead focused on social group attitudes rather than considering organized attitudes of a social group in the context of individual behavior separated from the social group. In general, Mead argued that social group is the core, which leads self-conscious mental development.⁴⁹

Mead's opinion creates a viewpoint that social behavior can be observed generally without categorizing it into an organizational level of social group or individual. In this context, Mead used *generalized other* terminology, which means that the whole community attitudes and capabilities to take the role from *the generalized other* become very essential for *the self*, as Mead states: "Only in so far as he takes the attitudes of the organized social group to which he belongs toward the organized, co-operative social activity or set of such activities in which that group is engaged, does he develop a complete self".

Mead describes the *full development* from *the self* in his statement:

"So the self reached its full development by organizing these individual attitudes of others into the organized social or groups attitudes, and by thus becoming an individual reflection of the general systematic pattern of social group behavior in which it and others are involved – a pattern which enters as the whole into individual's experiences in terms of these organized groups attitudes which, through the mechanism of the central nervous system, he takes toward himself, just as he takes the individual attitudes of others".⁵⁰

IV. 2. Old Labeling Politics: Indone-sian Context

In Indonesian context, Meadian *labeling* was used to remove the opposing influence as part of Soeharto's attempt to *seize power*. The New Order constructed a discourse on "the hazard of communism" on any individual that took an opposing stance against its authority. The New Order then labeled and stigmatized all individuals/groups affiliated to PKI (Indonesian Communist Party) "Communist" or "part of the G30S". This method continued through the fall of Soeharto's reign.

⁴⁹ George Herbert Mead (1962, 2nd edition), *Mind, Self and Society: From the Standpoint of a Social Behaviourist*. Chicago: Chicago University Press. Page 7

⁵⁰ George Herbert Mead, *Ibid.* Page 158

Departing from Mead's statement, the New Order needed no classification of categorization to label a given group/ individual communist. It simply generalised social and individual pattern of behavior. The pattern of social group behavior was used to generalize all related components (families, friends and relatives) as part of an individual's behavior. Generalizations expanded to people who were active in other organizations such as PNI and Baperki, which were judged as communist.

At this level, Mead applies the *symbolic interactionism* on group or individual labeling. According to Mead, significant symbols present human gestures. They become significant symbols when an individual's responses appear, which are not necessarily identical. One set of vocal gestures is language. Further on, Mead states:

“a symbol which answers to a meaning in that experiences of the first individual and which also calls out the meaning in the second individual. Where the gesture reaches that situation it has become what we call 'language'. It is now a significant symbol and it signifies a certain meaning”.⁵¹

Mead's approach is applicable on reviewing the New Order's practice of labeling on radically opposing activities. It generalized those activities/movements by judging commonalities in symbols and interactions. It generalized PKI, PRD and Forum Kota that were calling for structural changes on state administration and social systems.

Early in 1990s, the New Order reign arrested and sent to jail three students' activists of Yogyakarta who happened to possessed novels written by Pramoedya Ananta Toer and a paper on Marxism written by Frans Magnis Suseno. These three students were accused of having communist inclination.

IV. 3. The New Order's Labeling Practice: the Martial law Context of Aceh

What about Aceh? Megawati's government has revived the New Order's practice by labeling all critical activities separatist movement. As mentioned previously in this briefing paper, the regional martial law authority simply declared SIRA, SMUR and Kontras affiliated to GAM and therefore are categorized as part of the separatist movement.

We could specifically classify those four organizations: 1) GAM reconstructed the ideas and demand for independence; 2) SIRA constructed ideas and demand for referendum; 3) SMUR reconstructed the idea of democratic struggle; 4) Kontras reconstructed the ideas of justice and enforcement of human rights. All four ideas have different segments and levels without coherent melting point. Unreasonably, the government c.q. TNI perceived the symbolic interactions as a single component: **separatism**.

This separatism labeling expands to affect human rights activists both in and outside Aceh (Jakarta and even in international circle). Human rights activists and institutions are suspected and stigmatized of having linked to Free Aceh Movement. Organizations and

⁵¹ George Herbert Mead, *Ibid*, Page 46

individuals that resist the martial law imposition and military deployment are labeled as separatist. See how resistance to military operation and effort to enforce human rights were judged as being separatist. Is being a nationalist means approving military deployment to the province?.

This labeling practice seems to: 1) mini-mizing monitoring, investigations and studies on human rights violations under martial law; 2) isolating human rights workers from interaction with public at large; 3) constructing fear among human rights workers to immediately leave the province and stop their advocacy works during the military operation; 4) controlling and monopolizing information on the military operation as a whole; 5) arresting human rights activists who are alleged of having potential capacity to create instability in the province .

Under such situation, people are conditioned to believe that human rights works and promotion in Aceh are likely to jeopardize the unity of NKRI and therefore humanitarian and human rights workers are dangerous agents that might have contributed to threat.

V. Recommendations

All the above description presents a base to viewing the general situation of humanitarian activities in Aceh under the martial law. Human rights workers have encountered various barriers and constraints and there has been no effort done by the government to address the problems. Instead, they have often been labeled and criminalized to having attempted treasons. This paper aims at explaining the real situation and that humanitarian and human rights activities in the province has nothing to do with separatist movements as many (the executive, the legislative, etc) have believed.

Laws No. 39/1999 and 26/2000 provide for protection to anyone who works on humanitarian activities and human rights promotion. The state should exercise this responsibility as it is definitely mandated by the above laws. Any attempted effort that might harms, impedes or threatens the works of humanitarian and human rights activists shall be considered as contravening the law and therefore shall be committed to sanction. The state is held responsible for any of the above condition.

The inability of the political authority in securing protection to human rights and humanitarian workers from terrors, intimidations, arbitrary arrests and detentions strongly indicate absence of control on the execution of martial law. As there will be biases of the military operation, **martial law status should therefore be revoked immediately and negotiation should be started.** In a more specific framework, Indonesian government, parliament, TNI, Komnas HAM and other related institutions should:

1. Exercise their responsibility to protect people's rights to work for humanitarian and human rights as provided by the laws and constitutions. Therefore, arbitrary arrests and detentions should never cease their works and activities.
2. Stop the labeling practice that used to be employed by the New Order reign to arresting the oppositions.
3. Comprehensively investigate the arrests or disappearances of human rights and humanitarian workers before the martial law was imposed.

4. Follow up reported human rights violations against human rights and humanitarian workers under the martial law imposition.

Jakarta, August 2003