
PRISONERS OF CONSCIENCE CASES IN INDONESIA: THE RIGHTS OF FAIR TRIAL PERSPECTIVE

M. Rizki Yudha Prawira.¹

Faculty of Law Universitas Pembangunan Nasional Veteran Jakarta

Jl. Rs. Fatmawati, Pondok Labu, Jakarta Selatan. Indonesia

Email: rizkiyudha@upnvj.ac.id

ABSTRACT

This study examines cases of prisoners of conscience (PoC) in Indonesia through the lens of the right to a fair trial. The patterns observed in these PoC cases include arbitrary arrest, imprisonment, torture, exile, and even enforced disappearance. Various examples illustrate these issues. According to data gathered by Amnesty International Indonesia, there are numerous instances related to PoC. Between August 2019 and April 2024, total 128 PoC victims related to 82 cases happened in Indonesia. The same source indicates that many of these prisoners were incarcerated solely for their peaceful expressions. They have been charged under various laws, including the Information and Electronic Transactions Law, as well as laws concerning criminal blasphemy, treason, and pornography. This research uses normative juridical methods, specifically focusing on library legal research to examine secondary data and relevant legal materials. The approach adopted in this study is a statutory approach, which entails referencing legal issues or problems specifically pertaining to cases involving prisoners of conscience. This study also examines cases of PoC in Indonesia from the perspective of the right to a fair trial. It highlights the numerous violations of fair trial rights evident in the patterns of arrests leading to imprisonment in these cases.

Keywords: *Prisoners of Conscience, Fair Trial, Human Rights*

1. Introduction

Human rights are fundamental to every individual, without exception. This concept signifies that all persons are entitled to and safeguarded by human rights, regardless of their circumstances or background. Their recognition is not only encapsulated in international agreements and instruments but also enshrined in national legislation. Indonesia is one of the nations that recognizes human rights, encompassing both civil and political rights, as well as economic, social, and cultural rights.

¹ **Submission:** 10 Maret 2025 | **Review-1:** 5 April 2025 | **Publish :** 1 June 2025

The acknowledgment of human rights carries profound implications, as demonstrated by the ratification of various international conventions, including the International Covenant on Civil and Political Rights (ICCPR). The ICCPR delineates numerous civil and political rights applicable to individuals within a nation's jurisdiction. One such right, guaranteed by the state as outlined in the ICCPR, is the freedom of opinion. This right is also addressed in national legal frameworks, encompassing both constitutional provisions and statutory regulations. In Indonesia, for example, several provisions safeguarding freedom of opinion are enshrined in Article 28E of the 1945 Constitution and Article 44 of Law No. 39 of 1999 concerning Human Rights.

While the right to freedom of expression is explicitly protected by law, there are instances when the state itself acts as a perpetrator of repression. In Indonesia, numerous cases exist where individuals expressing political views or opinions on specific issues find themselves facing legal action and even imprisonment, despite their peaceful expressions. This situation highlights a significant irony, particularly concerning the state of human rights protection in Indonesia. Furthermore, it is imperative to note that both the ICCPR and the 1945 Constitution impose explicit obligations upon the state to uphold and protect the human rights of all individuals. In some situations where these obligations are disregarded, the state transcends mere negligence and can be classified as an active perpetrator of human rights violations.

The phenomenon of an individual's freedom being stripped away through detention or imprisonment for merely expressing a peaceful opinion is referred to as a prisoner of conscience (PoC). This concept and term is closely associated with the international civil society organization Amnesty International. According to Amnesty International, a PoC is defined as an individual who is detained or otherwise physically constrained (such as through house arrest) solely due to their political, religious, or sincerely held beliefs, as well as their ethnic background, sex, color, language, national or social origin, economic status, birth, sexual orientation, or other

characteristics. This definition applies to those who have not engaged in violence or promoted violence or hatred.²

Before delving into specific cases of PoC in Indonesia, it is essential to contextualize these cases within the broader international landscape. Numerous individuals have been detained or imprisoned solely for expressing their views, political beliefs, or opinions. One notable example is the case of Polad Aslanov, a journalist known for his critical stance and frequent covering and reporting of news about corruption cases, who has faced imprisonment for his activities. Azerbaijani authorities had arrested Aslanov with his wife and daughter at a border crossing on 12 June 2019, when he attempted to enter Iran to attend a friend's wedding. Aslanov was detained along with his wife and daughter. Later his spouse and child were released but he was charged with treason. Azerbaijani police accused him of conspiring against the government and selling state secrets to Iran. On February 2022 The Supreme Court sentence Aslanov 13 years in prison.³

Yuri Dmitriev is also considered a PoC case who was imprisoned for uncovering the burial sites of thousands of political prisoners executed under Stalin's regime. In 1997, historian and researcher Yuri Dmitriev identified these grounds, which are regarded as the largest location in the region for executions of political rivals during the Great Terror. Since the 1980s, Dmitriev had been studying mass graves in Karelia and trying to shed light on its Stalin-era atrocities. In 2016, he was arrested by the police after authorities discovered naked photos of a baby. This photo was intended to monitor the child's health and development, as she was suffering from a chronic disease at the time.⁴

² Amnesty International USA, "Freedom of Expression" (New York, 2021), https://bidenhumanrightspriorities.amnestyusa.org/wp-content/uploads/2020/11/Freedom-of-Expression_Strengthening-Human-Rights-For-All-in-2021_110620-2.pdf.

³ Safety of Journalist Platform, "Journalist Polad Aslanov Arrested, Jailed and Charged with High Treason," Safety of Journalist Platform, 2022, <https://fom.coe.int/en/alerte/detail/49403179>.

⁴ Friedrich Naumann Foundation for Freedom, "Prisoners of Conscience: Political Prisoners from East and Southeast Europe" (Sofia, 2021), https://www.freiheit.org/sites/default/files/2021-07/prisonersofconscience_report_digital.pdf.

In 2018, the Petrozavodsk City Court acquitted Dmitriev of two charges but sentenced him to three and a half years in prison for illegally possessing a firearm. However, a few months later, a higher court overturned this sentence and ordered a retrial. Consequently, Dmitriev was detained once again. In July 2020, the Petrozavodsk City Court sentenced him to three and a half years in prison, and he was expected to be released in November due to time served. Nevertheless, in September, the Karelia Supreme Court reversed the previous verdict and imposed a 13-year sentence.⁵

These two cases demonstrate that detaining or imprisoning individuals due to their political views, opinions, or humanitarian activities is a real phenomenon. Examining these examples reveals a strong suspicion of involvement by state actors in the imprisonment of the victims. This is evident from the circumstances surrounding the arrests of both individuals—Aslanov, accused of disclosing state secrets, and Dmitriev, who believes that the reasons for his arrest and trial were insufficiently substantiated. Despite both countries having ratified the International Covenant on Civil and Political Rights (ICCPR), which recognizes freedom of expression and opinion, these states are also obligated to safeguard this right. This highlights the irony and issue surrounding prisoners of conscience, which is a situation that frequently arises with a relatively similar pattern.

Both examples of PoC cases mentioned earlier also reflect a concerning pattern observed which also happened in Indonesia. A notable example of a PoC case involves three activists from Maluku who were found guilty and sentenced to three years in prison merely for expressing their thoughts peacefully. Pieter Likumahua, Aleksander Workala, and Benjamin Naene have been detained since April 2021 for possessing a flag and documents related to the unrecognized Republic of South Maluku.⁶

⁵ *Ibid.*

⁶ Amnesty International, “Indonesia: End Tragedy of Justice and Release Moluccan Prisoners of Conscience,” Amnesty.org, 2021, <https://www.amnesty.org.au/indonesia-end-tragedy-of-justice-and-release-moluccan-prisoners-of-conscience/>.

During the trial period from August to December 2021, three activists were detained at West Seram Prison. On 28 December 2021, the judges found them guilty of treason. Pieter received a sentence of three years and three months in prison, while Alexsander and Benjamin were each sentenced to three years. On 4 January 2022, Pieter, Alexsander, and Benjamin filed an appeal with the Ambon High Court. However, on 23 February 2022, the High Court rejected their appeal, thereby upholding the District Court's guilty verdict. Due to the Covid-19 pandemic which happened at that time, geographical challenges, and the lack of legal representation, they missed the deadline to file for cassation to the Supreme Court, which resulted in their legal acceptance of the High Court's ruling.⁷

The example of the PoC case in Indonesia shows that more detailed research is necessary. Understanding the different factors and details surrounding legal and fair trials' perspectives is crucial for grasping its actual dynamics and problems. This research aims to analyze cases of PoC in Indonesia by analyzing several instances with similar patterns from various sources. Furthermore, it seeks to explore cases suspected of being PoC in Indonesia through the perspective of fair trial principles and several national regulations that regulate the criminal justice system perspective.

2. Research Method

This research uses legal research methods, which involve conducting library legal research with a focus on examining library materials or secondary data.⁸ The approach utilized in this study is a statutory approach, which means that the research references legal problems or issues specifically related to cases related to the prisoners of conscience. This research includes an analysis from both the perspective of statutory regulations and the challenges encountered in the judicial process

⁷ Amnesty International, "Indonesia: Moluccan Activists' Appeal Rejected," Amnesty.org, 2022, <https://www.amnesty.org.uk/urgent-actions/moluccan-activists-appeal-rejected>.

⁸ Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003).

regarding the right to a fair trial. Additionally, a conceptual approach is taken to provide an analytical perspective for identifying developing views and doctrines within legal science.⁹

3. Results and Discussion

3.1. Cases of Prisoners of Conscience in Indonesia: An Overview

Despite Indonesia's status as a state that ratified the International Covenant on Civil and Political Rights, there are still instances of individuals being detained for expressing their political views and opinions. According to data from Amnesty International Indonesia, between August 2019 and April 2024, there were 128 prisoners of conscience (PoC) related to 82 cases in Indonesia. The same source indicates that many of these prisoners were incarcerated solely for their peaceful expressions. They have been charged under various laws, including the Information and Electronic Transactions Law, as well as laws concerning criminal blasphemy, treason, and pornography.¹⁰

A notable case that has received significant international attention is the detention of Pramodya Ananta Toer. Amnesty International assigned Pram's status as a prisoner of conscience because of the arrest and exile he experienced due to his activities in expressing political views and opinions regarding the political situation in Indonesia at that time.¹¹ Pramodya Ananta Toer is a renowned novelist, essayist, and critic, often considered the foremost Indonesian writer of his generation. His works are essential readings in Indonesian schools. Since October 1965, he has been a political

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011).

¹⁰ Amnesty International Indonesia, "100 Tahun Pramodya Ananta Toer: Negara Harus Jamin Kebebasan Berekspresi Dan Kemerdekaan Berpikir, Bebaskan Semua Tahanan Nurani Di Indonesia," Amnesty International Indonesia, 2025, <https://www.amnesty.id/kabar-terbaru/siaran-pers/100-tahun-pramodya-ananta-toer-negara-harus-jamin-kebebasan-berekspresi-dan-kemerdekaan-berpikir-bebaskan-semua-tahanan-nurani-di-indonesia/02/2025/>.

¹¹ *Ibid*

prisoner, one of approximately 14,000 individuals in penal exile on Buru, a remote island in the Indonesian archipelago. He was detained by military order without formal charges or a trial, facing the prospect of permanent imprisonment. For eleven years following his arrest, he has been denied access to pencil and paper, which has prevented him from writing.¹²

Pramoedya Ananta Toer, also known as Pram, faced arrest at least three times across different regimes: during the Dutch colonial period, the independence era under Soekarno, and the New Order government. His first arrest occurred during the 1945 Revolution when he was actively involved in the Indonesian nationalist movement. He was detained by Dutch colonial authorities and imprisoned in Jakarta. Pram's second arrest took place in 1960 under the Sukarno government. He was held without trial for several months shortly after publishing a significant book, *The Chinese Question in Indonesia*. This book sparked a notable backlash from military and civilian officials due to its defense of the Chinese community during a time when the government allegedly was enacting discriminatory policies. The book was subsequently banned, leading to his imprisonment.¹³

In 1965, he was arrested again, this time by the Army under General Suharto, who later became the President of Indonesia. The reasons for his imprisonment were allegedly vague, primarily revolving around accusations of being a committed Marxist, along with other detainees. Although Pram was associated by the government at that time with radical and populist ideals of the political left, it is unlikely that he ever officially joined the Communist Party (Partai Komunis Indonesia-PKI), the government

¹² Amnesty International, "Indonesia: An Amnesty International Report" (London, 1977), <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa210221977en.pdf>.

¹³ *Ibid.*

has never claimed or provided evidence of his membership in the PKI.¹⁴

The case of prisoners of conscience involving Pram is inextricably linked to a significant event from 1965 known as the September 30 Movement known as G30S (*Gerakan 30 September*). This movement marked the beginning of the New Order regime. In the wake of the September 30 incident, the ruling party effectively quelled various forms of resistance by branding anyone who opposed them as communist. As a result, a negative perception of communist ideology and PKI emerged. Throughout the New Order era, the Indonesian Communist Party (PKI) and everything associated with it were deemed enemies that needed to be eradicated.¹⁵

The political landscape and the regime's directives at that time to dismantle the PKI were not merely focused on the institutional "legitimacy" of a political party. Instead, many individuals suspected of having connections to the PKI were also targeted. For instance, Pram fell victim to arrest and exile solely based on his political beliefs and allegations linking him to the leftist movement. During that period, at least six groups of people were accused of involvement in the G30S incident, categorized as follows:¹⁶

- 3.1.1. Group A: individuals accused of direct involvement in the G30S incident;
- 3.1.2. Group B: direct members and affiliates of organizations associated with the PKI;
- 3.1.3. Group C: individuals who were involved or suspected of indirect involvement in the G30S incident;

¹⁴ *Ibid*

¹⁵ Masitha Dewi Pramesti, "Konstruksi Identitas Tahanan Politik Orde Baru Dalam Novel *Amba Karya* Laksmi Pamuntjak," *Journal.Unair.Ac.Id* 4, no. 2 (2015): 241–58.

¹⁶ KontraS and ICTJ, *Menyusun Puzzle Pelanggaran HAM 1965: Sebuah Upaya Pendokumentasian* (Jakarta: Komisi Orang Hilang dan Korban Tindak Kekerasan, 2012).

- 3.1.4. Group C-1: individuals linked to the "PKI Rebellion in Madiun Incident" who, after the G30S incident, expressed support for the remnants of the G30S, failing to explicitly oppose it despite having the capacity to do so;
- 3.1.5. Group C-2: ordinary members of previously banned mass organizations that shared principles with or sought refuge under the former PKI;
- 3.1.6. Group C-3: individuals who displayed sympathy for G30S through their physical actions, behaviors, or writings, although their specific role in the G30S events remains unclear.

Those arrested during the reign included ordinary citizens, civil servants, and individuals from various ranks and divisions of the army. The absence of clear and specific guidelines for classification grants significant power to local army commanders in their respective regions. They possess nearly absolute authority to arrest, imprison, confiscate property, and even kill anyone they suspect. Often, the personal biases of these commanders play a more decisive role in their decisions than the actual circumstances pertaining to the enemies they are tasked with eliminating. The lack of a definitive implementation framework allows for a very flexible classification, resulting in these commanders wielding unchecked power. The subjectivity of their judgments frequently outweighs the objective reality of the threats they are meant to confront.¹⁷

The momentum behind the transition of power from the Old Order (Orde Lama) to the New Order (Orde Baru) intensified the political climate following the "purge of the PKI." This turmoil led to the widespread arrest, imprisonment, and even exile of individuals

¹⁷ Alex Supartono, *Pelepasan Tahanan Politik Peristiwa September 1965* (Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1998).

labeled as sympathizers of the PKI or the G30S Movement. Examining the definition of a prisoner of conscience reveals a clear pattern in which the state acted as the perpetrator. Furthermore, numerous other instances occurred where individuals were detained and imprisoned due to their political expressions or views, which often criticized the ruling government at that time.

Following the fall of the New Order regime and the onset of the reform era, arrests and imprisonments based on political views and opinions still happen in Indonesia. One of the most concerning cases was that of Filep Karma, who was detained and imprisoned for his advocacy efforts aimed at raising awareness about the human rights situation in Papua.

Filep Karma, a 45-year-old civil servant, was arrested and charged with treason (*makar*) following large-scale student demonstrations and prolonged marches opposing the proposed special autonomy law and advocating for the "separation" of Papua from Indonesia. On December 1, 2004, he played a key role in organizing a rally to commemorate the 1962 declaration of Papuan independence, held in Abepura, Papua Province, which drew hundreds of students. During the event, participants raised the Morning Star flag while chanting "Freedom".¹⁸

On December 2, 2004, Karma faced charges that included: "conspiracy to rebel with the intent to cause disintegration of the Republic of Indonesia and to instigate social unrest" under Article 110(1) of the Indonesian Criminal Code; "participation in or ordering acts of rebellion aimed at causing disintegration or separation from the Republic of Indonesia" under Articles 106 and 55 (1) of the Criminal Code; and "publicly expressing hostility, hatred, or offense

¹⁸ Global Freedom of Expression, "The Case of Filep Karma," Global Freedom of Expression, 2015, <https://globalfreedomofexpression.columbia.edu/cases/indonesia-v-filep-karma/>.

towards the government of the Republic of Indonesia” under Article 154 of the Criminal Code.¹⁹

Cases suspected of involving political activism, particularly among native Papuans, often lead to accusations of treason (makar). TAPOL, a United Kingdom-based human rights organization that advocates for the rights and release of political prisoners, reported that as of May 2014, there were 76 political prisoners and detainees in Papua. Notably, the rate of detentions surged during and after the 2019 West Papua Movement Against Racism (*Gerakan West Papua Melawan Rasisme*).²⁰ From early 2019 to September 2020, following the Uprising Movement, there were 245 new political prisoners documented, with 109 individuals charged with treason. However, throughout 2020, only six individuals were actually convicted. According to the Papuans Behind Bars database, between 2021 and 2023, among the 132 Papuans detained and tried for political reasons, 50 were charged with treason, and 48 were ultimately convicted.²¹

When closer examination of the patterns surrounding the arrest and imprisonment of suspected political prisoners, it becomes evident that they often share a common thread: the expression of political opinions and views. Various institutions and civil society organizations harbor suspicions that these arrests are largely motivated by activities aimed at conveying one’s political stance, particularly concerning the human rights situation in Papua. If these suspicions are validated, we may observe similarities with the phenomenon of prisoners of conscience.

¹⁹ *Ibid*

²⁰ Latifah Buswarimba Alhamid et al., “Makar Dan Tahanan Politik Di Tanah Papua” (London, 2024), [https://www.tapol.org/sites/default/files/AIDPxTAPOL - Makar dan Tahanan Politik di Tanah Papua %5B2024%5D %28versi ID%29-compressed.pdf](https://www.tapol.org/sites/default/files/AIDPxTAPOL_-_Makar_dan_Tahanan_Politik_di_Tanah_Papua_%5B2024%5D_%28versi_ID%29-compressed.pdf).

²¹ Fia and Ade, “Bebas Namun Perlu Dilakukan Pendampingan,” Cendrawasih Pos, 2025, https://cendrawasihpos.jawapos.com/berita-utama/23/12/2024/bebas-namun-perlu-dilakukan-pendampingan/2/#google_vignette.

Based on the patterns observed in PoC cases, it is evident that the articles frequently cited as grounds for detention or imprisonment pertain to offenses against freedom of expression. These include provisions on criminal acts such as treason (*makar*), hate speech (*ujaran kebencian*), insults (*penghinaan*), and defamation (*pencemaran nama baik*), as outlined in the Indonesian Criminal Code. Additionally, the Information and Electronic Transactions Law (UU ITE), which addresses the criminal act of disseminating information that contains insults and defamation in cyberspace, is also commonly referenced. These articles remain in effect despite the revision of the Criminal Code under Law No. 1 of 2023 and the ITE Law under Law No. 1 of 2024. For example, In the Constitutional Court decision No. 76/PUU/XV/2017, a notable point in the judges' considerations highlights that the element of "inter-group" extends beyond ethnicity, religion, and race. It encompasses "all entities" that are not captured by these specific categories. Nevertheless, the stipulation regarding "hate speech" in the Criminal Code that was examined remains intact and was ultimately upheld in the ruling.

3.2. Cases of Prisoners of Conscience in Indonesia: Fair Trial Perspective

Cases involving prisoners of conscience in Indonesia are marked by unjust judicial processes. This is evident from various previously discussed cases. Such a situation starkly contrasts with the provisions of the ICCPR, which Indonesia ratified through Law No. 12 of 2005. Article 14 of the ICCPR states that all individuals are equal before the courts and tribunals. It further asserts that everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law regarding any criminal charge against them or in matters pertaining to their rights and obligations in legal proceedings.

Criminal law contains a variety of provisions concerning expressions such as defamation, hate speech, slander, and treason. These provisions are frequently regarded as subjective, with broad interpretations and ambiguous criteria for meeting their elements. This lack of clarity in the law fosters opportunities for arbitrariness among law enforcement officials. Consequently, the potential for authority abuse by law enforcement can result in an unjust judicial process or unfair trial.

Analyzing the arrest patterns of individuals from marginalized communities, particularly Papuan activists and other victims of PoC, shows that many detentions occur without judicial oversight. These arrests often target activists who raise concerns about human rights violations in their region, resulting in charges of treason that are considered to silence their voices effectively. The legal framework regarding treason in the Criminal Code poses significant risks to the right to freedom of expression, as outlined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

The UN Human Rights Committee, in its authoritative commentary (General Comment No. 34), clarifies that “the freedom to have an opinion on political, moral, or religious matters cannot be restricted by any legal provisions.” It further asserts that any limitations on this right, such as “harassment, intimidation, or stigmatization of an individual—including arrest, attempted detention, or imprisonment due to their beliefs”—constitute a violation of Article 19 (1) of the ICCPR.²²

It is essential to recognize that restricting freedom of expression is only justifiable when it aims to protect others' reputations, public morals, public health, or national security. Regarding national security -a term frequently employed by governments to rationalize actions against individuals they label as traitors- the Siracusa Principles offer valuable

²² Human Rights Committee, “General Comment No. 34 Article 19: Freedoms of Opinion and Expression” (2011), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F34&Lang=en.

guidance. These principles reflect a shared consensus among experts in international human rights. The Siracusa Principles assert that limitations on certain rights can be justified by national security only when it is crucial to protect the nation's survival, borders, or autonomy from acts of violence or threats. Furthermore, these principles highlight that national security should not be used as an excuse to curtail human rights in reaction to minor threats of violence that can be adequately addressed by current laws and order.²³

Furthermore, a similar human rights (soft law) instrument, namely the Johannesburg Principles, explains and strengthens the protection of the right to freedom of expression in dealing with national security issues. These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights, convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies at the University of the Witwatersrand in Johannesburg, South Africa. The Principles are grounded in international and regional law and standards concerning human rights protection, the evolving practices of states (as reflected, among other sources, in the judgments of national courts), and the general legal principles recognized by the international community.

Based on the Johannesburg Principle, opinions expressed in forms not prohibited by this principle should not face restrictions, even if they involve criminalization or punishment for those who engage in such forms. The Johannesburg Principles explicitly state that expressions that do not constitute a threat to national security include:²⁴

- 3.2.1. Advocating for changes in state policy or its structure without violence;

²³ Anshari, "Delik Terhadap Keamanan Negara (Makar) Di Indonesia (Suatu Nalisis Yuridis Normatif Pada Studi Kasus Sultan Hamid II)," *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 457–505, <https://doi.org/10.21143/jhp.vol48.no3.1742>.

²⁴ Article 19, "The Johannesburg Principles on National Security, Freedom of Expression and Access to Information" (1996), <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>.

3.2.2. Expressions that constitute criticism, insults, or ridicule of a nation, state or state symbols, government (and its organs), public officials, foreign nations, countries or symbols of foreign countries, foreign governments, or public officials of foreign countries; And

3.2.3. Communicating or disseminating information about alleged human rights violations.

In reference to Law No. 1 of 2023 concerning the Criminal Code (KUHP), treason (*makar*) is defined as an act carried out with the intention to commit an attack that has been realized through preparatory actions. The core of the issue lies in the original definition from the Dutch language, where the term "*aanslag*" is interpreted as "*gewelddadige aanval*," which translates to "violent attack" in English. Therefore, the fulfillment of the elements of treason is recognized as occurring whenever an attack takes place. This provision enables law enforcement officials to interpret treason as having occurred when an individual expresses an opinion or political viewpoint deemed treasonous. Consequently, this raises concerns about the fairness of judicial proceedings, given that the entire offense of treason carries a penalty of 12 to 20 years. Law enforcement authorities can initiate the arrest process based solely on a "subjective" interpretation.

When examining the case of individuals exiled on the island of Buru, it is alleged that the state's rationale is notably biased, depicting these individuals as rebellious and intent on overthrowing the established government by linking them to "left movement" affiliations. The same pattern can be observed in some arrests of Papuan activist's cases under treason charges. The fulfillment of preliminary evidence in these instances often relies on the interpretation of one-sided expressions and translations that suggest the opinion contains elements of separation or separatist movements, effectively leaving anyone at risk of arrest.

Moreover, the arrest and detention of PoC cases do not inherently lead to the conclusion that the detention process is excessively prolonged. International human rights standards mandate that individuals who are arrested or detained—whether as suspects or in anticipation of criminal charges—must be promptly presented before judicial authorities, such as a judge or other court officials. This procedure is essential to safeguarding the human rights of the suspects or accused, as outlined in Article 9, paragraph (3) of the ICCPR. The UN Human Rights Committee has established that the "immediacy" required for the legal review of a suspect's detention should not exceed 48 hours or two days. Furthermore, international human rights standards stipulate that this requirement is an automatic obligation for the state, irrespective of whether the suspect or detainee contests the legality of their detention.²⁵

In the report titled "Concluding Observations on Indonesia", as a response to the country's first and second reports, the Committee against Torture (CAT) highlighted the issue of excessively long pretrial detentions under the Criminal Procedure Code (KUHP), which can contribute to instances of torture, particularly in police custody. For individuals charged with treason in the *pro Justitia* before trial process, the potential sentence is twenty years, especially in cases where the alleged act involves the intention to kill the president as outlined in Article 191. Consequently, individuals in this situation may face detentions of up to 171 days across all levels of the judicial process, including police custody, the prosecutor's office, and the courts, before being presented before a judge.²⁶

²⁵ Amnesty International, *Fair Trial Manual: Second Edition* (London: Amnesty International Publications, 2014).

²⁶ Committee Against Torture, "Concluding Observations on the Initial Report of Indonesia, Report of the Committee Against Torture Twenty-Seventh Session (12-23 November 2001) and Twenty-Eighth Session (29 April-17 May 2002)" (2008), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=sah0drD2N2kq5bZlX0%2FUxjsw9ZTAU7HgUgftmjPSUsdxk1tiAKE3y1PBhTfrrfM8tcTr0zoYhiz74Ssrg9gpg%3D%3D>.

In response to the provisions of the judicial process, particularly those relating to court hearings, the United Nations Working Group on Arbitrary Detention (UNWGAD) has recommended revisions to these provisions about detention. The current provision of 171 days total of detention of learning at every level (investigation, persecution, and trial) is deemed excessively lengthy, creating opportunities for potential human rights violations and unfair trial practices. The UN Human Rights Committee provides recommendations for suspects to be brought before a judge within 48 hours to assess the legality of further detention, particularly in its evaluation of Indonesia's first report on the implementation of the ICCPR.²⁷

According to the ICCPR, Article 14 outlines the elements and features of a fair trial, including: independent court, public trial, presumption of innocence, defendant told of charge, time & facilities to prepare, trial without undue delay, right to a lawyer, right to examine witnesses, right to an interpreter, and right not to testify against oneself. The arrests, imprisonment, and exile in many PoC cases are highly susceptible to violations of the right to a fair trial as outlined in Article 14 of the ICCPR.

The following observable pattern in PoC cases is the prevalence of victims who are imprisoned and exiled without undergoing a fair trial. This is evident in the case of Pram and other individuals who were exiled to Buru Island. The Universal Declaration of Human Rights (UDHR) clearly establishes in Article 11, paragraph (1) that every person charged or suspected of committing a criminal offense must be presumed innocent until proven guilty in an open court. The judicial process must adhere to all standards of a fair trial to determine an individual's guilt.

²⁷ UN Human Rights Committee, "Concluding Observations on the Initial Report of Indonesia, 21 Agustus 2013, Paragraph 19, UN Doc. CCPR/C/IDN/CO/1," Pub. L. No. CCPR/C/SR.2984, 2985 and 2986 (2013), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=Vb6HUdgrVuXrvpykE6x2K1MrHkvz3IYIbAQHPiguL88Z2YbS1smnyJGguyp9SiDD5NbIVCG3aElhEjGAIJplw%3D%3D>.

However, in the PoC case involving Pram and others exiled on Buru Island, their arrests and imprisonments even occurred without any trial whatsoever.

4. Conclusion

The term "prisoners of conscience" (PoC) is closely associated with the civil society organization Amnesty International. It refers to individuals who are detained solely for peacefully expressing their opinions, beliefs, and political views. In Indonesia, PoC cases are evident, such as the arrest, detention, and exile of Pramodya Ananta Toer, which took place not only during the Dutch colonial era but also throughout the Old Order and New Order regimes. Pramodya's arrest and detention occurred without a fair and open trial process. Similarly, there have been multiple instances in which Papuan activists have been arrested and imprisoned on treason charges simply for critiquing the government. The patterns of human rights violations associated with PoC cases significantly infringe upon the right to a fair trial as outlined in Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

BIBLIOGRAPHY

1. Books

- Alhamid, Latifah Buswarimba, Antonius Naiaki, Rosmina Windesi, Hamim Mustofa, Mohammad Pieter Alhamid, Latifah Anum Siregar, and TAPOL (UK). "Makar Dan Tahanan Politik Di Tanah Papua." London, 2024. <https://www.tapol.org/sites/default/files/AIDPxTAPOL - Makar dan Tahanan Politik di Tanah Papua %5B2024%5D %28versi ID%29-compressed.pdf>.
- Amnesty International. *Fair Trial Manual: Second Edition*. London: Amnesty International Publications, 2014.
- . "Indonesia: An Amnesty International Report." London, 1977. <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa210221977en.pdf>.
- . "Indonesia: End Travesity of Justice and Release Moluccan Prisoners of Conscience." Amnesty.org, 2021. <https://www.amnesty.org.au/indonesia-end-travesty-of-justice-and-release-moluccan-prisoners-of-conscience/>.
- . "Indonesia: Moluccan Activists' Appeal Rejected." Amnesty.org, 2022. <https://www.amnesty.org.uk/urgent-actions/moluccan-activists-appeal-rejected>.
- Amnesty International Indonesia. "100 Tahun Pramoedya Ananta Toer: Negara Harus Jamin Kebebasan Berekspresi Dan Kemerdekaan Berpikir, Bebaskan Semua Tahanan Nurani Di Indonesia." Amnesty International Indonesia, 2025. <https://www.amnesty.id/kabar-terbaru/siaran-pers/100-tahun-pramoedya-ananta-toer-negara-harus-jamin-kebebasan-berekspresi-dan-kemerdekaan-berpikir-bebaskan-semua-tahanan-nurani-di-indonesia/02/2025/>.
- Amnesty International USA. "Freedom of Expression." New York, 2021. <https://bidenhumanrightspriorities.amnestyusa.org/wp->

content/uploads/2020/11/Freedom-of-Expression_Strengthening-Human-Rights-For-All-in-2021_110620-2.pdf.

Article 19. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (1996). <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>.

Committee Against Torture. "Concluding Observations on the Initial Report of Indonesia, Report of the Committee Against Torture Twenty-Seventh Session (12-23 November 2001) and Twenty-Eighth Session (29 April-17 May 2002)." 2008. <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=sah0drD2N2kq5bZlX0%2FUxjsw9ZTAtU7HgUgftmjPSUsdxk1tiAKE3y1PBhTfrfM8tcTr0zoYhiz74Ssrg9gpg%3D%3D>.

Fia, and Ade. "Bebas Namun Perlu Dilakukan Pendampingan." *Cendrawasih Pos*, 2025. https://cenderawasihpos.jawapos.com/berita-utama/23/12/2024/bebas-namun-perlu-dilakukan-pendampingan/2/#google_vignette.

Friedrich Naumann Foundation for Freedom. "Prisoners of Conscience: Political Prisoners from East and Southeast Europe." Sofia, 2021. https://www.freiheit.org/sites/default/files/2021-07/prisonersofconscience_report_digital.pdf.

Global Freedom of Expression. "The Case of Filep Karma." *Global Freedom of Expression*, 2015. <https://globalfreedomofexpression.columbia.edu/cases/indonesia-v-filep-karma/>.

Human Rights Committee. General Comment No. 34 Article 19: Freedoms of Opinion and Expression (2011). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F34%2F34&Lang=en.

- KontraS, and ICTJ. *Menyusun Puzzle Pelanggaran HAM 1965: Sebuah Upaya Pendokumentasian*. Jakarta: Komisi Orang Hilang dan Korban Tindak Kekerasan, 2012.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2011.
- Safety of Journalist Platform. "Journalist Polad Aslanov Arrested, Jailed and Charged with High Treason." Safety of Journalist Platform, 2022. <https://fom.coe.int/en/alerte/detail/49403179>.
- Soekanto, Soerjono, and Sri Mahmudji. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2003.
- Supartono, Alex. *Pelepasan Tahanan Politik Peristiwa September 1965*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, 1998.
- UN Human Rights Committee. Concluding observations on the initial report of Indonesia, 21 Agustus 2013, Paragraph 19, UN Doc. CCPR/C/IDN/CO/1, Pub. L. No. CCPR/C/SR.2984, 2985 and 2986 (2013). <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=Vb6H UdgRVuXrvpykE6x2K1MrHkvz3IYIbAQHPiguL88Z2YbS1smnyJ Gguyp9SiDD5NbIVCG3aElhEjGAlJplw%3D%3D>.

2. Journals

- Anshari. "Delik Terhadap Keamanan Negara (Makar) Di Indonesia (Suatu Nalisis Yuridis Normatif Pada Studi Kasus Sultan Hamid II)." *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 457–505. <https://doi.org/10.21143/jhp.vol48.no3.1742>.
- Dewi Pramesti, Masitha. "Konstruksi Identitas Tahanan Politik Orde Baru Dalam Novel Amba Karya Laksmi Pamuntjak." *Journal.Unair.Ac.Id* 4, no. 2 (2015): 241–58.