

The report of the hearing of the case relating to the clash in Abepura on 16 March 2006 in the Abepura state court.

By

Advocacy team for the Abepura clash of 16 March 2006

Introduction

The criminal trial for the Papuan students and civilians who have become indictees continued in two groups, the total number of accused persons being 23 persons. The trials related to the Abepura clash on 16 March 2006 in front of the University Campus Cenderawasih Abepura, which occurred after a demonstration was held against PT Freeport Indonesia. The trials for first group containing 16 people including Selvius Bobii and others, started on 17 May 2006 and recently concluded on the 2 August when the verdict was handed down. While the trial for the second group, comprising 7 indictees, including Yasya Echo Berotabui, and others started on 28 June and is still continuing at this time.

1. Condition of the indictees

All the indictees at this moment are detained at the Abepura correctional institution. They were moved there in stages from the Papua police headquarter cells since 8 June 2006. The two final detainees, Sem Wandik and Steven Wandik were just moved at the start of July 2006. In general, the condition of the indictees (some of them are already prisoners) in the correctional institute is healthier and safer than when they were detained in the police cells. The indictees are subject to less restrictions and are allowed visits by their families, church workers and a group of defence lawyers for Echo Berotabui, and others (Mr. Johnson Panjaitan, SH, and others). Routine visits and limited logistical support for the 23 indictees are always provided by the Advocacy Team including the provision of medical examination by a doctor for indictee who suffered physically from torture which was inflicted upon him during his detention by the police.

2. The panel of judges and the public prosecutors

The trials of the 23 indictees are before the same panel of judges, consisting of: Morris Ginting, SH (Presiding judge), A. Lakoni, SH, M.Hum (member of the panel) and Denny D Sumardi, SH (member of the panel). While the public prosecutors, who total more than five, come from the Papua High Office of Prosecutors in Jayapura. Information about the conduct of the judges and prosecutors can be read in the first report of the hearings which was published by SKP Jayapura on 12 July 2006, titled **'The threat to civil rights of the indictees of the Abepura case of 16 March 2006, in legal process'**.

3. Security Apparatus

During the hearings in the court the police from Jayapura Police Station were constantly present in the court building. At the hearings regarding Selvius Bobii, dan others, the members of the police has a strong impact in a number of aspects including the things they used. A small number of the group (about 10-15 people) wore plain clothes which are generally worn by members of the intelligence service. Their presence lead to an atmosphere of intimidation, which resulted in many members of civil society not attending the trials, including the parents of those on trial. Nevertheless, as the trials progressed through June 2006 against the group of 7 indictees, the presence of the security forces was dominated by intelligence agents who would often try to fill the room in which the hearing was taking place. However, the atmosphere of the hearings has

became more open and the indictees gained courage to defend themselves in front of the judges and the prosecutors.

4. The defence lawyers

The provision of legal services by defence lawyers for the indictees, can be divided into two groups. For the case of Selvius Bobii, and others, the defence has been provided by lawyers who work with legal aid organisations in Jayapura: LBH (Mr. Paskalis Letsoin, SH, Rahman Ramli, SH), Kontras (Harry Maturbongs, SH) and Democracy Alliance for Papua (Mr. Iwan Niode, SH & Ms Anum Siregar, SH). It is very unfortunate that Mr. Petrus Eil, SH from Papua Kontras, who signed the interrogation statements (*Berita Acara Pemeriksaan/ BAP*), was never present in the hearings until a decision of the court was handed down on 2 August 2006.

In the case against Yasya Echo Berotabui, and others, the lawyers are lead by Mr. Johnson Panjaitan, SH and a number of lawyers from Legal Aid and Human rights Association (PBHI) Jakarta, together with Mr. Stev Waramory, SH and Ms Selfiana Sanggenafa, SH from Jayapura who are assisted by a number of people from Papua and Jakarta including Mr. Aloysius Renwarin, Ms Fanny Soumokil, SH, Ms Frederika Korain, SH and others. They are all working together as part of the Advocacy team for the Abepura clashes of 16 March 2006 (Advocacy Team B 16 M).

It is necessary to clarify that the presence of the defence lawyers from Jakarta was based on the need to secure a defence in this legal process for the accused persons, **as was requested by the accused and their parents, to protect the rights of the accused to a defence which is reliable and correct throughout the court process.** The requests of these seven indictees is supported by the secretariat of Justice and Peace (SKP) in diocese of Jayapura and Office of Justice, Peace and the Integrity of Creation (KPKC) of the GKI Synod of Papua, dan ELSHAM Papua after observing the process of the trial against Selvius, and others which was very politicized and in an atmosphere of terror and intimidation by the security apparatus and also the actions of the judges and public prosecutors who did not maintain their independence. The previous lawyers did not challenge the atmosphere of the hearings and attitude of the judicial actors. These conditions were very worrying and endangered the interests of the indictees, and were also evident in the final decision of the judges of the state court in Jayapura, in which Selvius Bobii, and others were given a heavy prison sentence.

5. The Atmosphere of the trial

In general, the atmosphere of the trials is not greatly different from that described in the report of SKP of 12 July 2006 titled, **The threat to civil rights of the indictees of the Abepura case of 16 March 2006, in legal process**'. Nevertheless there are a few important factors which occurred throughout the trial which are important to note in this summary because they influenced the attitude and opinion of the judges in the final sentencing of the 16 accused which is documented in the table below.

➤ *Relationship between the Police- Prosecutors - Judges*

The hearings which were conducted in the state court in Jayapura illustrated that the justice process is not neutral and independent as established by the applicable law. The Prosecutor and Judges were heavily focused on reaching an outcome that was already decided. For example, the process of investigation in the hearing only concentrated on the BAP which was later rejected by most of

the indictees. The indictees explained that the statements that were given in the BAP were provided in a situation where during the police interrogation there was a great deal of torture. Moreover the torture was already raised by the indictees when they presented their defence, including showing the resulting wounds to their bodies (for example *Ferdinand Pakage showed his scar where he was shot in the foot*), however this explanation was not addressed by the judges. Another factor was that the prosecutor presented witnesses who were members of the police from Jayapura Police Station who did not recognise the faces of the indictees correctly and were not able to point out with certainty the involvement of the indictees in the criminal action which was detailed in the indictment. The faces of the indictees was only recognized by the witnesses from photos which taken by the police so that it is questionable where the evidence originated. This action violates section 1 part 8 and 9 of the Indonesian criminal procedure code (KUHAP).

- *The presence of uniformed police and intelligence apparatus in the hearing.*
When the first hearing was held in the case against Selvius Bobii, and others on the 17 May 2006, members of the police force, wearing full uniform and with their weapons were present in the hearing room. Others also stood guarding the entrance door to the hearing room and the room where the defendants were being held at the back of the hearing room, as well as in the grounds of the Jayapura state court. Not to be forgotten also is the presence of groups of intelligence, the majority coming from the police but with a smaller component from the TNI, including civilians (Papuan and non-Papuan) who are recruited as intelligence informers. In addition to being present and recording the proceedings of the trial, they occasionally took photos of the faces of those in the public gallery with their mobile phones. They also socialized with the members of the police force outside the hearing room. Both the uniformed police and intelligence agents, always gave an unfriendly impression to civilians who were present at the hearing. On a number of occasions in the hearing when witnesses were being questioned, the police shouted loudly together. Members of the police who were brought forward as witnesses gave statements which were not consistent with the case of the police, for example, the statements refuted or were inconsistent with statements that were in the BAP of the police.

The presence of the police armed with their weapons violates section 219 of the KUHAP which states that no person can carry a firearm or sharp weapon in the court room.

The atmosphere of the court room started to change when the second group of defendants (Echo Merano Berotabui, dan others) were brought before the court on 28 June 2006 with their defence team which was lead by Johnson Panjaitan, SH. In the hearing on the 12 July 2006 which was attended by many members of the families of the indictees, civil society organisations and print and electronic media personnel, Johnson Panjaitan firmly asked to the judges if the uniformed security personnel could leave the court room. This request was agreed to by the head judge and he ordered the personnel with weapons to leave the hearing room and to move away from the door of the hearing room. Since this time, the majority of security personnel who have been present in the court room have worn civilian clothes.

➤ *The intimidation of the indictees in the detention room in the State court of Jayapura.*

From the notes of the hearings made by the Advocacy team observers, the indictees suffered from intimidation at least on two occasions, both by the police and the families of those who died on 16 March 2006. The intimidation by the police mobile brigade (BRIMOB) occurred at hearings held on 17 and 24 Mei 2006. Some of the indictees suffered ill treatment which resulted in injuries from the police after they rejected the indictment which was read out in the court by the Prosecutor. The threats said by members of Brimob were such as “*When the time comes for your release, it is better that you ask asylum from Australia or another country, because if you don’t, we take your life. We will kidnap and kill you, we will throw your corpse in a crocodile pool so no one will be able to recognize you*”. Such threats are criminal acts as stated in the KUHP (the Indonesian Penal Code) section 315 articles 1 and 2 and section 353.

The intimidation by the families of the police who died occurred on the 12 July 2006 as follows; the members of BRIMOB brought in 2 family members of the deceased to the detainee waiting room, where they brought out a knife and threatened the indictees to confess that they had killed their relative who died on 16 March. In relation to this incident the defence lawyers wrote a letter of complaint to the head of the court, judges and prosecutors to pay attention to the rights and safety of the indictees throughout the course of the trial. The actions of the family of the victim as detailed above is a criminal act as stated in the KUHP section 336 section 336 article 1, section 335 article 1 part 1 and Law No. 12/1951 concerning the use of weapons against the law.

➤ *Witnesses who gave incriminating evidence*

The majority of the witnesses who gave their statements in the hearing, against both Selvius Bobii, and others, as well as, continuing against Echo Berotabui, are active police in Polresta Jayapura. In general they gave an explanation which incriminated the indictees. This is despite the condition that witnesses are defined by the Indonesian criminal procedure code that as a person “who saw, felt or heard actions which constituted criminal acts”, this condition was not met by the witnesses referred to above, because it was very clear that they did not know the faces of the indictees and that did not know exactly if the indictees were at the place of the clash.

It was regretful that in the case including Selvius Bobii and others, no supporting witnesses were lead by the defence lawyers which could influence the opinion of the judge in deciding the criminal sentence.

➤ *The Criminal image which was developed in relation to the indictees.*

The trials against the indictees, was supported by the continual publication by Papua police Chief (Kapolda Papua) about the ongoing efforts of the police to arrest other students who were fugitives. This positioned the Papuan indictees and students in general as criminals, who disturbed the peace and law and order. Public opinion was shaped by this which was evident in many citizens being scared to attend the hearings. In the hearing on 12 July 2006, 5 students wanted to hold a protest with a banner in the yard in front of the court building which supported their colleagues who were being tried. However they were arrested by

Polsek Abepura just as they got off the public transport and tried to open their sign. They were interrogated for 5 hours, then released after Johnson Panjaitan, Aloysius Renwarin and their other lawyers arrived at Abepura Police Station.

A public judgment such as this violates the basic presumption of innocence which says that no person can be said to be guilty (treated as a criminal) until there is a court decision in an accordance with law, which says that a person is guilty.

The group of students who joined the demonstration on 15-16 March 2006, did not join the demonstration to join an action against the police, or chose to flee to other cities in Papua or to hide and not be able to go into public areas and be absent from their studies. These things happened because the police conducted various types of search action.

➤ *Jayapura and National Media coverage*

In monitoring the media in relation to the process of the trials against the indictees in can be seen that generally the news only provided superficial information on the progress of the trials. Other factors which occurred in the hearings, such as the explanation from the indictees about the torture they experienced during police interrogation, the attitude of the judge and prosecutor which lacked independence, and the witnesses who gave statements which were not consistent with the facts, were not covered by the media.

6. *Decision/ Verdict of the judges in the case of Selvius Bobii, and others.*

The verdict against the indictees was delivered in three hearings, that is on 24 July, 26 July and 2 August 2006. The decision which contained the reasoning of the judges, referred to the fact that from the statements of the witnesses, it can be proven that the indictees committed a criminal act as charged by the Prosecutor. The sentences handed down by the judges where generally a term of imprisonment 1-3 years greater than was recommended by the Prosecutor. For example, in relation to indictee Nelson Rumbiak it was recommended that he be sentenced to 4 years but the judges sentenced him to 6 years in gaol. For Luis Gedi and Ferdinand Pakage 12 years was recommended and the verdict stated 15 years in gaol. The period of sentenced was only less for one indictee, Markus Kayame (who was 50 years old) because he was considered not to be fully mentally able.

All the indictees were given the opportunity to state their intention to appeal to the High Court within 7 days after the decision was handed down. From the 16 indictees, 10 people received the decision without being accompanied by their lawyers: Paskalis Letsoin, Anum Siregar, Iwan Niode, Harry Maturbongs dan Rachman Ramli. The lawyers had left the room as a sign of protest against the judges for breaching the promise to the lawyers from the beginning and throughout the trial, that, they will render a decision which is fair to the indictees.

NAMES OF INDICTEES AND LENGTH OF SENTENCE

No.	NAME	AGE	SEX	STATUS	SENTENCE
1.	Selvius Bobii	25	M	University student	6 years in gaol

2.	Luis Gedi	27	M	Private businessman	15 years in gaol
3	Ferdinand Luis Pakage	19	M	Parking attendant	15 years in gaol
4	Penius Wakerkwa	21	M	University student	5 years in gaol
5.	Othen Dapyal	25	M	University student	5 years in gaol
6.	Thomas Ukago	22	M	University student	5 years in gaol
7.	Elkana Lokobal	21	M	College student	5 years in gaol
8.	Elyas Tamaka	30	M	University student	5 years in gaol
9.	Patrisius Aronggear	30	M	University student	5 years in gaol
10.	Markus Kayame	47	M	Civil servant	4 months and 2 weeks
11.	Moses Lokobal	31	M	Private businessman	5 years in gaol
12.	Musa Asso	28	M	Private businessman	5 years in gaol
13.	Mon Jefri Obaja Pawika	21	M	University student	5 years in gaol
14.	Mathias Michael Dimara	19	M	News paper delivery man	5 years in gaol
15.	Nelson Ipan Cornelius Rumbiak	20	M	College student	6 years in gaol
16.	Bisiur Mising/Bensiur Mirin	21	M	University student	5 years in gaol
17.	Alex C. Wayangkau	21	M	University student	5 years in gaol
18.	Yasya Echo Merano Berotabui	25	M	University student	Hearing still continuing in Jayapura state court.
19.	Piter Stefanus Buinei	21	M	University student	As above
20.	Sepik Sony S. Jitmau	19	M	College student	As above
21.	Mochammad Ahmad Kaitam	20	M	College student	As above
22.	Aris Mandowen	21	M	Private businessman	As above
23.	Steven Wandik	23	M	Farmer	As above
24.	Sem Wandik	21	M	University student	As above

Note: the sentences stated above are less the time already spent in detention while the investigation and trial process was ongoing.

Conclusion

From what has been stated above, the following recommendations concern areas which we would like all parties to pay attention to and are necessary in the search to find a way to resolve these cases in a way that preserves life and promotes democracy and respect for human rights in Papua.

- The trial against Papuans, the majority of whom are students, in relation to the Abepura clash of 16 March 2006, has brought fear, intimidation and trauma to the surface in Papua, in a society where such sentiments are deeply held, so that they cannot be free and able to express their opinions in public, either in mass demonstrations or other forms of freedom of expression;

- The criminal judgment against Selvius Bobii, and others, sets a bad precedent for the police apparatus in Papua, that it is easy to 'criminalise', all bodies which try to criticise government policy which is not consistent with aspirations of Papuan society;
- The trial against the indictees and the efforts of the Papua police, who continue to search for the names of students who may be candidates to become suspects, has left behind feelings of trauma and fear for students who wish to return to a normal life and continue with their studies in the higher education institute in Papua;
- The right to life for the Papua nation as guaranteed in the Papua Special Autonomy law number 21/200, is all the more threatened in their own country;
- The cases relating to the Abepura clash of 16 March 2006 is complicated by political interests and therefore efforts to seek justice for the victims cannot be resolved only through legal means, but rather there is a need for political and other components of society to re-open space for democracy in Papua to produce justice and peace which is wanted by all Papuan society.

Jayapura, 21 August 2006

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