

Human Rights Council Advisory Committee

Submission on Local government and human rights

To;

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Local government and human rights

QUESTIONNAIRE

1. How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.

The organization of local government in Indonesia is regulated by Law Number 23 Year 2004 on Local Governance. This legal framework covers the functions, authorities, financial resources, and other matters related on how local governance is organized. Based on this Law, the local government is responsible to manage and administer matters related to the interest of the governed areas and people, while considering the principle of autonomy and assistance.

Government Regulation Number 38 Year 2007 on the Distribution of Authorities between Central Government, Province, and District/Cities, further distinguishes the responsibility of different governance levels. Based on the Regulation, only central government has authority and responsibility to cover the areas of foreign policy, defense, security, judicial, national fiscal and monetary, and religion. While the local government or the collaboration of the different governance level, has authority to cover all matters outside the already mentioned, including education, health, industry, communication, socials, women empowerment and children protection, development plan, investment, etc.

We concern that several local government (explain further in question number 5) has made and circulate the regulation on religion matters which contradict to human right standard in national and international norms or laws. Based on the regulation mentioned above, the religion matter shall be regulated by the central government on which inline with the International Human Right Standard, such as the ICCPR and UDHR.

On the financial matter, the Article 157 on Law Number 23 Year 2004 mentions that the financial resources of local government is earned from local income (tax, retribution, management of local properties), allocated fund from national budget, and other legal local incomes.

As the decentralization process keeps on going, today, local governments in Indonesia consists of 34 provinces (led by elected governor), 414 districts (led by elected regent), 1 administrative district (led by regent whom appointed by governor), 93 cities (led by elected mayor), and 5 administrative cities (led by mayor whom appointed by governor).

2. Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.

President Regulation Number 23 Year 2011 on National Plan of Action on Human Rights year 2011-2014 mandates the government, both central, province, and district/city, to uphold and internalize Human Rights values into policies. Article 3(2) on the Regulation explicitly obligate the local government (governor, regent, and mayor) to execute the National Plan of Action on Human Rights, based on its respective responsibilities and functions, while considering the local situation.

National Plan of Action on Human Rights is developed to increase the promotion, fulfillment, protection, and enforcement of Human Rights in Indonesia while considering religion values, morale norms, tradition, culture, security and orderliness. Several focuses/programs on the National Plan of Action on Human Rights year 2011-2014, including:

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1. Establishment and reinforcement of National Plan of Action on Human Rights' Institutions;
2. Preparation to ratify international human rights instruments;
3. Harmonizing the drafts and evaluation of regulations;
4. Education on Human Rights;
5. Implementation of Human Rights' standards and norms;
6. Communication service regarding human rights issues;
7. Monitoring, evaluation, and reporting.

The Regulation also mandates the local government (province, district/city level) to form the Committee on National Plan of Action on Human Rights who responsible to governor, regent, or mayor.

We deplore that from seven programs of RANHAM, it does not covering to prioritize the agenda of effective remedies for victims of (gross) human rights violations. While Indonesia has a number of victims of (gross) human rights violation which happened in the past, including; Victims of gross human rights violation of 1965/66, the victims of Military Operation Area (DOM) I and II in Aceh, which until now has not been given an effective remedy.

3. Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?

Based on Government Regulation No. 21 of 2011, on the formation, organization, and procedure of the representatives of Ombudsman in local level, the Representatives of the Ombudsman has a hierarchical relationship with the Ombudsman responsible to the Chief Ombudsman. To date, there is 32 (Thirty two) offices of Ombudsman in local level. Ombudsman in local level receive reports of alleged maladministration in public service in the local level. While the Ministry of Law and Human Rights has established 33 (thirty-three) local offices and could also receive reports from individual or groups.

4. What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?

In Indonesia, Civil Society has been actively monitoring the policy and its implementation, yet there is limited space for participation of the civil society in the planning of policy or any activities for the protection and promotion of human rights at local level. Nevertheless, we recognize that the main role of civil society itself is to monitor the government (both central and local) on their policy and implementation, and to raise awareness of the society on their rights. It stated also in the Law No. 17 of 2007 on National Long-Term Development Plan (RPJPN) 2005-2025 that one of the goals of the Indonesian government is to make consolidated democracy, which is more openly for participation of civil society.

Therefore most of the civil society organization has been actively conducted activities to promote human rights, such as with conducted training, workshop, and also advocating for the human rights violations in local and national level.

5. What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?

On the program undertaken by KontraS, we focus on the capacity building of local staff in local

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institutions in the area of human rights, including the police institution at the local level. We deeply recognize the role of the Police Institution as the main agent of the security guards, law enforcement, community service; in other words, the police are human rights protector, yet our experience also shows a paradox that police also as one of human rights Violator. Therefore we tried to enter in the realm of policing by conducting training in various areas to improve their understanding of human rights. Besides, we also published a handbook on "Guidance on Policing, and the right to freedom of thought, conscience and religion".

In other training for human right defender in freedom of thought, conscience and religion in 2014, we enhance the focal points in several areas in Indonesia to monitoring the policy of their local government to line with promotion and protection of human rights.

6. What are the main challenges faced by local government in your country in the promotion and protection of human rights?

On our assessment, based on the actual problem, we believe that the problem of the local government on the promotion and protection of human rights is; the coordination between central and local government, the lack of understanding of human rights in local government level and the last but not least is the opportunities for corruption in the decentralization.

First, on the lack of coordination between central and local government can be proved by the regulation on religious matters issued by the authority of local government.

We concern for this situation, because the local government has a significant role on human rights protection, yet it will be a big problem if there is still lack of understanding on human rights on local government level. For example, there is a circular issued by the provincial government and district level which prohibits the worship of Ahmadiyah minority groups. This regulation had ultimately lead to violent conflict on minorities.

Among the restrictive regulations on the prohibition of the Ahmadiyya worship, inter alia;

- a. Letter no. 223.2/803of South Sulawesi Governor /10 February 2011
- b. Letter no. 450/PUM/2011/68 regulation of Riau Regent/ 16 February 2011
- c. Letter no 5 on 2011 / 21 Februari 2011/ Pandeglang Banten
- d. Letter no. 200/160/BKPPM.I/II/2011 (Mayor' Decree) 25 February 2011 Samarinda
- e. Letter no. 188/94/KPTS/013/2011 (Governor Regulation) 28 February 2011 East Java
- f. Letter No.12 on 2011 (Governor Regulation) on 3rd March 2011 West Java
- g. Letter no. 300.45-122/2011 (Mayor' Decree) 3 March 2011 Bogor, Jawa Barat
- h. Letter no.9 on 2011, Depok, West Java.

While, In Aceh, the enforcement of Islamic Shari'a Law in Aceh province was officially enacted in 2002 by issuing *Qanun* (The main legal instruments for the governing of Aceh). The punishment of Qanun' violations are in the form of caning and fines which is regulated in Aceh Governor Regulation No. 10 of 2005. The caning punishment is only applies to Moslem people in Aceh. It covers for several issue, such as; consumption of alcohol, gamble, fornication/prostitution, and so on.

We believe that Aceh Shari'a Law has been contradict the standard of national and international human rights norms and laws. For example, the caning has violated the Universal Declaration of Human Rights (UDHR), Convention against Torture (CAT) and International Convention on Civil and Political Rights (ICCPR) while Indonesia has become the state party.

Second, the decentralization has made the opportunities for corruption, resulted the local government can not maximize the promotion and protection of their citizens rights. For example the corruption in education and medical devices which ultimately harm the public health and decrease the access to education for public in local government. *Indonesia Corruption Watch* has reported five cases of alleged corruption in the special allocation fund of education in five

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areas to the Corruption Eradication Commission. The case in Simelungun, Sinjai, Tasikmalaya, Ponorogo, and Garut which is estimated to cost the country more than USD 24 billion. In January 2014, Ministry of Home Affairs stated that 318 people from a total of 524 local government head and deputy was entangled with the cases of corruption.

With those problematic regulation issued by local government in many areas covering religion matters, and also the corruption opportunities in decentralization in Indonesia, we believe that there should be policy adjustment between local government and capacity building for the local government to enhance their knowledge on human right.

6. Please provide any best practices with regard to the above-mentioned issues.

KontraS appreciate Mayor of Palu, Rusdi Mastura, when he delivered an apology to victims of Events 1965. The apology followed up by Palu Mayor Regulation No. 25 Year 2013, which contains the 17 articles entitled "National Action Plan on Human Rights in Local Government". Ministry of law and Human Rights has declare the City of Palu as Conscious city of Human Rights.