

Universal Periodic Review on Indonesia
INFID Submission to Indonesia for 1st session of UPR , 7-18 April 2008

I. Working Mechanism / methodology / consultation process

1. Preliminary consultation started on 22 October 2007 in Jakarta by involving INFID and HRWG members and partners. After 4 consultations this report was then prepared as a synthesis of the reports from various NGO network that conducted advocacy to the UN human rights mechanisms and in other human rights forums. Consultation was also conducted with the National Commission for Human Rights (Komisi Nasional HAM) and National Commission on Violence against Women (Komisi Nasional Perempuan). At the last meeting, there was a multi-stakeholders consultation from CSO-KOMNAS HAM and related government's departments including TNI, the Indonesian National Armed Forces

II. Legal and institutional framework in the promotion and protection of human rights:

2. In Indonesia, there is a conflict of laws (contradiction among articles) within the constitution, which in turns resulted in discriminative measures towards indigenous people. This leads to several laws that threaten the indigenous people's ownership such as Plantations Law and Oil Palm Mega-Projects policy in West Kalimantan. These are examples of violations against indigenous people's rights. (Details in Annex 1 point 1)
3. Legal framework on protection of women against discrimination is still very weak. Some of the weaknesses are that Optional Protocol CEDAW has not been ratified. The existing laws and regulations do not support CEDAW perspective such as Health Law and various other provincial regulations/by laws. Specifically, Law on Citizenship makes the circumstances more difficult for female migrant workers and there are no special measures from the State to protect Indonesian women who work overseas.
4. The legal foundation in the ratification of Convention on Protection of Children is a Presidential Decree. This legal foundation resulted in the lack of fulfillment in protection for children in laws. Furthermore, several human rights instruments related to children protection have not been ratified: Convention on Migrant Workers, Optional Protocol on the Sale of Children and Child Prostitution, and Optional Protocol on Children in Armed Conflicts. Such condition places children in a vulnerable position to become victims.(See Annex 1 point 3)
5. Apart from the above problems, Law No. 23/2002 on the Protection of Children does not placed KPAI (Komisi Perlindungan Anak Indonesia, Commission for the Protection of Children) as a *pro justitia* institution so that it does not possess *sub-poena* authority when violations against children's rights occur. As a result, KPAI cannot conduct effective investigations when violations occur. Related to this issue, Law No. 23/2002 on the Protection of Children does not regulate referral mechanism to address cases of violations against children's rights: whether the cases will be referred to Komnas HAM or Komnas Perempuan. The situation is even more complex because KPAI does not have intensive communication with Komnas HAM and Komnas Perempuan, resulting in lack of synergic coordination among them.

6. Related to the freedom of religion or belief – although very private – there are several regulations that contradict each other. The Constitution provides that “every person is free to observe and practice his religion...(article 28 E point 1 UUD 1945). Meanwhile, Article 29 of the 1945 Constitution explicitly guarantees the freedom of every citizen to observe each of their own religions and to practice in accordance to those religions and beliefs. However, the guarantee provided by the constitution is reined by the Presidential Regulation No. 1/PNPS/1965 which decides what religion or belief is acknowledged or not. This Presidential Regulation is then adopted in KUHP article 156 A on Blasphemies that give the State the authority to criminalize any religions or beliefs that are declared deviate, such as what happened to Lia Eden, Yusman Roy in Malang, and M Ardi Husen in Probolinggo. Presidential Regulation No. 1/PNPS/1965 is clearly in contradiction with the 1945 Constitution, as well as with the Covenant on Civil and Political Rights (ICCPR), in which article 18 of ICCPR has been ratified into Law No. 12/2005. (See Annex 1 point 4)
7. There is no special law on enforced disappearances. Law No. 26/2000 on Human Rights Court and Law No. 39/1999 on Human Rights merely regulates the crime of enforced disappearances as a crime against humanity that requires elements of crime such as having a systematic and widespread nature. In the discussion regarding the draft law on the revision of Criminal Code, there is no special article that regulates the issue. Indonesia has not signed the international convention on the protection of every person against enforced disappearance, which has been legalized on 20 December 2006. Even though the Indonesian government has promised to ratify the convention, it has not managed to do so. The convention is very important considering that there is no criminalizing law on enforced disappearances. When the Indonesian government ratifies the convention, there is an obligation to adopt it into the national law.
8. In Indonesia there is the Government Regulation No. 3/2002 on Compensation, Rehabilitation and Restitution for victims of serious human rights violations. However, this regulation cannot be implemented. (See Annex 1 point 5)
9. Death penalty is still listed on 11 regulations although the 1945 Constitution as the highest legal norms have guaranteed the right to live for everyone. The constitutional guarantee can be seen in Articles 28 E and 28 I point (1) 1945 Constitution. It is then strengthened after Indonesia ratified the Covenant of Civil and Political Rights (ICCPR) to become Law No. 12/2005. Meanwhile, draft revision of the Criminal Code which is still in the formulation stage still contains provisions on death penalty such as in articles 87-90 although it gives strict limitation to the convicts, including the existence of final reviews – through a long evaluation – in order to make it difficult to execute a convict on death row. However, the prolonged delay on the execution (*death row phenomenon*) against a convict is also prohibited by the ICCPR Committee. (see annex 1 point 6)
10. Market economy policy/strategy that is supportive towards strong capital has brought about two impacts in laws/regulations. **First**, the law and regulations are discriminative against the poor and have systematically deprived the poor of their basic rights. **Second**, omission of laws and regulations that is substantially in favor of the poor. (See Annex 1 point 7)

11. Development policy that has one dimension and in favor of large scale businesses (property business, mining, plantation, etc) has had the following impacts: 1) damage on nature that results in continuous disasters and leads to the loss of people's basic rights, including the rights to live and to have a decent living; 2) condemnation of farmers' land and the rights of indigenous people. Development policy in city plan, land, forestry, mining, water, etc, tends to sacrifice the basic rights of people who are economically weak both in the city and in the country. This policy has impacted on widespread poverty and violations against people's basic rights including the right to live and to earn a decent living.
12. In Indonesia there are no specific regulations on torture. Although Indonesia has ratified the Convention on Anti Torture (CAT), there are no specific regulations that can criminalize acts of torture. (Details can be found in Annex 9)

II. Implementation and efficiency of legal and institutional framework:

13. There is no effective promotion to the grassroots level and to government institutions regarding the substance of CEDAW, CERD, CAT, ICCPR, or CRC. One of the efforts that can be done by the government is to maximize the performance of human rights institutions and State bodies related to the ratified Convention, such as the Minister of Women Empowerment, Komnas Perempuan, Komnas Perlindungan Anak, to have the function/the authority to receive complaints from the community.
14. KPAI (Komisi Perlindungan Anak Indonesia or the Commission for Child Protection) is a State body that was established based on Law No. 23/2003 on the Protection of Children and is independent in nature (Article 74). KPAI's mandate is specifically to promote and to protect children's rights. However, its role and function is not yet significant in performing its mandate. Until today, KPAI still fails to map the occurrence of violations against children's rights in terms of: perpetrators, types of violations, *locus*, root of the problems and the spread.
15. Institutionally, the Attorney General Office has a Special Team that oversees the existence of Beliefs and Religions called PAKEM (*Pengawas Aliran Kepercayaan Masyarakat dan Keagamaan*). This institution consists of various elements of intelligent that will punish and disband practices of beliefs; in practice, they based their work on *fatwa* (ruling) from MUI (the Indonesian ulemas council or Majelis Ulama Indonesia) which declares whether a belief or religion deviates or not. MUI's fatwa has led to various acts of violence and vandalism perpetrated by certain community groups. Historically and normatively, MUI's status is a mass organization that is no different from other mass organizations. Therefore, there is no authorization from any institutions that can claim whether a certain belief or religion deviates or not. On the other hand, the impact of the *fatwa* can be indicated as actions that are referred to in General Comment No. 22 for Article 18 ICCPR.
16. The Attorney General refused to conduct investigations on past cases of serious human rights violations, saying that they are waiting for the formation of an adhoc human rights court. A specific aspect of enforced disappearances is that the crime is considered ongoing (continuing crimes) as long as the victims' whereabouts are still unknown and this shows that the court does not have to have an adhoc nature. The government and

many of its institutions simply refer to formal regulations without considering other aspects so that it keeps implementing the mechanism or application of death penalty. The Constitutional Court that was expected to safeguard the Constitution issued a decision that states death penalty does not contradict the 1945 Constitution.

17. In the implementation of International convention on economic, social, and cultural rights, is still poor. Poor understanding of government officials both at central, provincial and district levels that Economic, social and cultural rights are human rights has been the main obstacle to the implementation. Review on Human Rights Action Plan reveals that the majority of government staffs do not have adequate comprehension on human rights. In addition, the National Commission on Human Rights also does not speak much about economical, social, and cultural rights, let alone to execute their roles.
18. International obligation as explained in Economical, Social, and Cultural Rights Covenant is also still too feeble. The impact of poor understanding and the incapacitated commitment on respect, protect, and perform compliance to the economical, social, and cultural rights would be the widespread human rights infringement, especially to citizens who are deficient on economical, social, and cultural. Infirm human rights promotion and protection can be seen at grassroots level such as malnutrition cases, forced evictions, and violation to poverty-stricken medical subsidy. (See Annex 1 point 8).

IV. Cooperation with human rights mechanisms and stakeholder

19. In the last two years, the Indonesian government through Foreign Affairs Department has shown initiatives on reports and human rights promotion, performing the duty as the chairman of Human Rights Commission in 2005, and as a member of United Nation's Human Rights Council. The relation between the government and civil citizens has developed into a strategically positive relationship, which also happens between Foreign Affairs Department, National Commission on Human Rights, and National Commission on Violence against Women. The Indonesian government has been more responsive and collaborative with United Nation's Special Rapporteur for the past 3 years. This positive attitude also brought inclination on reporting obligation intensity in the past 2 years. The formulation of the report has also involved Non-governmental Organization and National Commission on Human Rights. At regional level (South East Asia), the government also exhibits proactive attitude toward ASEAN's Human Rights mechanism establishment.

V. Identification of achievements, best practices, challenges and constraints:

20. The ratification of 6 out of 8 Human Rights International Convention has been a normative achievement. On the other side, to anticipate misinterpretation of criminal acts stated in Law No. 26/ 2000, the Supreme Court has built a 'Blue Book' which is an agreement on human rights court. However, this Blue Book has not performed effectively since it has never been applied on human rights court

VI. Key national priority, initiatives and commitment to overcome the challenge

21. On the constitution level: amendment of articles in the Constitution related to the rights of Indigenous people, namely Article 18 b point (2) and amendment to integrate constitutional guarantee on the rights of children in accordance with CRC.

22. In the level of national legislation, the Indonesian government must harmonize all laws and regulations in accordance with ICCPR, CERD, CAT, CEDAW and ICESCR, and integrate this agenda into the Human Rights Action Plan 2008-2010; revoking discriminative laws that contradict the Constitution such as Regional Regulations/by laws (Perda) based on religions and that are discriminative against women; improving the legal foundation of the ratification of Convention on the Rights of Children (CRC) from Presidential Decree to Law; immediately identify and amend all regulations that do not comply with the principles and norms of child protection as regulated in the (CRC) and other international human rights legal instruments. Revoking Law No. 1/PNPS/1965 that states religions that are acknowledged and any other regulations that contradict the Constitution and ICCPR; related to Indigenous People, the government must revoke laws and any of their derivatives such as Forestry Law and Mining Law. In terms of ratification, the government should ratify priority instruments in the future (See Annex 1 point 9). Meanwhile, on the policy level, priority must be given to the formulation of national strategies and standard in fulfilling economic social and cultural rights including dissolving budget politics, especially the rights to food, shelter, health and education by taking into consideration special needs of children, women and disabled people (See Annex 1 point 10)
23. In the institutional level: the Government must give a wider mandate, authority and function to Komnas Perempuan; changing KPAI's working mechanism (See Annex 1 point 11); dissolving PAKEM under the Attorney General Office; building a monitoring system on the implementation of economic social and cultural rights, including a systematic data collection system; conducting efforts to reveal the truth, investigations, trial and sentencing in a just, transparent and comprehensive manner, as well as fulfilling victims' rights; forming a special institution to carry out the fulfillment of victims' rights.

VII. Expectation in terms of capacity building and technical assistant:

24. Assistance in capacity building such as human rights dialog program has been carried out with several countries in bilateral form such as with Norway, Switzerland and Canada. However, there is no comprehensive assessment towards the effectiveness of such program on police personnel, attorney general office, judicial institutions, parliament staff, and other government apparatus related to the fulfillment of economic social and cultural right in both central and regional levels.

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