



## **Universal Periodic Review on Indonesia Women and Children Issues**

**Submitted by :**

**Indonesia's NGO Coalition For Women and Children Rights**

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# **Universal Periodic Review on Indonesia**

## **Women and Children Issues**

### **I. Work Mechanism /Methodology/Consultation Process**

1. The following report was prepared by Indonesian NGOs working on the advocacy of women and children's rights, namely **Yayasan Pemantau Hak Anak (YPHA), Kapal Perempuan, Bina Desa, Asian Muslim Association Network, Ikatan Perempuan Positif Indonesia and Koalisi Perempuan Indonesia untuk Keadilan dan Demokrasi**. The preparation of this report, which specifically focuses on the issues of women and children, was guided by ten recommendations of the Human Rights Council. It is submitted that all recommendations relating to women and children ought to be fully considered by the Government of Indonesia. With a view to capturing the situation of the fulfilment of civil and political rights as well as economic, social and cultural rights of women and children, a Public Consultation was held on 15 November 2011 in Jakarta. The Consultation was held with the participation of all elements, including the Government, academia and various NGOs.

### **II. Normative and institutional frameworks in the promotion and protection of human rights, especially those of women and children**

2. Indonesia has ratified several international human rights instruments which directly or indirectly relating to the obligations to promote, protect and fulfil women and children's rights. The ratified instruments include, among others, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT); as well as several key ILO instruments, including ILO Convention No 138 on the Elimination of Child Labour, ILO Convention No 105 on the Abolition of Forced Labour, and ILO Convention No 182 on the Elimination of the Worst Forms of Child Labour. However, until this report was written, some human rights instruments that guarantee the protection and fulfilment of the rights of women and children, such as the Optional Protocol to CEDAW, the Optional Protocol on Children in Armed

Conflict and the Optional Protocol on the Sale of Children and Child Prostitution, have yet to be ratified by the Government.

3. The 1945 Constitution, notably Articles 28E, 28I, and 29, firmly guarantee the right to freedom of religion of every Indonesian citizen. The guarantee of freedom of religion is also confirmed in Law No. 39 Year 1999 on Human Rights and the International Covenant on Civil and Political Rights, which has been ratified by Indonesia through Law No. 12 Year 2005. However, to date, a substantial gap remains between the provisions stipulated in the Constitution and the implementation on the ground. Violence and marginalisation of citizens, especially women and Children, remain persistent.

4. With a view to ensuring, providing protection and fulfilling the right to health or reproductive health, the Government and the Parliament have issued Law No. 36 Year 2009 on Health in lieu of Law No. 23 Year 1992 on Health. The CEDAW Committee has also responded to the report the Government of Indonesia, notably in its General Recommendation No. 24, recommending the Government of Indonesia to provide a guarantee both through legislation and regulation as well as programmes that support women and children to obtain access, service and fulfilment of good quality, safe and affordable healthcare. However, the Government has issued a Regulation of the Minister of Health No. 1636/MENKES/PER/XI/2010 on Female Genital Mutilation, which allows for Female Genital Mutilation to be carried out by health care institutions and medical personnel. This Minister of Health Regulation is, without any doubt, contradictory and inconsistent with the provisions of CEDAW.

5. The right of everyone to food, comprising an access to food sources, availability, adequacy, and good quality of food, is guaranteed in the Constitution of the Republic of Indonesia, the 1945 Constitution, notably Articles 28A, 28C(1), 28H and other policies such as, Law No. 7 Year 1996 on Food, Law No. 5 Year 1960 on Basic Rules of Agrarian, Law No. 36 Year 2009 on Health, Law No. 8 Year 1999 on Consumer Protection, Law No. 39 Year 1999 on Human Rights, and Law No. 23 Year 2002 on the Protection of the Child. In addition, Indonesia has also ratified the International Covenant on Economic, Social and Cultural Rights through Law No. 11 Year 2005, and the Convention on the Elimination of All Forms

of Discrimination against Women through Law No. 7 Year 1984. Despite all of this, to date, starvation is by far a major contributor to the death of children under five years old. Malnutrition and starvation mostly experienced by women and children.

6. The right to education is firmly guaranteed in the Indonesian Constitution. Indonesia also has Law No. 20 Year 2003 on National Education System, which serves as a basis of ensuring the fulfilment of the right to education for all, including women and children. In regard to the eradication of illiteracy, a Joint Ministerial Decree (Minister of Women Empowerment, Ministry of Home Affairs, and Minister of National Education) on the Acceleration of Female Illiteracy Eradication was issued in 2005. There is also a Presidential Instruction No. 005 Year 2006 on the National Movement for the Acceleration of the Completion of Compulsory Education and Literacy Eradication. Yet, women and children in Indonesia have not been able to fully enjoy their right to education due to the lack of educational facilities and infrastructures, the long distance to travel to reach the school, and also the availability of teachers who can reach remote villages. In addition, although the Government has made a policy of cost-free education for public elementary school (government-owned primary school), the number of existing state primary school cannot accommodate the number of children who need basic education, whereas, the cost of private schools is very high.

7. Although Indonesia has already enacted Law No. 39 Year 2004 on Placement and Protection of Indonesian Workers Abroad, created the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), the issuance of the Law and the establishment of BNP2TKI have yet to answer the problems of Indonesian migrant workers. Most of Indonesian migrant workers are women and girls who had to migrate to survive and support their families in the village. Almost ninety per cent of Indonesian migrant workers work as domestic and plantation workers who are vulnerable to various forms of violence and threats of death penalty execution in Malaysia and Saudi Arabia for defending themselves from violent attacks of their employers. Although Indonesian migrant workers are beneficial to the Government, it demonstrates a lack of seriousness in protecting its citizens working as migrant workers in various countries. The Government's efforts to lobby other governments aiming at protecting Indonesian workers working in domestic sphere seem fruitless. At present, Indonesia does not have a specific law on the protection of domestic workers. Also,

Indonesia has yet to ratify the 1990 UN Convention on the Protection of All Migrant Workers and Members of Their Families.

8. Indonesia has issued Law No. 21 Year 2007 on the Eradication of Human Trafficking; Law No. 5 Year 2009 on the Ratification of the UN Convention against Transnational Organised Crime to Prevent and Combat Trafficking in Persons; Law No. 14 Year 2009 on the Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime; Law No. 15 Year 2009 on the Ratification of Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organised Crime. Yet, cases of trafficking of women and children remain happen.

### **III. Implementation of the Protection and Fulfilment of the Rights of Women & Children**

9. Protection of children from forced marriage has yet to be fully implemented. Law No. 1 Year 1974 on Marriage establishes a minimum age of marriage for woman is 16 years and for man is 19 years. Entering into a marriage at a younger age than the established minimum age can be done with permission. The establishment of a very low age of marriage for woman shows that the Law on Marriage overrides the principles of the protection of the rights of the child by endorsing the age of marriage for children. In practice, although the age of marriage for woman is 16 years, there were many girls reported to have experienced forced marriages at the age less than 16 years. The 2009 Population and Family Planning Agency (BKKBN) report reveals that in urban areas, marriages under the age of 16 years reached 21.75 per cent, whereas in rural areas reached 47.79 per cent. Plan Indonesia noted that out of 2.049 million or 34.5 per cent of which were marriages of children between the ages of 13-16 years. The practice of forced child marriage, indirectly contributes to the high dropout rate of girls from basic education, poor quality of reproductive health of women and in the end, resulting in the situation of women's impoverishment.

10. Sexual commercial exploitation of children in the form of prostitution is one of the worst forms of child labour. Up to 2010, UNICEF noted that of the total number of persons trafficked in Indonesia, 30 per cent of them were people under the age of 18 years. Age of

children entering the process of human trafficking was estimated at between 10-17 years. Every year, about 40.000-70.000 children experience sexual commercial exploitation and about 100.000 children are trafficked.

11. Traditional practices that are harmful to girls still occur in Indonesia. These practices are rooted in discrimination and control of women's sexuality of women since they were young. Forms of discrimination and control of women's sexuality are reflected in the practice of female genital mutilation is a symbol of the subjugation of women's sexuality. Female genital mutilation is legitimised by the Regulation of the Minister of Health No. 1636 Year 2010, which stipulates the procedures for circumcision of girls by medical personnel. By this regulation, Indonesia has legitimised the patterns of social and cultural behaviour which based on inferiority and superiority prejudices and stereotypes over men and women.

12. Protection of children from cruel, inhuman and degrading punishment is not yet maximal. Corporal punishments of children continue to occur at homes, schools, alternative care institutions and correctional institutions. Despite the prohibition of violence against children has been included in various legislations such as Law No. 23 Year 2002 on the Protection of the Child; Law No. 39 Year 1999 on Human Rights; and Law No. 23 Year 2004 on Domestic Violence, the interpretation and implementation of the such legislations still tolerate corporal punishments as a means of discipline and education. In Nangroe Aceh Darussalam, a province in Indonesia that implements the Sharia Law, public flogging will be publicly inflicted against anyone violating Sharia Law without any exception on people under the age of 18. This practice legitimises corporal punishment as well as promotes corporal punishment it is to be inflicted in public.

13. Protection and fulfilment of the rights of children who were born and taken care of by female inmates remain disturbing. A research done by the Department of Criminology of the University of Indonesia in 2009 stated that the 2 per cent of 399 women who were imprisoned in Malang and Semarang had ever given birth and taken care of their babies in prison. Support of the State to provide the needs of convict women during their pregnancy and post giving birth, notably sufficient nutrition and special healthcare, is still below standard. Children born to women prisoners can only be taken care of by their mothers for two years, after which they

must be handed over to others for adoption or temporary treatment. A closed adoption process has raised a big question on future fate of the children.

14. In the context of violations of the right to freedom of religion, women often experience multiple discriminations. On the one hand, discrimination against women occurs because she is a woman. In the mainstream of religious understanding, which is based on masculine interpretation, women ought to be in a position lower than men. Being considered reasonable, women victims of violence were often forced to be silent considering that the violence was reasonable and in accordance with religious teachings. In fact, the intensity of this discrimination is likely to be stronger when it is used as a tool of politicisation of identity wrapped in morality. Second, women of this group also became victims of discriminatory conducts, even in a more severe manner. In the context of religious violence, women often became the symbol of honour and destruction of a community. Forms of discrimination in this context include, but not limited to: Local Regulation on how women should dress which restrict the right to freedom of expression by requiring women to dress according to the standards of the majority religion. Local Regulation on the prohibition and prevention of prostitution which result in the limitation of women's access to economic due to a policy restriction on night-time curfew for women until 10:00

15. Ahmadi women often experienced threats of rape, sexual harassments and other sexual intimidations of other sexually nuanced when the attacks occurred. Even after the attacks, they also suffered a prolonged depression and reproductive disorders, up to miscarriages. Women also bear psychological burdens of seeing their children experience discrimination in everyday life at school and in society. This problem was triggered by the application of Law No. 1/PNPS/1965 and the Joint Ministerial Decree on Warning and Order towards the Followers, Members, and/or Board Members of Ahmadiyya Group of Indonesia and Society. Even now, Ahmadi living in Transito, Mataram, have experienced massive persecution. After the loss of their property due to the attacks, they are likely to lose their right to citizenship due to living in refugee camps. After six years living in refugee camps, their status of citizenship has become unclear. Children who were born and live in refugee camps also have the difficulty in getting their birth certificates. In the end, these two vulnerable groups will lose their basic political rights and their access to public services, including legal services

and health services, notably reproductive health needed. In addition, Ahmadi people also experience difficulty in registering their marriages, especially if their spouses are non-Ahmadis because Law No. 1 Year 1974 prohibits marriage of different religions. When women cannot register their marriages, then when they divorce or their husbands die, they will lose their right to joint property and inheritance. Children born out of wedlock will be considered illegitimate.

16. In addition to discrimination against Ahmadiyya Muslim, discrimination also experienced by communities, notably indigenous peoples, who do not belong to the six officially-recognised religions (Islam, Catholicism, Christianity, Hinduism, and Buddhism, and Khong Hu Cu), also suffered discrimination. State refuses to register their marriages and to extend marriage certificate to those who do not belong to the six officially-recognised religions. As a result, their children could not easily obtain birth certificates and the women do not have the clarity of their marital status.

17. Maternal mortality in Indonesia is fairly high. Based on the Indonesia MDG Report 2010, live births per year are 228/100.000. If we are to refer to the MGDs targets, Indonesia determines that the rate of maternal mortality will decrease up to 102/100.000 births in 2015. This is due to many women experienced pre-eclampsia at the time of delivery, the delay in the delivery assistance due to limited access to hospitals and the lack medical personnel who can help women, particularly because rural infrastructures are not sufficient enough due to the absence of budget allocation or natural disasters that recently hit several regions in Indonesia. Regions in Indonesia which are classified as remote areas are the ones with very minim health/medical personnel.

18. According to the data of the Ministry of Health, in the end of September 2010, there were 22.726 AIDS cases, of which 17.576 people (79 %) were at the age of 20-39 years. In 2009, the estimated number of people with HIV/ AIDS was 298.000 people with 25% of them were women. From the monitoring of the National AIDS Commission, it is estimated that in future time there will be an increase in HIV prevalence in population of the age of 15-49 years; of 0.22 per cent in 2008 to 0.37 per cent in 2014; as well as an increase in the number of new HIV infections in women, which will also increase the number of HIV infections in children.

According to the Ministry of Health, it was estimated in 2009 that there were 3.045 new cases of HIV in children with 7.546 cumulative cases; while in 2014, it is estimated that there will be 5.775 new cases with 34.287 cumulative cases of HIV children throughout Indonesia.

19. Forced removal of uterus on women with HIV/AIDS and Hospital rejection of patients with HIV/AIDS. Most female patients remain experiencing rejection by health officials because of their status. In some cases, women with HIV/AIDS had to undergo removal of their uterus after delivering the babies forcibly without being given counselling. Most of the removals of the uterus were done with the approval of their husband, not the women.

20. The 2009 World Population Report published by UNFPA in November 2009 showed the number of illiterate women in Indonesia at the age of 15 years and above is almost three times more than men, namely 11.2 per cent were women and 4.8 per cent were men. In a similar vein, in 2010, the Directorate of Public Education, National Education Ministry, estimated that around 5.3 million women are still illiterate. The biggest percentage of illiterate women's groups was in the group of women aged over 40 years. Unfortunately, Government's policy on the eradication of illiteracy only focuses on the population under the age of 45 years. The budget to eradicate illiteracy is insufficient. For example, in 2009, illiteracy eradication budget only reached out 200,000 people, about 2 per cent of the illiterate population.

21. The Government provides inadequate protections and facilities for children with special needs: people with disabilities, autism, and other special needs children.

22. Some areas in Indonesia, such as Aceh, West Sumatra, Lampung, all of Java, West Nusa Tenggara, East Nusa Tenggara and Papua have to deal with serious starvation and malnutrition. The Food and Agriculture Organization (FAO) notes, until 2010 there were 30 million population of Indonesia who were still under the status of undernourished population, when referring to GlobalHealthFacts.org. The Indonesia MDGs Report 2010 indicated that about 31.4 per cent of children under five were low in weight, lack of nutrition and suffered malnutrition, 5.4 per cent of infants suffered malnutrition. Percentage of population with the calorie intake of 2.000 kcal/capita/per day reached 61.86 per cent..

23. Since the Government implement the SAPs (Structure Adjustment Programs) in its agricultural policy and Investment, especially Foreign Direct Investment, rural women have experienced violations of their economic, social and cultural rights. Changes in farming systems from manual farming to intensification of industrial agriculture crops, expansion of oil palm plantations require land, water, seeds, pesticides that can double the results in a short time. This has made women excluded from land ownership and power over the provision of food for the family. Other impacts of the agricultural industry programs, including the shifting of agricultural lands for palm oil plantations and the retrogression and degradation of land which affects soil water reserves. On the other hand, climate change and sea reclamations has also made women's fishermen lost their livelihoods and sources of livelihood due to erratic weather and restriction area of sea has made the fishermen unable to find fish for sale.

24. More than 80 per cent of Indonesian migrant workers are women and most of them come from the rural area. Migrant Care recorded that the mortality of migrant workers in Indonesia reached 1.018 people in all receiving countries and 683 or 67 per cent of them died in Malaysia. While the number of acts of violence against migrant workers reached 2.878 cases in the same year. The Government provided insufficient help and legal assistance for the migrant workers. Exploitation and violence against domestic workers also occurred in Indonesia, especially in the forms of physical and sexual violence, lack of nutrition, unlimited working hours, low wages and restriction to communicate with people and their families

#### **IV. Recommendations to the Government of Indonesia**

25. The Government of Indonesia make efforts to promote the substance of CEDAW, CERD, CAT, ICCPR and CRC at the local and national levels. One of the efforts that can be taken by the Government is to maximise the performance of human rights institutions and state agencies associated with the ratified conventions.

26. At the level of legislation, the Government of Indonesia should harmonise all laws and regulations in accordance with the ICCPR, CERD, CAT, CEDAW and the ICESCR, and include this agenda in the 2011-2014 National Action Plan on Human Rights; revoke all discriminatory regulations that contradict to the Constitution, including religious based and

discriminative bylaws; improve the legal basis of the ratification of the CRC from a Decree to a Law; immediately identify and amend all legislations that are inconsistent with the principles and norms of the protection of the child as stipulated in the CRC and other international human rights instruments; revoke Law No. 1/PNPS/1965 on Prevention of Abuse and/or Blasphemy.

27. The Government of Indonesia is urged to ratify the Optional Protocol on CEDAW, the Optional Protocol on Children in Armed Conflict, and the Optional Protocol on the Sale of Children and Child Marriage Act Prostitution; to revise Law on Marriage in the framework of harmonising the Law with the principles and standards of international protection of the Human Rights and rights of the child; to monitor the implementation of ILO Convention 182 and law enforcement on violations of ILO Convention 182 and the CRC.

28. The Government of Indonesia is urged to repeal Regulation of the Minister of Health No. 1636 on Female Genital Mutilation and to officially prohibit the practice of female circumcision and other traditional practices inflicting sufferings on women and girls.

29. The Government of Indonesia is urged to prohibit corporal punishment against children throughout their life; to prevent and suspend all traditions of education and discipline using corporal punishment in the context of cultural traditions or Sharia Law.

30. The Government of Indonesia is urged to increase the support for children who were born and taken care of by female inmates by reducing the suffering of women prisoners, improving nutrition and health support, and enforcing the adoption process in accordance with the principles and international standards of child protection; and to repeal the prohibition of marriage of different religions.

32. The Government of Indonesia is urged to provide protection of women working in informal sectors, notably to draft a law that guarantees the protection of domestic workers; and to ratify the international convention on the protection of migrant workers and all of their families.