



**Universal Periodic Review (UPR)
Stakeholder Submissions**

The Indonesian National Human Rights Commission (Komnas-HAM)

**Submission to the United Nations
Universal Periodic Review
13th Session of The Working Group on the UPR
Human Rights Council
2012**

This report is prepared by the National Commission on Human Rights (Komnas HAM) Indonesia based on data owned by Komnas HAM and refined through a consultation with stakeholders on 7 November 2011. Komnas HAM is an independent institution which is equivalent to other state institutions. In accordance with the mandate of Law no. 39 Year 1999 on Human Rights, Komnas HAM has the function of monitoring, mediation, public awareness, as well as study and research on human rights (human rights), including the implementation of international human rights norms in the practice of national and state in Indonesia. Main points that become the main focus in this report:

- Freedom of Religion or Belief
- Protection of Migrant Workers
- Corporate Responsibility in Respect of Human Rights

Government of Indonesia is expected to notice the recommendations listed in this report to improve the quality of enjoyment of the rights and freedoms of the people of Indonesia in the future.

**The Report of The Indonesian National Human Rights
Commission (Komnas HAM) on the UPR Process**

I. Background and Term of Reference

1. National Commission on Human Rights (Komnas HAM) is an independent commission, established in 1993 under Presidential Decree (Decree) No. 50 of 1993. Law no. 39 Year 1999 concerning Human Rights to strengthen the existence, purpose, function, organization, membership, principles, duties, and authority of Komnas HAM. Komnas HAM has the role and functions of monitoring, mediation, education and public awareness, as well as study and research on human rights to ensure the implementation of state obligations to respect, fulfill and protect human rights.
2. This report is prepared based on complaint data, monitoring, assessment, and research conducted by Komnas HAM. This report is then consulted with stakeholders, particularly the activist non-governmental organizations (NGOs) concerned with human rights issues. Consultation carried out on 18 November 2011 to obtain an input and improvements to the text of this report.

II. Promotion and Protection of Human Rights in Indonesia

A. Cooperation and Mechanism of Human Rights

- Scope of International Obligation
3. Indonesia is tied to a number of international treaties on human rights, namely CEDAW Convention (ratified by Law no. 7 / 1984), the Convention Against Torture (ratified by Law no. 5 / 1998), the Convention on the Rights of the Child (Presidential Decree. 36/1990, confirmed by Act no. 23 Year 2002 on the Protection of Children), the International

Convention on the Elimination of All Forms of Racial Discrimination (through Law no. 29 of 1999, which strengthened legalized with Law no. 40 of 2008).

4. In 2004, Indonesia signed the International Convention on Migrant Workers 1990 on the Protection of the rights of all Migrant Workers and Their Families. In 2005, Indonesia has ratified the two covenants are also important in human rights, namely the International Covenant on Civil and Political Rights (through Law no. 12 of 2005) and the International Covenant on Economic, Social and Cultural Rights (Law no. 11 of 2005).

Law and Constitution Reform to Protect Human Rights

5. After the authoritarian regime of Suharto fell, Indonesia Government amend the constitution four times, namely in 1999, 2000, 2001 and 2002. The amendment was in line with the mainstream of democracy and respect for human rights are pushed to the surface of the public post-fall of the Soeharto regime in 1998. Since then, Indonesia proactively ratified a number of international conventions which are closely related to the respect and protection of human rights. One of the legal reforms undertaken by Indonesia recently to harmonize national laws with international human rights treaties is the ratification of Law no. 40 Year 2008 on the Elimination of all forms of racial and ethnic discrimination and Law. 12/2006 on Citizenship

- Infrastructure and Institutional Human Rights

6. Government of Indonesia established National Human Rights Commission in 1993 through Presidential Decree. 50 of 1993 which strengthened the ratification of Law no. 39, 1999. This law aims to ensure and strengthen the independence of National Human Rights Commission in accordance Paris Principles 1991.
7. National Human Rights Commission was given additional authority through Law no. 40 Year 2008 on the Elimination of Racial and Ethnic Discrimination. This law puts the Commission as a watchdog for any effort to eliminate racial and ethnic discrimination.
8. Government of Indonesia has released a National Action Plan for Human Rights (RanHAM) for the period 1998-2003 and continued in the period 2004-2009 and 2009-2014. One of the most important agenda is an effort RanHAM number of instruments of ratification of international human rights, institutions and the harmonization of national legislation with international human rights instruments, human rights education and counseling, the implementation of human rights norms and standards, as well as monitoring, evaluation, and reporting of human rights. In general, RanHAM aims to foster a culture of respect for human rights in line with government's commitment to all international human rights instruments.

B. Implementation to International Human Rights Obligation

9. Indonesia's government has taken various policy measures, such as ratifying a number of international human rights treaties, harmonizing various legislations with international human rights norms and standards, and develop national human rights action plan. But all that was not enough to guarantee and assurance of the enjoyment of human rights by the citizens. At the level of practice, citizens are still faced with some problems that resulted in the quality of enjoyment of human rights of citizens still had not moved far.
10. In the process of UPR 2008, the Indonesian government is recommended to do the following things:
 - a. Education and Training human rights for law enforcement officials, including prosecutors, police, and judges and other security forces. Human rights training for law enforcement agencies has yet to be an integral and involves the National Human Rights Commission as an institution that has the function of education, curriculum, and

established standards of human rights training. In addition, training of human rights by the Government of Indonesia, if any, have not demonstrated results. This is evident from human rights abuses committed by security forces, especially police. According to the National Human Rights Commission complaint data, in 2009, there were 4926 complaints. From many of them, some 891 cases are citizen concerns about the process of investigation by police and as many as 177 complaints questioning the legality of detention by the police. National Human Rights Commission asked the international community to support the Government of Indonesia to make human rights education and training programs organized by National Human Rights Commission as one of the conditions to be met by all law enforcement officers.

- b. Ratification of a number of standards and international human rights treaties, namely (1) of the Rome Statute, (2) Additional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, (3) Additional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; (4) Additional Protocol to the Convention against Torture and Other Forms of Treatment and Punishment Cruel, Inhuman and Degrading not Human (5) The International Convention Concerning the Protection of All Persons from Enforced Disappearance. Until now, the government has not met these recommendations. National Human Rights Commission recommends the Government of Indonesia to immediately ratify a number of standards and international human rights treaties.
- c. Community Empowerment. In the process of UPR 2008, the UPR Committee recommends that the government of Indonesia to support and protect the community work and human rights defenders, including at the provincial and local level as well as regions with special autonomy. Cases of enforced disappearance or arrest of action or acts of violence by security forces against citizens reasonably suspected to be linked with the struggle for human rights. The absence of the right to security guarantees for human rights defenders has led to the birth of the Draft Law on Human Rights Defenders are expected to protect the fighters and human rights activists. However, the bill is still pending discussion in the House. National Human Rights Commission recommends the Government of Indonesia and the Indonesian Parliament to speed up endorsement of the Act of Human Rights Defenders.
- d. Impunity. In the process of UPR 2008, the UPR Committee recommends that the government of Indonesia to combat impunity. The issue of impunity strongly associated with the completion of the settlement are not cases of gross human rights violations that occurred in the era of the Soeharto regime, namely: (1) May 1998 riots case, (2) case Semanggi, and Clover II in 1998, (3) Case People are Forced Disappearance 1997-1998, (4) Case Talangsari, (5) Case Wasior Wamena. These cases are followed up by Komnas HAM inquiry. The results of the investigation the Commission stated that in those cases there is probable cause as a follow Crimes Against Humanity which is a clump of Serious Human Rights Violations. Nevertheless, the results of Komnas HAM is not acted upon the Attorney General who acts as investigator and prosecutor in the Justice system of human rights in Indonesia, so in these cases there has been a legal impasse. Komnas HAM recommended to the government to immediately follow up the results of investigations carried out ad hoc National Commission on Human Rights, so that cases of gross human rights violations

can be expressed in good faith to avoid impunity for perpetrators of gross human rights violations. National Human Rights Commission requested the support of the international community to urge the government of Indonesia cq Attorney General follow up the investigation files of the Commission in such cases

- e. Revised Book of Criminal Law (Penal Code). In the process of UPR 2008, the UPR Committee recommends that the government of Indonesia to finalize the draft Penal Code that includes the crime of torture. The draft Penal Code is still simmering indeed include the crime of torture, but the definition of torture does not refer to the Convention Against Torture as a whole. Complaints Commission data shows there are at least 30 cases of torture in the investigation by the police during 2010. In addition, police are also still doing the persecution and other acts of violence. According to Commission data, there were 32 cases of abuse and 16 cases of violence by the police, either during or outside duty service
 - f. Capacity building / collaboration / sharing experience of best practice. In the process of UPR 2008, the UPR Committee recommends that the government of Indonesia to conduct capacity building, cooperation, and sharing experiences with other countries for best practices and promoting respect for human rights. Currently the government through the Ministry of Foreign Affairs and Ministry of Justice and Human Rights has been built in consultation with the stakeholders concerned with human rights issues. However, the consultation process was not conducted in a fairly long range and continuous, but more a temporary (just before a report submitted to the institutions of international human rights treaties). Komnas HAM recommended to the government to build communication and consultation are persistent and permanently institutionalized with the various stakeholders in order to improve the quality of enjoyment of human rights. This can be done through communication, consultation, and collaboration with stakeholders in the process of formulating national legislation and harmonization of national legislation with international human rights treaties already ratified.
 - g. Continuing efforts to ensure the promotion and protection of human rights for all components of the people of Indonesia. In the last four years, the promotion and protection of human rights in Indonesia suffered the reverse flow in the midst of incessant reform and constitutional law to respect, fulfill and protect human rights. In the following paragraphs (16-17), Komnas HAM reported that during the last four years has been a series of steps backward in the implementation of state obligations to respect, fulfill and protect human rights in Indonesia, mainly in the following issues: (1) Freedom of Religion or Belief and (2) Protection of Migrant Workers, (3) Corporate Responsibility in Respect, Protection, and Remedy of human Rights
11. Freedom of Religion or Belief. Rights and freedom of religion or belief in Indonesia suffered a setback. At least, it is reflected in two cases: (1) The attack against the Ahmadiyah followers in Cikeusik, (2) The case of deterrence to worship at the Church of Yasmin
- a. The attack by a group of people against the Jemaah Ahmadiyah in Cikeusik, Banten, occurred on February 6, 2011. The attack was led to the deaths of three people Ahmadiyah and five others wounded. Komnas HAM has formed an investigation team in this case and concluded that there has been a violation of the right to life, freedom of religion or belief, the right sense of security, and the right to private property in such cases. Law enforcement officials have arrested 12 people and prosecute perpetrators.

But the perpetrators punished very lightly: 3-6 months in jail. National Human Rights Commission looked at the light sentence is a bad precedent for the rule of law and guaranteeing the rights and freedom of religion or belief in Indonesia. National Human Rights Commission urged the prosecution to appeal the verdict which was mild. A report from the Attorney stated that the Commission judges in the case Cikeusik under threat from certain community groups when deciding the verdict.

- b. In the case of the Indonesian Christian Church (GKI) Yasmin, Jemaah Christians can not practice their religion in the Church of Yasmin, Bogor, Bogor freeze because the Government Building Permit (IMB) Yasmin Church in 2008. GKI Yasmin party sued by the State Administrative Court (Administrative Court) Bandung on September 4, 2008. GKI Yasmin won the lawsuit. City Government then appealed to the High Court TUN (PTTUN) in Jakarta, but lost, and then continues to the last court level. The Supreme Court (Supreme Court) ruled that the City Government shall revoke the letter Freezing IMB GKI Yasmin. But the City Government does not abide by such decisions, although the Chief Justice had urged the Supreme Court decision was implemented. Bogor Mayor attitudes have stimulated certain community groups to stop and repel follower GKI Yasmin who want to run a religion or belief. Komnas HAM recommended to the government of Indonesia to implement the Bogor city government urged the Supreme Court decision and respect the rights and freedom of religion or belief in Indonesia
 - c. Two of these regulations are often the instruments used to ban a bunch of citizens, stop, or invade the rights and freedom of religion or belief. Violence often arise and result in conditions of respect, fulfillment, and protection of rights and freedom of religion or belief in Indonesia worsened in recent years. Throughout 2009, according to data owned by Komnas HAM has occurred 100 cases related to rights and religious freedom, the expulsion of certain groups, closure or demolition of houses of worship a particular religion, or raids against certain groups.
 - d. National Human Rights Commission recommends the Indonesian government and asked for support from the international community that the Government of Indonesia No.1/PNPS/1965 junto revise Law No. 5 of 1969 on Prevention of Abuse and blasphemy with the formation of a new law that guarantees the protection of freedom of religion or belief. The new law should also contain settings regarding the prohibition of incitement, the spread of hatred, violence, and persecution in the name of religion. It is also important to shift the paradigm of the state in managing the plurality of religion and belief of dialogical approach to the repressive, discriminatory practices to fair treatment for all religions or beliefs.
12. Protection of Migrant Workers. Government of Indonesia to send undocumented migrant workers abroad about 750 thousand people. Overall, the number of Indonesian migrant workers reached 4.5 million people. This figure could rise to two to four fold when calculating the number of undocumented migrant workers. The fate of migrant workers in Indonesia is very alarming because it is often experienced abuse, physical violence, and sexual violence, and face the issues of law or under sentence of death in the occupied country. According to data from Migrant Care, the number of workers who threatened the death penalty in Malaysia reached 307 people, while in Saudi Arabia 25 people. The government has imposed a Law. 24 Year 2004 on Placement and Protection of Indonesian Workers Abroad (PPTKILN) and formed a Task Force of Indonesian Migrant Workers who

are facing legal issues, primarily the death penalty. However, Law no. 24 In 2004 more emphasis on placement rather than the protection of migrant workers, including the lack of attention to the fundamental rights of workers and protection of women. On 22 September 2004 the government has signed the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families 1990. Even ratification of this Convention has entered in (Human Rights Action Plan) 2004-2009. But until now the government has not ratified the Convention. Komnas HAM recommended to the government to ratify the Convention and, soon afterwards, to harmonize legislation with the existing convention to ensure the protection of the rights of migrant workers. Komnas HAM also recommends the Government of Indonesia to take diplomatic action and legal assistance to protect the Indonesian Migrant Workers.

Achievement, Best Practices, Challenges and Barriers

13. Respect for human rights, especially freedom of opinion and expression, including freedom of the press, the situation had improved immediately after the fall of Suharto in 1998. Regimes Post-Suharto opened the faucet of freedom of the press that the meeting be closed for 30 years.
14. Over the past few years, freedom of expression and opinion faucets meet the challenges and obstacles that seriously enough. The turning point in the freedom of expression and opinion at least some of the issues and reflected in the following cases: (1) violence against journalists, (2) banning and burning books, (3) violence against the Papuans; (4) criminalization of opinions on the internet.
 - a. About violence against journalists. According to data from the Alliance of Independent Journalists (AJI) Jakarta notes that in 2010 alone there were 44 cases of violence against journalists. Three of them are cases of murder, while other cases of persecution, intimidation, threat, terror, deprivation of means of journalists, the ban on coverage, and others. National Human Rights Commission asked the international community to support the Government of Indonesia to ensure security and protect the journalistic profession.
 - b. About the banning and burning books. On March 9, 2007, AGO officially banned the publication and circulation of junior high school history textbooks and school curriculum in 2004 that assessed cause unrest in society. Then in 2009, the Attorney General ban five books on the pretext of disturbing public order and against the 1945 Constitution and Pancasila (Joseph, 2010). Throughout June to August 2007 the government set fire to as many as 14 960 copies of the 13 publishers of history books were burned. There are three sources of law used to ban books AGO in Indonesia, namely: (1) of Law No. 4/PNPS/1963 concerning Security Printing the contents of Order Can Interfere. Second (2) of Law No. 16/2004 of the Prosecutor, namely section 30 which assigned the Attorney institutions to oversee the circulation printed matter, including books, magazines, and newspapers, (3) the articles or hatzaai artikelen spreaders of hate in the Criminal Code. Komnas HAM recommended that the government revise these regulations to guarantee freedom of expression and opinion.
 - c. About violence in Papua. The government forcibly disperse the Papuan People's Congress III (KRP III) on October 19, 2011. As a result of the action, three people were killed, others wounded, and a number of Papuan leaders were arrested. KRP III is one expression of dissatisfaction with Papuans on the pattern of national

development that has not been attention to the rights of local communities. Law enforcement officers arrest the KRP III leaders with treason and held as political prisoners. Commission looked at the handling of this kind is not in line with the principles of human rights and democracy. Komnas HAM recommended to the Government of Indonesia to accelerate the development of human rights-based in order fulfillment and restoration of the rights and freedoms of people of Papua..

III. Key Priorities

15. The key priority must be done to improve the quality of enjoyment of human rights are human rights mainstreaming in national development strategies and the politics of everyday (daily politics). This includes, but is not limited to, the implementation of various human rights instruments, both national and international human rights instruments of international human rights instruments consistently.

IV. Capacity Building and Technical Assistance

16. In line with the mainstream of decentralization and regional autonomy, capacity building and technical assistance is more appropriate for human rights is intended for law enforcement officials and government administrators in the region. National Human Rights Commission recommends the Government of Indonesia to establish bilateral relations and regional and international cooperation to develop the capacity and technical assistance for law enforcement officers and government administrators in the region.