



**THE INDONESIA NATIONAL COMMISSION ON HUMAN RIGHTS  
(KOMNAS HAM)**

**Jl. Latuharhary No. 4B, Menteng, Jakarta Pusat 10310, Indonesia**

**Submission to Human Rights Committee  
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## **I. INTRODUCTION**

1. The Indonesia National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, popularly known and referred to by its acronym “Komnas HAM”), provides this submission to the United Nations Human Rights Committee (hereafter the Committee) with regard to Indonesia’s implementation of the International Covenant on Civil and Political Rights (ICCPR).
2. Under its statutory function, Komnas HAM can conduct human rights monitoring, including monitoring the implementation of the international human rights instruments to which Indonesia is a state party, in this case, the International Covenant on Civil and Political Rights (ICCPR).
3. Komnas HAM is a national human rights institution with an “A” accreditation by the Global Alliance of National Human Rights Institutions (GANHRI).
4. Previously, Komnas HAM submitted a Submission on the List of Issues Prior to Reporting (LOIPR) on Indonesia’s anticipated 2nd periodic report under the International Covenant on Civil and Political Rights (ICCPR) in January 2020. This submission is a follow-up submission of the previous one.

## **II. THEMATIC ISSUES**

### **A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant**

5. The House of Representatives (DPR) passed the new Criminal Code (KUHP) in 2023, which has been ratified as Law No. 1 of 2023 concerning the Criminal Code. It should be noted that this Criminal Code will come into force 3 (three) years after it was passed.
6. There have been several advancements in human rights in the new Criminal Code, namely: the determination of actions of discrimination, torture, and obstruction of justice as crimes under the criminal code. In addition to that, it is worth noting that the death penalty is no longer classified as a primary form of punishment.
7. However, there are still some prescriptions in the Criminal Code that carry potential threats to human rights, namely: the crime of defamation against state officials, as well as articles on disruption against public order, due to its broad interpretation.

8. In the new Criminal Code, there are five forms of special crimes that are regulated, those are Crime of Gross Violations of Human Rights Terrorism, Corruption, Money Laundering, and Narcotics, which are included in the Chapter on Special Crimes. This arrangement can reduce the essence of the specificity/Lex Specialis of the criminal act. With regard to the crime of gross violation of human rights, further arrangement is required to ensure that the new Criminal Code will be in line with the existing Law No. 26/2000 on Human Rights Court. The new Criminal Code has also reduced the length of punishment from a minimum of 10 (ten) years to 5 (five) years.
9. Until this report was prepared, there were no government plans to ratify the first Optional Protocol of the ICCPR.

**B. Constitutional and legal framework within which the Covenant is implemented**

10. Although the use of the ICCPR in court proceedings is still limited, Komnas HAM has noted positively several court decisions that have used the ICCPR as the basis for court decisions.
11. One of the recent uses of ICCPR was in the court proceedings of the lawsuit against Haris Azhar and Fatia Maulidiyanti - human rights activists who were accused of defamation under Law No. 11 of 2008 concerning the Information and Electronic Transactions (ITE Law). The court ruled that Haris Azhar and Fathia Maulidiyanti had not been legally and convincingly proven guilty of committing a crime as charged under the *Cogitationis Poenam Nemo Patitur* considerations which means that no one should be punished because of what they think.
12. The Second Amendment to Law No. 11 of 2008 concerning the Information and Electronic Transactions (ITE Law) was officially promulgated in January 2024 with the enactment of Law No. 1/ 2024. However, the revision process of the ITE Law was carried out without adequate public participation. It should be noted that several articles resulting from the second revision still carry risks to human rights. These include Article 27 Paragraph (3) regarding insults and defamation; and Article 28 Paragraph (2) regarding the dissemination of information that causes hostility, and hatred and contains sentiments of ethnicity, religion, race, and inter-group relations (SARA).
13. Apart from ITE Law, Komnas HAM noted several laws and regulations that carry risks against civil and political rights, namely: the Law on Mass Organizations, and the Omnibus Law on Job Creation.
14. Meanwhile, Law No. 6/2023 on the Enactment of Government Regulation in Lieu of Law No. 2/2023 may limit the meaningful participation of trade

unions in determining labor minimum wage as it allows decisions on wage standards to be made without the participation of the Wage Council.

15. The drafting process of the Omnibus Law did not go through meaningful public participation. This was one of the considerations of the Constitutional Court's decision No. 91/PUU-XVIII/2020 to cancel Law No. 11 Year 2020 concerning Omnibus Law Job Creation. Without meaningful public participation, the Omnibus Law on Job Creation was reenacted through the enactment of the Government Regulation in lieu of Law (Perpu) No. 2 Year 2022 and later on was endorsed by DPR through Law No.6 Year 2023. concerning Omnibus Law on Job Creation.

### **C. Anti-corruption measures**

16. Regarding the attack against one of the Corruption Eradication Commission (KPK) staff, Novel Baswedan, on 11 April 2017, Komnas HAM assessed that the legal process was inadequate so it did not provide a deterrent effect and guaranteed protection for KPK staff. Komnas HAM is of the view that efforts to eradicate corruption are a form of defending human rights (human rights defenders). First, the public prosecutor provides a trial for 1 year for the perpetrators. Regarding the Novel Baswedan case, the defendant Rahmat Kadir Mahulette was sentenced to two years in prison. His colleague, Ronny Bugis was sentenced to one year and six months in prison. The two active members of the Indonesia National Police were charged under Article 353 Paragraph 2 in conjunction with Article 55 Paragraph 1.1 of the Criminal Code.
17. In 2021, as a result of the implementation of the revised KPK Law, 75 employees of KPK were dismissed as they were deemed not in compliance with the requirements to pass the Test on Nationhood Perception (Tes Wawasan Kebangsaan), including a senior employee, Novel Baswedan. The said test should have been carried out transparently to ensure its aim to strengthen KPK. Furthermore, this kind of test should have not been used retroactively to cancel the employment status of KPK's staff, as this could have been considered a violation of the right to work.

### **D. Non-discrimination**

18. A study conducted by Komnas HAM in the year 2020 found incidents of discrimination based on race or ethnicity in government schools, which limited the number of students from certain races or ethnicities.
19. Based on Komnas HAM's monitoring of the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in 2020.

Komnas HAM identified several discriminating regulations against persons with disabilities in the form of inadequate accommodation in courts, the lack of inclusive planning and budgeting, and the lack of access to public services.

20. Komnas HAM received several cases of discrimination against persons with disabilities in access to employment. One of the cases happened in South Solok Regency - West Sumatra Province, in 2018. The local government discriminated against a person with paraplegia, whose selection results of a civil servant were canceled.
21. In 2020, Komnas HAM carried out monitoring and investigation functions following up on a report from the Sunda Wiwitan Community regarding the seal to close the construction of a place of worship Pasarean Curug Goong in Kuningan Regency - West Java. Komnas HAM recommended the Regent of Kuningan remove the seal, and later the seal was reopened by the Regent of Kuningan.
22. Therefore, Komnas HAM recommends the Government of Indonesia conduct a comprehensive review and revision of the discriminatory laws and regulations, both for national laws and local regulations.
23. Komnas HAM also discovered actions of discriminating hate speech based against racial, religious, and/or ethnic during the 2019 elections. This occurred during the campaign phase, both through direct media (direct speech, banners, billboards, etc) or through social media

#### **E. Counter-terrorism measures**

24. Komnas HAM takes note of progress on the recognition and reparation to the victims of terrorism in Law 5/2018 (*the revised Anti-Terrorism Law*), especially for victims of terrorism before the enactment of Law 5/2018. These victims can now receive compensation without having to wait for a court decision.
25. Based on the revised Anti-Terrorism Law the role of the Indonesia National Army (TNI) in countering terrorism will be further regulated by issuing a Presidential Regulation. However, to date, this regulation has not been issued. Komnas HAM recommends that the regulation would assign military roles as an auxiliary function - such as information and data, deployment of personnel, and other relevant matters, under the supervision of the National Counter-Terrorism Agency (BNPT) and law enforcement institutions.

#### **F. Fight against impunity, and past human rights violations**

26. Komnas HAM has carried out an investigation based on Law No. 26/ 2000 on Human Rights Court and concluded 17 cases as alleged gross violations of human rights. Until this report was prepared, only 4 cases had undergone trial

at the Human Rights Court, namely (the East Timor case (1999) the Tanjung Priok case (2003), the Abepura case (2004), and the Paniai case which is currently still in the cassation process by Public Prosecutor.

27. In the case of enforced disappearance in 1997/1998, the investigation files have been submitted to the Attorney General's Office (AGO). However, until now the Attorney General's Office has not carried out further investigation. One of the factors hampering the follow-up by the AGO is the different perception between Komnas HAM and the Attorney General's Office on the standard and procedure of investigation.
28. Meanwhile, in 2014 the House of Representatives recommended the President establish an Ad Hoc Human Rights Court for the case of enforced disappearances in 1997/1998. However, until now there has been no follow-up from the government on any plan to set up the Ad hoc human rights court.
29. Regarding the case of the murder of Munir Said Thalib, Komnas HAM has conducted a study to analyze the elements of gross human rights violations in the case. Komnas HAM's study concluded possible elements of gross human rights violations in the case. As a follow-up, Komnas HAM formed a team to conduct a pro-justitia investigation of allegations of gross human rights violations in the murder of Munir Said Talib. This investigation is still ongoing.
30. As a follow-up to the Commission on Truth and Friendship (CTF), the Government of Indonesia has issued Presidential Regulation Number 72 of 2011 concerning Action Plans for Implementing Recommendations of the Truth and Friendship Commission of the Republic of Indonesia and the Democratic Republic of Timor-Leste. However, the Presidential Regulation was only valid for 5 (five) years and expired in 2016. Meanwhile, not all of the recommendations listed in the CTF have been implemented.
31. One of the recommendations issued by the CTF is to search the children who were transferred to Indonesia in the period 1975 - 1999. Until now there has been no specific policy between the Government of Indonesia and the Government of Timor Leste to follow up on the search and remedy for the children.
32. Komnas HAM encourages both the Government of Indonesia and the Government of Timor Leste to cooperate in searching for and reuniting the displaced children with their families.

33. Komnas HAM recommends the Government of Indonesia renew the Presidential Decree or form further policies to restore the rights of victims, especially the displaced children.
34. The Aceh Truth and Reconciliation Commission (TRC) is a permanent commission that was established in 2016. In 2023 the Aceh TRC produced a report and listed several victims. Yet, no reparation program has been set up for those identified victims. The Central Government and the Aceh Provincial Government need to work and coordinate in establishing a reparation mechanism for the victims.

#### **H. Violence against women, and domestic violence**

35. The implementation of the Special Regional Regulation No. 1/2011 has not brought impact to the local level in Papua. Most cases of violence against women, especially sexual violence, were put to stop due to intimidation against the victims. As a result, the evidence is not sufficient to follow up the legal process. Apart from that, women victims of sexual violence also do not receive assistance because the Regional Technical Implementation Unit for the Protection of Women and Children (UPTDPPA)/ The Center of Integrated Services for the Empowerment of Women and Children (P2TP2A) are mostly inactive or not established. One of which is monitored by Komnas HAM is in Nabire Regency.
36. For this reason, the Central Government must oversee the implementation of Perdasus Special Regional Regulation No. 1/2011 by ensuring the regional governments throughout the Papua region record the number of women victims of violence, including sexual violence, to provide reparation policies for victims. The Central Government also needs to encourage Regional Governments to immediately establish and activate UPTDPPA/P2TP2A.

#### **I. Voluntary termination of pregnancy and sexual and reproductive rights**

37. Law No. 36/2009 concerning Health has regulated legal abortion with certain criteria, namely for victims of sexual violence and for health reasons that endanger the mother-to-be. This has also been strengthened in the new Criminal Code.
38. Regarding forced contraception and sterilization of women with disabilities, the Indonesian Association of Women with Disabilities (HWDI) 2017-2019 recorded 142 cases of violence against women with disabilities in 11 provinces in 2019. Of this number, 2% were forced contraception.

#### **J. Right to life**

39. Regarding the impact of climate change, the Government of Indonesia has issued Presidential Regulation No. 112 concerning the Acceleration of

Renewable Energy Development for the Supply of Electric Power. However, the policy is overshadowed by the possible use of dirty energy, namely regulation that allows space for the construction of value-added and co-firing oriented steam electric power stations, which have the potential for large-scale land use and potential deforestation.

40. Energy transition projects as part of climate change mitigation which is translated into the National Strategic Project (PSN) also carry the risk of causing agrarian conflict. This occurs due to the lack of community participation during planning and implementation and is prone to conflict due to excessive use of security approaches.
41. In relation to the eradication of narcotics crimes, throughout 2020 - 2021 Komnas HAM handled 17 cases of excessive use of force by law enforcement officers (Indonesian Police) in prosecuting drug crimes. Some of the actions carried out included shooting during arrest and torture during examination. Of the 17 cases of excessive use of force, only 5 were processed through either legal procedure and/or internal police procedure. Komnas HAM also reminds the authorities that violence and torture cannot be used as justification in procedures to eradicate drug crimes.
42. Komnas HAM appreciates the new Criminal Code which regulates the death penalty as no longer a primary form of punishment, and that the death penalty can be altered to life imprisonment after a criminal sentence of 10 (ten) years.
43. Komnas HAM appreciates that no death penalty execution has ever been carried out in Indonesia since 2016. Komnas HAM strongly recommends the Government of Indonesia continue this moratorium on death penalty execution. Komnas HAM also encourages the Government of Indonesia to consider altering all convicts who have served more than 10 years imprisonment into life sentences. This is because the waiting list for the death penalty has a psychological impact and is part of the practice of torture.
44. Another case is the murder of Pastor Yeremia Zanambani in Bomba Village, Hitadipa District, Intan Jaya Regency, on 19 September 2020 by a member of the TNI due to a gunshot wound. The perpetrators of the shooting were tried at Military Court III-19 Jayapura. The three convicts, SA, AA, and MAHB were sentenced to 1 year imprisonment each. This decision was also strengthened by an appeal decision at the same court.
45. Komnas HAM also monitored the mutilation case of 4 (four) Nduga residents in Mimika, Timika, which occurred on 22 August 2022. This murder and mutilation incident involved 5 (five) TNI officers and 4 (four) civilians from



Nduga who later were tried separately at the Jayapura III Military Court and the Timika District Court.

46. Komnas HAM takes note of the just decisions of the Jayapura III Military Court against the accused TNI officers as of: life imprisonment, 20 and 15 years imprisonment. However, it should be noted that this case is still in the appeal process.
47. A case of gross human rights violations on the Paniai case was tried in the Human Rights Court, with the case: 1/Pid.Sus-HAM/2022/PN Makassar. However, the court only charged 1 (one) low-rank military officer as a suspect. Later the suspect was declared not guilty. Currently, the Paniai case is still at the cassation stage at the Supreme Court.
48. Regarding the Wasior and Wamena case, Komnas HAM has complied with the Attorney General's recommendation to separate the case into 2 (two) dossiers due to different tempus and locus. However, the human rights court for the cases has not yet been established.

#### **K. Prohibition of torture and other cruel, inhuman, or degrading treatment or punishment and treatment of persons deprived of their liberty**

49. Komnas HAM takes a positive note on the inclusion of legal norms that have made torture a form of crime according to the new Criminal Code (Law Number 1 of 2023) with a maximum penalty of 7 (seven) years in prison.
50. Throughout 2020 - 2021, Komnas HAM has handled 100 cases with 46 dying victims as a result of torture, cruel, and degrading treatment by law enforcement officers. The acts of torture included beatings, kicking, electric shocks, urination, forcing to drink urine, denudation, stripping, and dragging using motorized vehicles. Of the 100 cases handled by Komnas HAM, only 22 were processed, either through legal process or by internal police mechanisms, and most of the perpetrators were not punished.
51. The majority of the 100 cases related to torture mentioned above were torture that occurred during the investigation process when law enforcement officers inquired about information. To prevent and reduce the possible use of torture during interviews, Komnas HAM encouraged law enforcement agencies to set up procedures to use cameras in every investigation.
52. Komnas HAM also encourages procedures for investigating any law enforcement officers who commit torture to be carried out by external investigation officers to ensure a fair, transparent, and objective legal process.

53. Regarding the capacity of detention places, Komnas HAM appreciates the steps taken by the Government of Indonesia to provide restorative justice in several cases to reduce overcrowding in detention places. However, according to Komnas HAM's monitoring under the Cooperation for the Prevention of Torture (Kerja Sama untuk Pencegahan Penyiksaan (KuPP)), there is still overcrowding in various places of detentions ranging from 12% to 85%. Various problems arise from this overcrowding, including increased violence and torture, as well as various health problems.
54. In 2019, KuPP published a policy paper that recommended the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT). Previously the plan to ratify OPCAT was incorporated in the two previous RANHAM (National Action Plan on Human Rights) in 2004-2009 and 2010-2014. As for now, the plan seems to have been removed since it is not yet included in the RANHAM of 2015-2019 and 2020-2024.

#### **L. Treatment of aliens, including migrants, refugees, and asylum seekers**

55. Indonesia is not a party state to the 1951 Refugee Convention but has taken moral action to protect refugees in Indonesia. Therefore, Komnas HAM appreciates the Government of Indonesia's steps to provide guaranteed protection for foreign refugees through the stipulation of Presidential Decree No. 125 Year 2016 on the Handling of Refugees from Abroad. However, Komnas HAM assesses that the implementation of the Presidential Decree 125/2016 has not been effective, especially regarding the roles of the Central Government and the Local Government.
56. Komnas HAM recommended that the Government of Indonesia further strengthen coordination with UNHCR and IOM to ensure an effective mechanism for determining the status of refugees in Indonesia, especially in responding to the latest wave of Rohingya refugees.
57. Komnas HAM's monitoring found threatening conditions against Rohingya refugees who arrived in Aceh province from 15 October to 10 December 2023. The refugees received negative sentiments from the local population. The Government of Indonesia needs to provide adequate information to local communities that the government will be responsible for handling the Rohingya refugees, as well as ensuring security and order in society.
58. The issue of internally displaced persons (IDPs) due to conflict often happens in Papua. There have been several incidents of conflicts that led to the IDPs in Papua, these include cases in Tembagapura due to gunfire between the Civilian Armed Group (Kelompok Sipil Bersenjata - KSB) and security forces in 2020, in Maybrat (South West Papua) in 2021, and Paro District - Nduga Regency and Wamena in 2023.

59. The main challenges in addressing the problem of IDPs in Papua are the unavailable data on IDPs and the unresponsiveness of the Central and Regional Governments. On the other hand, the security approach put forward by the Government of Indonesia has caused trauma for IDPs - especially since they come from conflict areas. In November 2021, Komnas HAM identified at least 2.086 people from three different districts in Maybrat fled to the jungle outside their districts due to the gunfire between the West Papua National Liberation Army (Tentara Pembebasan Nasional Papua Barat - TPNPB) and the security forces. In October 2022, the number tripled to 6.556 IDPs, spreading across Papua.
60. In July 2023, Komnas HAM conducted monitoring regarding the situation of the IDPs from Maybrat in Sorong Regency, South Sorong Regency, and Maybrat Regency. Komnas HAM noted that until July 2023, at least 3000 people still live in shelters in worrying conditions with deprived economic and social conditions.
61. Integrated and comprehensive data is needed to identify the basic rights of IDPs, both in shelters and after they return to their original places. The basic rights include public services, education, health facilities, and other rights deemed to be necessary. The Government of Indonesia must guarantee the right to security against the non-recurrence of events, recovery of the psychological and psychosocial of the IDPs, and the rebuilding of the damaged and destroyed buildings and houses.
62. Komnas HAM encourages the Government of Indonesia to establish an integrated and responsive mechanism between Central and Local Governments for handling the IDPs.

**M. Access to justice, independence of the judiciary, and fair trial (arts. 2 and 14)**

63. Violation against access to justice often occurs at the early stage of legal processes, particularly during police investigations. Throughout 2020 to 2021, Komnas HAM dealt with 348 cases concerning violations of access to justice which were conducted by police. The forms of violation occurred in the form of restrictions on access to legal aid, unprofessional and unresponsiveness in receiving public reports, incomplete administrative stages of investigation - including the arresting and detention process, and also discriminatory treatment in receiving public complaints.
64. The implementation of the Legal Aid Law for the people is currently underway. However, Komnas HAM still finds several problems regarding this issue, such as: a) the appointment of a legal representative without the

suspect's consent which resulted in the inadequate defense provided by the legal representative; and b) legal aid for the Masyarakat Hukum Adat (MHA) often do not considerate the specific social and cultural context MHA, such as failing to meet the need to use traditional languages during legal proceeding.

#### **L. Freedom of conscience and religious belief**

65. Every year Komnas HAM continues to receive complaints regarding threats against freedom of religion and belief as of 37 cases in 2019, 14 cases in 2020, and 18 cases in 2021. One of the prominent cases handled by Komnas HAM was the case of Gereja Kristen Indonesia Yasmin (Indonesia Christian Church) who had waited for 15 years to establish the church. GKI Yasmin was finally able to build the church in a different location, near the original location, and inaugurated on 9 April 2023.
66. In 2021, the Ministry of Education and Culture, Ministry of Home Affairs, and Ministry of Religious Affairs released the Joint Ministerial Decree (JMD) No. 02, No. 025-199, and No. 2019 year 2023 on the Use of Uniforms and Attributes for Students, Educators, and Education Personnel in State Schools. The JMD regulates the freedom of the students, educators, and education personnel to wear uniforms and attributes with or without specific religious identification as well as prohibits government and schools from requiring them to wear uniforms and specific religious attributes in the schools. In this regard, the JMD could be appreciated as an improvement in guaranteeing the freedom of religion and beliefs in Indonesia. However, the JMD was overturned by the Supreme Court in the same year.
67. The establishment of house of worship in Indonesia is regulated through the Joint Ministerial Regulation of the Ministry of Religious Affairs and the Ministry of Home Affairs No. 8 & 9 Year 2016 on the Guidelines for Implementing the Duties of Regional Heads/Deputy Regional Heads in Maintaining Religious Harmony, Empowering Religious Harmony Forums and Establishing Houses of Worship. The JMR regulates the requirement for establishing a house of worship through the recommendation of the Forum of Religious Harmony (Forum Kerukunan Umat Beragama/FKUB) and Ministry of Religious Affairs, which requires approval of signature from 90 members of the religious community and proof of support from 60 peoples of the local community, or commonly known as 90-60 formula. Komnas HAM is of the view that the JMR could potentially discriminate and limit the freedom of religion or beliefs because the requirements mentioned above are subjective and prone to fall at the mercy of the majority religious adherents in the area, thus putting the local religious minority at a disadvantage.

68. Komnas HAM recommends the Government evaluate JMR No. 8 and 9 of 2016 to avoid the tendency to limit and discriminate against the freedom of religion or beliefs.

### **Freedom of expression**

69. Komnas HAM notes that several discussions inside the universities concerning the situation of Papua were disbanded by the Indonesia National Police using the reason for not having a permit. One of the incidents happened in Surabaya when the discussion held by the Student Press Agency (Lembaga Pers Mahasiswa/LPM) of Electronic Engineering Polytechnic Institute of Surabaya on the Framing Media and Hoax: Papua in the Perspective of the Mainstream Media was disbanded by the local police and university security officer.
70. The Ministry of Communication and Information of Indonesia conducted an internet shutdown on 21 August 2019 during the mass protest in Jayapura, Papua. The reason for the internet shutdown was to stabilize the situation in Papua and to prevent the spreading of hoaxes that may be able to escalate the situation. The internet shutdown resulted in the people outside the island of Papua being unable to access the situation in Papua and vice versa.
71. This action by the Ministry of Communication and Information was then sued by the Indonesia Journalist Association (Asosiasi Jurnalis Indonesia/AJI) and Southeast Asia Freedom of Expression Network (SAFEEnet) through the State Administrative Court in Jakarta on 21 November 2019 with Defendant I, the President of the Republic of Indonesia and Defendant II, the Minister of Communication and Information. This lawsuit was later won by AJI and SAFEEnet and the Government of Indonesia was declared against the law on the verdict dated 3 June 2020.
72. Threats to freedom of expression also occurred to Heri Budiawan a.k.a Budi Pego, a human rights defender/ environmental activist. During a demonstration to reject the operation of a gold mining company in his village, a banner with the symbol of communism appeared unknowingly. Budi Pego then was charged with spreading communism. Since then Budi Pego has been undergoing court proceedings, from district level court, higher court, and supreme court.

### **Peaceful assembly**

73. Restrictions to freedom of peaceful assembly still occur in the Papua region. On 10 November 2021 a public meeting at Jayapura University of Science and Technology (USTJ) Papua, in conjunction with the commemoration of the 21st year of the death of Theys Hilo Eluay, a prominent liberation Papua activist was dissolved. 15 (fifteen) people were brought to Jayapura Police Headquarters for questioning, with 9 (nine) of them named as suspects.

74. Article 10 (4) of Law No. 9/1998 on the Freedom to Express Opinions in Public mentioned that in principle, written notification for mass protest does not apply to scientific activities on campus and religious activities. Therefore, disbanding public forums due to unavailable permits can be considered a form of limiting freedom of expression.
75. Restrictions on freedom of expression also occurred on 15 August 2019 in Malang-East Java, when the Papuan Student Alliance (AMP) demonstration that rejected the 1962 New York Agreement was blocked by a group of people and ended in clashes. 23 (twenty-three) Papuan students were injured and this incident then sparked protests in other areas.
76. On 16 August 2019, a siege and attack by a group of TNI officers and mass organizations occurred in the Papuan student dormitory in Surabaya. The incident happened due to an incident where the Indonesian flag was found damaged and had fallen into the gutter in front of the dormitory. 5 (five) Papuan students were injured, where one of them was shot in the leg with tear gas, three people were hit, and one person was injured in the eyebrow. A total of 43 Papuan students were arrested for questioning at the Surabaya Police Headquarters after the incident but were released due to insufficient evidence.
77. The incidents in Malang and Surabaya were spread widely on social media and triggered a wave of massive demonstrations in various cities throughout Papua, starting from Jayapura, Manokwari, Fak-Fak, Sorong, Merauke, Timika, Biak, Wamena, Nabire, and other cities since 19 August 2019. The mass protests demand an investigation of the racism cases in Malang and Surabaya and demands for a referendum for independence. The demonstrations turned into riots in Manokwari, Sorong, Fakfak, Timika, Jayapura, and Deiyai.
78. The anti-racism demonstration lasted more than 2 (two) weeks. Demonstrations also took place in several cities outside Papua and West Papua, such as Jakarta, Bandung, Medan, Makassar, Semarang, Bali, Kupang, Yogyakarta, and Manado.
79. Komnas HAM requested the Government of Indonesia to guarantee that the police and security forces did not use violent methods in handling demonstrations as it could violate human rights, and it could escalate conflict in Papua.

#### **Freedom of association**

80. One important case concerning restriction to freedom of assembly and association was the use of Law No.17/2017 concerning Mass Organization in

the case of the dissolution of the Islamic Defenders Front and HTI. This case ignites discussions between the pros and the cons. The government must further protect freedom of assembly and association because the Mass Organizations Law allows restrictions on the rights to freedom of association and assembly, which are guaranteed by the 1945 State Constitution and the Covenant on Civil and Political Rights.

81. Regarding the issue of disbanding or banning mass organizations, the government must not dissolve organizations solely based on the principle of *contrarius actus* and act without a judicial process mechanism (due process of law). "From a human rights perspective, the sanction of revoking the legal entity status of an organization based on the principle of *contrarius actus* is unjustified because it provides freedom and arbitrariness in shutting down an organization. This is related to the right to freedom of association as a negative right, which means that the state is prohibited from doing so. Interventions that reduce the enjoyment of these rights are referred to as positive obligations where the state is obliged to ensure that all citizens enjoy these rights. "Guaranteeing the right to freedom of association and assembly is an important characteristic for a rule of law and a democratic state, if it does not provide certainty regarding the right to freedom of association and assembly then it can be said that the country is not fully democratic.
82. The rights of association and assembly are individual and collective rights that intersect with civil rights and political rights. This right is also closely related to the right to freedom of expression and opinion which is actualized by the freedom of people to convey thoughts, ideas, aspirations, and beliefs collectively.
83. Restrictions must not be intended to reduce the right to freedom of association and assembly. These restrictions must first be regulated by law. The government's decision to cancel the legal entity status of an organization, meaning to revoke the rights and obligations attached to the legal subject, is a form of punishment (*constitutive*) that must be based on a court decision.
84. Based on the principle of due process of law, an organization that violates criminal law, disturbs public order, threatens public safety, or endangers state security can be dissolved through criminal proceedings simultaneously against the people representing the organization.

### **Rights of the Child**

85. The abolition of corporal punishment is regulated in Law No. 35/2014 on Child Protection. Meanwhile, Law No. 11/2012 on the Juvenile Criminal Justice System regulates diversion and restorative justice mechanisms for children. In the implementation, diversion as an effort to prevent corporal

punishment and imprisonment is still difficult to avoid because the conditions for conducting diversion include criminal punishment below 7 years, and applies to a non-recurrence offender.

86. In addition, the practice of corporal punishment is still found to be carried out by parents, and educators both in formal schools and non-formal education as a form of disciplining children. Many cases of corporal punishment have been reported. Moreover, when the perpetrators are parents or educators, the punishment would be increased by one-third of the punishment stipulated in the law. Due to the lack of massive socialization of child protection laws, corporal punishment of children continues to occur.
87. Komnas HAM Fact Finding Team on the Incident of 21-23 May 2019 when mass protests were rejecting the Omnibus Law/Job Creation Law - found there were 465 juvenile suspects 74 of whom were children. The involvement of children in the demonstration is worrying, especially since 4 of the 9 victims who died from being shot by live bullets were children. The way Indonesia National Police investigators handled the juvenile suspects was also worrisome as it was not in accordance with the Convention on the Rights of the Child and Law No. 11 /2012 on the Criminal Justice System for Juvenile which regulates the process of arresting and investigating the juvenile.

#### **Participation in public affairs**

88. Articles 106 and 110 of the Criminal Code regarding treason are often used as criminal charges against indigenous Papuans (Orang Asli Papua/OAP), who publicly expressed their opinion. This situation leads to the stigmatizing of OAP and a threat to freedom of expression.
89. In October 2019, Komnas HAM received a letter from Amnesty International addressed to President Joko Widodo to revoke the suspect status and release 22 (twenty-two) Papuan activists who were arrested on the charges of treason due to their participation in peaceful demonstrations in several cities, such as Jakarta and Jayapura. The same letter was also addressed to the House of Representatives to revoke or amend Articles 106 and 110 Criminal Code on treason. The repressive actions of the authorities against citizens who exercise their rights to opinion could be considered human rights violations. The repressive treatment against freedom of expression is not in line with the National Police Chief's Regulation No. Protap/1/X/2010 on Overcoming Anarchy. Instead of respecting and protecting these rights, the National Police then put charges against the 22 (twenty-two) people who publicly expressed their thoughts and opinions regarding the situation in Papua.
90. Komnas HAM also received a complaint from the Papua Advocacy Team on 26 September 2019 regarding the alleged criminalization against 6 Papuan activists, namely Issay Wenda, Charles Kossya, Danoo Tabuni, Ambrosius



Mulait, and Naliana Wijangge. They were arrested by the police on 30-31 August 2019 and also experienced limited access to their legal representatives.

91. Regarding the violence conducted by the Civilian Armed Groups (Kelompok Sipil Bersenjata/KSB), Komnas HAM takes note of the number of violence committed by KSB since 2020, which targeted civilians and security forces. Some of them are a) the shooting of a Freeport Company bus convoy group while traveling from Tembagapura to Timika by KSB members led by Joni Botak on 13 January 2020; b) the hostage-taking of 3 (three) teachers in Aroanop on 15 February 2020; c) shooting at Tembagapura Police Headquarters on 2 March 2020; d) the KSB attacked the military post in Kisor, South Aifat District, in Maybrat Regency on 2 September 2021 which was resulted in the death of 4 (four) military officers; e) shooting of construction, road, and bridge workers in Majnic Village, West Moskona District, Bintuni Regency on 22 September 2022 by TPNPB-OPM, resulted in 4 of 14 workers died; f) A series of violence by KSB also occurred on 16 July 2022 in Nogolait Village, Nduga Regency, against civilians which resulted in 10 people dying and 2 others being injured; g) In October 2023, KSB attacked 5 (five) medical officers in Amuma District, Yakuhimo Regency. h) In August 2023, in Jayawijaya Regency, a woman activist was killed by KSB.
92. The most recent serious attack by the Civilians Armed Group was done by TPNPB who took hostage Captain Philip Mehrthen, a New Zealand citizen who worked as a pilot in the Papua region on 7 February 2023. The victim has not been found until today.
93. Revision of Special Autonomy under Law No. 2 Year 2021 has not yet brought significant improvement for the Papuans. Komnas HAM is of the view that the planning and implementation of the Special Autonomy Policy II was inadequate in terms of public participation. Therefore, the Government of Indonesia should strengthen the inclusive participation of the Papuan People Assembly (Majelis Rakyat Papua/MRP) as a representative of the Papuans - which consists of representation of the Papuan ethnics, the churches, and women, in the planning and implementation of the Special Autonomy and the development of the new special autonomy region (Daerah Otonomi Baru).
94. Komnas HAM monitoring found that voter data collection and guarantees for citizens to exercise their right to vote in elections in Papua are still inadequate. One of the conditions is the lack of access to e-KTP, which could hinder the local population's participation in the 2024 elections because e-KTP is a requirement for voting. The Central Government and local government need to take proactive and inclusive election data collection policy by looking at the specific situation and geographical conditions in Papua to ensure citizen participation in the 2024 elections.

95. The Law No. 21/2001 on Special Autonomy in Papua does not provide provision for establishing local political parties in Papua. It only prescribes that the population in Papua province can establish political parties.
96. In 2019, Indonesia held its first simultaneous election for electing president & vice president, members of the National House of Representatives, Regional House of Representatives, and Local House of Representatives. During this election, 894 Voting Organizing Group (Kelompok Penyelenggara Pemungutan Suara/KPPS) officers died and 5,175 officers got sick after organizing voting and counting votes. Monitoring conducted by Komnas HAM found that the high scale happened due to fatigue caused by a heavy workload. It is something that the Government of Indonesia needs to take care of since it will conduct another simultaneous election in 2024.

### **Rights of minorities**

97. In terms of regulations, the Government of Indonesia has acknowledged, protected, and respected the existence of Masyarakat Hukum Adat (MHA), ranging from Presidential Decree Number 53/2021 - which acknowledges the MHA as a vulnerable group, up to the National Action Plan on Human Rights 2021-2025. Until December 2023, there are at least 88 local regulations that acknowledge the existence of MHA.
98. However, there is no specific law on the MHA. Komnas HAM is of the view that a specific law is necessary to protect MHA rights. Komnas HAM recommended the Government of Indonesia to finalize the draft Law on MHA that would synchronize all the regulations related to MHA.
99. Komnas HAM appreciates the Government of Indonesia's commitment to fulfilling and protecting the MHA rights, including the issuing of the Ministry of Environment and Forestry Regulations Number 9 Year 2021 on the Management of Social Forest. However, the process to stipulate the status of the Customary Forest as part of a Social Forest still faces challenges and obstacles including multi-layered conditions, including the policy paradigm to grant utilization rights over Customary Forests without recognizing the MHA's authority to control and manage Customary Forests.
100. Regarding the Job Creation Law, Komnas HAM takes note that several provisions in the law that give easier permits to the business sector may limit the living space of MHA. Komnas HAM recommends the Government of Indonesia review the provision to fulfill, respect, and protect MHA's access to land.