



**Comments' of**

**THE NATIONAL HUMAN RIGHTS COMMISSION  
(Komisi Nasional Hak Asasi Manusia)  
Of the Republic of Indonesia**

**On**

**INDONESIA'S COMPLIANCE  
WITH THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**April 2014**

**The Indonesian National Human Rights Commission,  
Jl. Latuharhary No. 4B, Menteng, Jakarta Pusat 10310  
Phone: 62-21-3925230  
Fax: 62-21-3925227**

## 1. Introduction

1. The Indonesian National Human Rights Commission (*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 the Indonesia’s implementation of the International Covenant on Economic, Social and Cultural Rights (IESCR).
2. This submission does not provide a complete assessment of Indonesia’s compliance with the IESCR, but only focus on the relevant recent and current areas of Komnas HAM’s work.

## 2. Komnas HAM’s Role to Monitor Indonesia’s Compliance with IESCR

3. The Indonesian National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia, hereafter called: Komnas HAM) is an independent institution, equal with another states institutions. Under the Law 39/1999 Concerning Human Rights Komnas HAM has objective to:
  - a. develop conditions conducive to the execution of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Human Rights; and,
  - b. Improve the protection and upholding of human rights in the interests of the personal development of Indonesian people as a whole and their ability to participate in several aspects of life.(Article 75 Law 39/999 Concerning Human Rights)
4. To achieve the aims, Article 76 states that the National Commission on Human Rights functions to study, research, disseminate, monitor and mediate human rights issues. Article 89 of the Law 39/1999 further states that:
  - i. To carry out the functions to study and research, with realize aims as referred to in Article 76, the National Commission on Human Rights has the authority to:
    - a. study and examine international human rights instruments with the aim of providing recommendations concerning their possible accession and ratification;
    - b. study and examine legislation in order to provide recommendations concerning drawing up, amending and revoking of legislation concerning human rights;
    - c. publish study and examination reports;
    - d. carry out literature studies, field studies, and comparative studies with other countries;
    - e. discuss issues related to protecting, upholding and promoting human rights; and,
    - f. Conduct cooperative research and examination into human rights with organizations, institutions or other parties, at regional, national and international levels.
  - ii. To carry out its function as disseminator as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:
    - a. disseminate information concerning human rights to the Indonesian public;
    - b. take steps to raise public awareness about human rights through formal and non-formal education institutes and other bodies;

- c. cooperate with organizations, institutions or other parties at national, regional and international level with regard human rights;
  - iii. To carry out its monitoring function as referred to in Article 76, the National Commission on Human Rights is charged with and authorized to:
    - a. monitor the implementation of human rights and compile reports of the output of this monitoring;
    - b. investigate and examine incidents occurring in society which either by their nature or scope likely constitute violations of human rights;
    - c. call on complainants, victims and accused to request and hear their statements;
    - d. call on witnesses to request and hear their witness statements, and in the case of prosecution witness to request submission of necessary evidence;
    - e. survey incident locations and other locations as deemed necessary;
    - f. call on related parties to give written statements or to submit necessary authenticated documents as required upon approval of the Head of Court;
    - g. examine houses, yards, buildings, and other places that certain parties reside in or own, upon approval of the Head of Court;
    - h. on approval of the Head of Court, provide input into particular cases currently undergoing judicial process if the case involves violation of human rights of public issue and court investigation, and the input of the National Commission on Human Rights shall be made known to the parties by the judge;
5. Thus, Komnas HAM has statutory functions which are: dissemination of national and international human rights concepts, conducting research on various United Nations human rights instruments with a view to recommending their ratification thereof or accession thereto, monitoring and conducting inquiry on the implementation of human rights and submitting views, advices and recommendations to the authorities concerned for the implementation of human rights and conducting regional and international cooperation for the promotion and protection of human rights.
  6. Under its statutory function, Komnas HAM can conduct a human rights monitoring including to conduct an inquiry of the implementation of human rights and also to monitor the implementation of the international human rights in which Indonesia is party, in this case the International Covenant on Economic, Social and Cultural Rights (ICESCR).
  7. **Komnas HAM's Comment on List of issues in relation to the initial report of Indonesia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/IDN/1), adopted by the pre-sessional working group at its fifty-second session (2–6 December 2013)**

#### **Issues relating to the general provisions of the Covenant**

##### **(Arts. 1–5)- Article 1, paragraph 2 – Free disposal of natural wealth and resources**

8. The official terminology for indigenous populations or indigenous peoples in Indonesia is *masyarakat adat* or *masyarakat hukum adat*, which can be literally translated as “customary (law) communities” in English. As in other countries in

Asia,<sup>1</sup> there is still disagreement as to whether the *masyarakat adat* or *masyarakat hukum adat* are exactly equal to ‘indigenous peoples’ that defined in the international concern for indigenous peoples, as it is perceived throughout the United Nations system. Several government institutions, including the President and Ministry of Environment, also use the term “indigenous peoples” as the English translation of *masyarakat adat* or *masyarakat hukum adat* in the official documents. There is not any official data stating the number of population of the indigenous peoples in Indonesia. The Alliance of Indigenous Peoples’ of the Archipelago (Aliansi Masyarakat Adat Nusantara, hereafter called as AMAN) estimated approximately 50 million to 70 million of the 240 millions overall populations in Indonesia.

9. Traditional land rights (*hak ulayat*) generally refer to rights under *adat* systems, which include aspects of: i) use and conservation of land, ii) access to water and other resources, and iii) land transfer and exchange. While variations exist among different communities, the common belief is that lands are jointly owned by their individual owners and by the communities. However, these rights are usually not supported by legal titles and few maps exist showing clear boundaries of the lands covered by these rights; as such, they are difficult to enforce in the formal legal systems.
10. The term *masyarakat adat* is not used in most Indonesian legal documents, except in the Special Autonomy Law of Papua No. 21/2001, the Oil and Gas Law No. 22 of 2001 and the Coastal and Small Islands Management Law No. 27 of 2007. On the other hand, the term *masyarakat hukum adat* (*adat* law community) is found in several laws including the 1945 Constitution, the Basic Agrarian Law No. 5/1960, Forestry Law No. 41/1999, Human Rights Law No. 39/1999, the Constitutional Court Law No. 24/2003, Water Resources Law No. 7 of 2004, Plantation Law No. 18 of 2004, and Environmental Protection and Management Law No. 32 of 2009. However, Komnas HAM argues that the legal recognition of indigenous peoples' existence and rights in some of those laws are not wholly consistent with of which formulated and defined in the 1945 Constitution.
11. In the early 1980s, the New Order administration classified almost 70% of the total land area as “Forest Areas”, without giving recognition to the pre-existing rights of local people, including *masyarakat adat*, on these lands and natural resources. The State leased out, through concessions to corporations and state agencies, millions of hectares of land, forests, coastlines and other natural resources which had been customarily owned, used, and/or cared for by local and indigenous communities. Indeed, government calculations in 2003 showed that out of around 190.5 million hectares of land, 67.4% has been declared as “state-forest” areas. According to this categorization, many *masyarakat adat* suddenly found themselves living “illegally” on state land, despite their occupancy and customary land ownership for generations or even centuries.

---

<sup>1</sup> United Nations Special Rapporteur on the rights of indigenous peoples. 2013 Report to the Human Rights Council A/HRC/24/41/Add.3. 2013. p. 5.

12. The Indonesian Government, particularly the Minister of Forestry, Minister of Energy and Mineral Resources, Head of the National Land Agency, regional governments, and district heads, have the authority to lease state lands to corporations and government bodies through concessions. Many agrarian concessions take the form of logging, mining, plantations, conservation schemes, transmigration and infrastructure projects within *adat* lands and territories. As large-scale investments on land concessions encroached on the lands of rural communities, land speculation activities became widespread. As a result many local communities were alienated from their lands with little benefits from the projects. In summary, there is a long history of grievances and conflicts related to land and concessions in Indonesia, which continue to pose serious challenges for the country. Komnas HAM identified increasing recognition that improved land tenure and protection of the customary rights of the *masyarakat adat* are critical to the country's conflict prevention and inclusive development.
13. There are various processes through which their customary lands and forests are officially recognized. The first legal process is recognition of the *masyarakat adat*. According to several laws and regulations and legal practices, the legal recognition may be ruled through (1) a general district or provincial regulation for all indigenous communities within its jurisdiction, (2) a specific district or provincial regulation for a particular community, (3) an administrative decree, (4) Court decision, and (5) a legal contract. Moreover, the process for legal recognition of customary lands and forest which are located within designated forest areas are more complicated. The process become more difficult once the forest areas already gazette or legalized. Following the legal recognition of the communities, The District Head should submit a recommendation letter over the status of the lands and forests to the Ministry of Forestry. Then the Minister will make the final decision. Komnas HAM identified several customary lands and forest recognition by various district governments, however the number of benefitted communities and total designated areas far too small compare to the overall populations and the land they claim.
14. In addition to contested claims between indigenous peoples and state institutions over natural resources, there are many more land conflicts affecting other local communities in Indonesia. Komnas HAM receive more than six thousands complaints annually, and the land issues have been the highest number among many other complaints. There are 1198 land cases from a total of 6493 complaints in 2013, 1213 land cases from a total of 6284 complaints 2012 and 1064 land cases from a total of 6358 complaints in 2011. Some of the land cases were reported by indigenous communities, other local communities and retired government officers (including military and police personnel). The types of land issues are ranging from land grabbing (including customary lands), individual land conflicts to execution of court's decision over land cases.
15. The People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR) acknowledge massive and systematic agrarian and natural resources conflicts throughout the country and recommend relevant policy and law reform and

- comprehensive agrarian conflict resolution through its Decree No. 9 of 2001 on Agrarian and Natural Resources Management Reform. Komnas HAM in collaboration with civil society organizations and academics recommend an establishment of an ad hoc committee to resolve and massive and systematic agrarian conflict comprehensively since 2004. Positive response from the President's office began in 2012. Another positive response came from Constitutional Court through their Cases No. 45 of 2012 and 35 of 2013 which corrected the legal status of forest areas designation and customary forests. However, the realization of President's response and Constitutional Court Decisions are unclear and it is translated to the absence of concrete measures taken by the State party to address the increasing incidence of land-grabbing.
16. Komnas HAM argues the Constitutional Court Decision RI No. 35/PUU-X/2012 over the judicial review of Law No. 41 Year 1999 concerning Forestry announced on 16 May 2013 as a significant phase in the efforts for the recognition of indigenous peoples' existence and rights in Indonesia. In addition, Komnas HAM appreciates efforts by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi – KPK*) and Presidential Working Unit for Supervision and Management of Development (UKP4) for their facilitation to the establishment and implementation of a joint action agreement concerning the management of Indonesia's forests involving eight cabinet ministers and the heads of four state institutions (including Komnas HAM) in March 2013. The pact is expected to lead to a working program and a mechanism to monitor and evaluate Indonesia's forestry sector including land conflicts within the so called forest areas.
  17. Komnas HAM appreciate the initiative of the Parliament to propose the Draft Law on *Masyarakat Hukum Adat* (Bill of the Indigenous Peoples Rights). The bill was listed in the Indonesian National Legislation Program 2013 and remains in 2014. However, Komnas HAM identified insufficient response from the Government's decision in assigning the Ministry of Forestry as the Coordinator of the government team. The Team consists of Ministry of Energy and Mineral Resources, Ministry of Home Affairs, Ministry of Law and Human Rights and Ministry of Forestry. Komnas HAM identified Ministry of Forestry, Ministry of Energy and Mineral Resources have conflict of interest position in regard to the recognition of *masyarakat adat* and their rights. These two institutions along with The National Land Agency and district governments are reported as suspected human rights perpetrators in most of the land cases complaint to Komnas HAM for several years. Thus, the President needs to reconsider his decision to allow a more genuine and fair law making process.
  18. The extractive projects are regulated by Oil and Gas Law No. 22 of 2001 and Law on Minerals and Coal Mining No. 4 of 2009. There has been regulation of the oil and gas industry in Indonesia since 1960s, but this law was enacted to create "independent, reliable, transparent, competitive, efficient and environmental friendly petroleum and natural gas business activities." Article 4 states that oil and gas "shall constitute national assets controlled by the State", which is to be controlled by the government as the holder of the mining concession. According to Article 11(2), every joint

- cooperation contract for an oil and gas company is required to contain at least 11 provisions, including environmental management (k) and development of surrounding communities and guarantee for rights (*hak-hak*) of *masyarakat adat* (p). Furthermore, Article 33(3)(a) states that oil and gas-related business activities cannot be executed in “cemeteries, places considered sacred, public places, public facilities and infrastructures, nature preserve, cultural preserve as well as land belonging to *masyarakat adat*”. The law also allows cooperatives and small-scale companies to execute upstream and downstream business activities, which may be utilised by local individuals or communities, including indigenous communities.
19. The Law No. 4 of 2009 replaced the Mining Law No. 11 of 1967. This legislation is implemented by Government Regulation No. 78/2010 concerning reclamation and post-mining (20 December 2010) and Government Regulation No. 22/2010 on Mining Areas (1 February 2010). Article 4(1) states that “mineral and coal as non-renewable natural resources constitute national wealth controlled by the state for the greatest benefit of the people's welfare.” The law stipulates a ban on mining firms exporting unprocessed ore from 2014 onwards and requires the firms to build local smelters or to cooperate with smelting companies to process the ore. The law does not contain any provisions for *masyarakat (hukum) adat* and their traditional communal land rights, nor does it provide provisions on the rights of *masyarakat (hukum) adat* to participate in the decision-making processes related to the mining projects in or around their territories. The law, however, contains provisions for artisanal mining (*pertambangan rakyat*), which may be utilised by local individuals or communities, including *masyarakat adat* in relatively limited conditions.
  20. Komnas HAM appreciate efforts by a few corporations to responds positively to grievance reported by local communities and civil society organizations. However, Komnas HAM identified many complaints t the extractive industries remain unsolved. There are many of the mining licenses issued on forest areas which are still contested by either *masyarakat adat* or other local communities and the corporations due to conflicting laws and regulation. Another unresolved case is the Lapindo Brantas mudflow (East Java) where the local villagers have been suffering because the mud flowed over their houses. The Government set several efforts take to resolve the case, however many members of affected communities have not agree with the proposal. Furthermore, the environmental damages hardly to be rehabilitated.

### **Article 2, paragraph 2 – Non-discrimination**

21. The Law 4 of 1997 on disabled people had systematically discriminated disabled people. The Act number 4 of 1997 does not contain state obligation to protect, respect, and fulfil of human rights and individual freedom of the disabled persons, even though the 1945 constitution and act number 39 of 1999 on human rights had stated clearly that protection promotion, respect, and fulfilment of human rights including vulnerable groups such as people with disabilities, is the responsibility of

- the state, specially government. Moreover the act does not govern the state responsibilities in the empowerment of disabled people. Komnas HAM appreciates the draft bill of Disabled Persons to amend the Law No. 4 of 1997 is on the list of Indonesian National Legislation Program 2014. Komnas HAM however, does not see any significant efforts for making public buildings, environment and services accessible to persons with disabilities.
22. Komnas HAM appreciates the initiatives were taken by the local government of Jakarta Province and also Yogyakarta Province to issue the local regulations on disability. These local regulations are : a. the Local Regulations 10 of 2011 on the Protraction on Person with Disabilities issues by Jakarta and ; b). the Local Regulation 4 of 2012 on the Protection and Fulfilment of the Rights of Persons with Disabilities issues by Yogyakarta. Komnas HAM, however, notes that the implementation of these regulations is facing challenges on the issue of budget needed by the program. The local regulations also do not provide complaint mechanism.
23. Komnas HAM appreciates a few universities which accommodates disabled students. However, several universities explicitly reject disabled candidates to apply for enjoying higher education. Komnas HAM appreciates Ministry of Education plan to issue a Ministerial Decree on inclusive education for disabled person achieved higher education. Komnas HAM expect the Decree will allow them enjoy higher education without any exception.

## **Issues relating to the specific provisions of the Covenant (Arts. 6–15)**

### **Article 9 – The right to social security**

24. Komnas HAM appreciates the Social Security Program to provide nationwide healthcare coverage for all Indonesians people. However, based on its short study in West Nusa Tenggara Province, and also West Java (Bogor and Sumedang district), Komnas HAM notes that this program is facing big challenges to be overcome. The challenges consist of three big issues : a). the availability and accessibility of the facility and health workers; b). membership and ; c). the socialization and coordination.
25. Komnas HAM is of the view that those challenges can only be answered if only if the government fix all the problems by assuring the availability of facility of health and the availability and the distribution of health workers, including doctors, specialist doctors and nurses. The government should handle the problem of the data validity to overcome the problem of membership otherwise poor people (such as homeless people, street children and others) will face social difficulties in getting access to the medical treatment in the hospital. The effort should be taken to disseminate the

program to the public and also make a better coordination among all of the parties involved in the program (such as hospitals, association of doctors, etc).

## **Article 12 – The right to physical and mental health**

***Please provide information on the impact of measures taken to improve access to, and the quality of, sexual and reproductive health services and maternal health services, particularly in rural and remote areas.***

26. The current concerns are increasing non-communicable diseases as the number one cause of death in Indonesia. Data deaths from non-communicable diseases increased from 41.7% in 1995, to 49.9% in 2001, and 59.5% in 2007. Impotence, disorders of the fetus and cervical cancer are some non-communicable diseases related to sexual and reproductive health. Risk factors due to the use of tobacco products, especially cigarettes pose a threat to public health. This concern is followed by the smoker data and evidences which the prevalence of female smokers increased threefold in 2011 compared to 2001. Currently estimated that there are over 4.5 million women smokers in Indonesia and most of them live in rural and come from families with a low income level.
27. Even though, Indonesian Law No. 36/2009 on Health has mandated the presence of sexual and reproductive health services, until now, the government regulation as a follow up of the law has not been made. Let alone to remote areas, for urban areas have not yet formally exist. Some types of sexual and reproductive health services that have been provided are services for family planning (contraception). However, the services for sexually transmitted diseases in particular have not been there. In addition, both services were still not reaching adolescence, despite the fact that the health care law has already been mandated. Furthermore, contraceptive services only allow for legitimate husband and wife. This certainly does not support the family planning program itself and also contrary to the Health Act that promises reproductive health services to everyone, without requiring married or not.
28. In the absence of sexual and reproductive services are adequate in remote areas as well as increasing non-communicable diseases, will concern many Indonesian women who are victims. To that end, in addition to the need for regulations implementing the technical function, the need for more comprehensive legal instruments such as the WHO Framework Convention on Tobacco Control (FCTC) in tobacco control efforts in Indonesia has become a necessity. In this regard, Komnas HAM urged the Indonesian government to immediately accede to the treaty as an effort to protect the health of the people of Indonesia-related sexual and reproductive health.
29. Komnas HAM realize there are insufficient measures taken to ensure access to adequate mental health treatment and care. One of the major problems is the unavailability of health and medical service for people with mental health problems at

the State Health Centres and district hospitals. Komnas appreciate the efforts taken by the Government of Aceh Province in providing the medical access for people with mental health problems. Furthermore, Komnas HAM appreciate the initiative of The Parliament and peoples with mental health problem organizations to prepare a bill on Mental Health which listed in 2014 National Legislation Program.

Jakarta, 25 April 2014  
The Indonesian National Human Rights Commission  
The Sub Commission on Human Rights Research and Study  
Commissioner,

A handwritten signature in black ink, appearing to be 'Sandrayati Moniaga', written in a cursive style.

Sandrayati Moniaga