

**List of Issues Prior to Reporting (LOIPR) on Indonesia’s anticipated 2nd periodic report  
under the International Covenant on Civil and Political Rights  
The 129th session of the Human Rights Committee**

*This report was created and submitted by the Indonesian National and Local NGOs, namely:*

**YAPPIKA-ActionAid, LBH Pers, ELSAM, Arus Pelangi**

*Coordinated by:*

**Human Rights Working Group (HRWG)**



**Submission to Human Rights Committee**

**List of Issues Prior to Reporting (LOIPR) on Indonesia’s periodic report under the  
International Covenant on Civil and Political Rights (ICCPR)**

## Table of Contents

INTRODUCTION .....	3
RESPONSES TO THE RECOMMENDATIONS .....	3
A. Inconsistency of ICCPR Values in National Legislation: Response to the Paragraph 5 of Concluding Observation .....	3
B. Inconsistency of ICCPR Values in Regional Regulations: Response to the Paragraph 6 of Concluding Observation .....	4
C. Completion of the 1997-1998 Enforced Disappearance Case and the Munir Case: Response to the Paragraph 8 of Concluding Observation .....	5
D. Fulfillment of non-derogable rights in a state emergency situation: Response to the Paragraph 9 of Concluding Observation .....	6
E. Abolition of Death Penalty: Response to the Paragraph 10 of Concluding Observation.....	7
F. Corporal Punishment in the Aceh Qanun: Response to the Paragraph 15 of Concluding Observation .....	8
G. Excessive Use of Force and Extrajudicial Killing by the Police and Military: Response to the Paragraph 16 of Concluding Observation .....	8
I. Arrangement of Detention in Criminal Procedure Code: Response to the Paragraph 19 of Concluding Observation .....	10
J. Restriction of Freedom of Assembly and Association, Freedom of Opinion and Expression, and Freedom of Religion and Belief in the Societal-based Organization Law: Response to Paragraph 24 of Concluding Observation .....	10
K. Right to Religious Education and Absence of Student Rights to Refuse Religious Education in Schools: Response to Paragraph 26 of Concluding Observation .....	13
L. Silencing Criticism through the Law on Information and Electronic Technology: Response to the Paragraph 27 of Concluding Observation .....	13
M. The silencing of Freedom of Opinion and Expression and Freedom of Assembly and Association of Papuan demonstrators: Response to the Paragraph 28 of Concluding Observation .....	15
N. Additional update: Lack of Personal Data Protection: Additional Update on the CCPR Issues ....	17
Profile of the Organisations .....	18

## **INTRODUCTION**

1. This Report was created and submitted by the Indonesian national and local NGOs, coordinated by the Human Rights Working Group (Indonesia's NGOs Coalition for International Human Rights Advocacy). The report is based on each organization's monitoring and report, collected in the process of drafting, and compiled by HRWG. The organizations contributed on this report namely: HRWG, YAPPIKA-ActionAid, LBH Pers, ELSAM, and Arus Pelangi.

## **RESPONSES TO THE RECOMMENDATIONS**

### **A. Inconsistency of ICCPR Values in National Legislation: Response to the Paragraph 5 of Concluding Observation**

2. In terms of understanding and awareness of state apparatus, in general, there are several training programs implemented by the Government and also in collaboration with civil society organizations. However, the main obstacles and challenges are related to how the effectiveness of the training and capacity building are measured and have a positive impact on the community. In many conditions, training is not systematic, unplanned, and the perceived impact of the training is not visible.

3. Related to the ratification of first OP ICCPR, to date, no attempt has been made by the Government of Indonesia to ratify the ICCPR Optional Protocol, both at the government level and at the parliament level. There is no bill to ratify the Optional Protocol and it is not included in the national legislation program.

4. Instead of ensuring the adoption of the ICCPR in national legislation, in 2019 the Government and the House of Representatives actually planned to enact the Criminal Code Bill which contains articles that castrate civil liberties.

5. Controversial articles in the Penal Code Bill include contempt for the president and vice president. Article 218 threatens the perpetrators with a maximum imprisonment of 3.5 years. In article 219, the person who broadcasts the insult was threatened 4.5 years in jail. In article 220, it is explained that this act becomes an offense when complained of by the president or vice president.

6. In addition, articles 353-354 of Penal Code Bill regulate penalties for perpetrators of contempt of public authority and state institutions. The perpetrator is threatened with 1.5 years in jail. If the humiliation triggers riots, the perpetrator could be sentenced to 3 years in prison. And if it is broadcasted, the perpetrators threaten 2 years in jail.

7. The Criminal Code Bill also regulates treason criminals through articles 167, 191, 192 and 193. The perpetrators of treason against the president and the Republic of Indonesia are threatened

with death, life imprisonment or jail for 20 years. Treason against legitimate government, also threatened with imprisonment of 12 and 15 years.

8. Furthermore, the Criminal Code Bill also regulates penalties related to insulting the state flag. These provisions are stipulated in articles 234 and 235. In article 235, a maximum fine of IDR 10 million is stipulated for those who: (a) use a state flag for commercial advertisements / advertisements; (b) flying a flag that is damaged, torn, faded, wrinkled or dull; (c) print, embroider and write letters, numbers, pictures or other signs, or attach badges or any object to the flag; and (d) wearing the flag for ceilings, roofs, wrapping, closing goods, which decreases its honor.

9. Article in the Criminal Code Bill on contempt of courts also has the potential to suppress citizens' rights. Article 281 letter b regulates a criminal fine of Rp. 10 million for those who: “*Are disrespectful towards judges or trials or attack the integrity of judges in court hearings*”.

10. Provisions related to criminal acts against religions are regulated in articles 304-309. These articles are also considered problematic, because their contents are far from the standard of Article 20 of the ICCPR concerning the context of the prohibition of hate propaganda, and not yet containing important elements, which are acts of "intentional" related to criminal acts against religion.

#### **Proposed List of issues:**

- 1) How does the Government of Indonesia ensure the effectiveness of state apparatus training and capacity building programmes, and ensure that it impacts on the protection of the civil and political rights?
- 2) What are the main obstacles that have caused the Indonesian government not to immediately ratify First OP of ICCPR?
- 3) What efforts have been made by the Indonesian government to ensure that the Criminal Code is in accordance with the principles of the ICCPR? Are input from civil society and NHRI included in the revision process?

#### **B. Inconsistency of ICCPR Values in Regional Regulations: Response to the Paragraph 6 of Concluding Observation**

11. Some of the efforts made by the Government to prevent or abolish discriminatory local regulations cannot be carried out effectively. One of them is the Joint Regulation of the Minister of Home Affairs and the Minister of Law and Human Rights Number 20 and Number 77 of 2012 concerning Parameters of Human Rights in the Formation of Regional Legal Products. In addition, harmonization of regional regulations with the perspective of women is also included in RANHAM (Presidential Regulation No. 75/2015 jo Perpres No. 33 of 2018 About the National Human Rights Action Plan), but in its implementation it is constrained by the commitment and understanding of local governments on human rights. As a result, a number of discriminatory regulations still emerge and have not been abolished / revised until now.

12. The effort of Indonesian Government to eliminate or revise discriminatory local regulations is increasingly not getting momentum when the Constitutional Court revoked the function of the Ministry of the Home Affairs in cancelation of enactment of the Local Regulation, as regulated in Article 251 Paragraph 7, as well as Article 251 Paragraph 5 of Law Number 23 Year 2014

concerning Regional Government. In fact, this regulation is an opportunity for the Central Government to criticize discriminatory regulations.

13. As in August 2018, National Commission on the Elimination of Violence against Women (KOMNAS Perempuan) found 421 discrimination regional policies, 56 percent of them in the form is regional regulations, the rest in the form of circular letters from regional heads from district to subdistrict. Of these, there is 333 discrimination policies about against women.

14. On November 27, 2018, the Government of Pariaman City and Regional Representative Council (DPRD) of Pariaman City ratified a regional regulation in which it regulates the matter of punishment for LGBT and transgender. The regional regulation is a revision of the Regional Regulation on Peace and Order.

15. At this time, the Government of Depok City and Regional Representative Council (DPRD) of Depok are arranging regional regulation drafts about resisting LGBT. According to SOGIE organizations monitoring (Arus Pelangi, 2019), at least 12 Years of LGBT Persecution in Indonesia; in the last 10 years there were 45 local regulations that discriminated against LGBT in Indonesia, there are 22 regulation policies of all that explicitly mention resist-LGBT.

#### **Proposed List of Issues:**

- 1) After the Constitutional Court's decision revoked Article 251 Paragraph 5 of Law Number 23 Year 2014, what did the Central Government do to revoke or revise discriminatory regulations?
- 2) Are there efforts, for example harmonization mechanisms based on human rights principles, made to prevent the newly issued regulations from being discriminatory?

#### **C. Completion of the 1997-1998 Enforced Disappearance Case and the Munir Case: Response to the Paragraph 8 of Concluding Observation**

16. There has not been significant progress in the procedure for resolving past human rights violations. The Attorney General always returns the documents to Komnas HAM, even though Komnas HAM has tried to complete the documents. The only way for the Government to resolve this is to issue a PERPPU (regulation in lieu of law) which gives / strengthens the National Commission for Human Rights the authority to conduct an investigation and filing case to the court. That way, the National Human Rights Commission can investigate these cases and directly process them to court.

17. President of Indonesia, Joko Widodo, promised to solve the bottleneck of past human rights abuses cases. In the process of implementation, the Government did not take any meaningful action in encouraging the Attorney General to follow up on The National Commission on Human Rights (KOMNAS HAM) report.<sup>1</sup>

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<sup>1</sup> In 2017 and 2018, in several times The Attorney Generals of Indonesia give a sign will finish cases in 1998 through a non-judicial way, due to the uncertainty that occurred with The National Commission on Human Rights (KOMNAS HAM). In 2019, the Attorney General said the Semanggi case was not a case of gross human rights violations. This shows the absence of goodwill from the state to bring these cases to the level of an ad hoc human rights court.

18. A number of initiations made by the Jokowi Government in the first period, including carrying out the Symposium on Revealing the Truth of the '65 Event by the Victims, instead received rejection from the military and a number of vigilante groups. Until now, there has been no attempt to follow up on the symposium's recommendations.

19. The government chose the path of non-judicial settlement through the National Harmony Council (DKN). The initiation was delivered by Mr. Wiranto as the Coordinating Minister for Political, Legal, and Security Affairs of Indonesia (first period). This mechanism has been widely criticized by victims and civil society because it has become an impunity for past human rights violations, because the Government cannot ensure the truth-telling process is in it.

20. The discourse on the formation of DKN as well as an integrated joint team from the government is also dilemmatic / problematic because it narrows the meaning of justice in the context of reconciliation, an arena of forgiveness between perpetrators and victims.

21. At the beginning of Jokowi in the second period, Government of Indonesia delivering the discourse on institutionalization of the Truth and Reconciliation Commission (TRC), again raised by The Coordinating Minister for Political, Legal, and Security Affairs of Indonesia. Minister emphasized (promised) that the process at the Truth and Reconciliation Commission (TRC) was not to replace the judicial process, even though the Government does not provide a certainty about the legal process. The process of re-institutionalization of the TRC is being carried out by the Ministry of Politics and Security through the idea of establishing a TRC Presidential Regulation; The draft of the Presidential Decree was handed over by the expert team to Menkopolhukam for further discussion/action. The format of regulation through this Presidential Decree was chosen to deal with the legislative process (with regulation) which will require a lengthy process while there is an urgent need for recovery of victims.<sup>2</sup>

### **Proposed List of Issues:**

- 1) If the Indonesian government is truly committed to resolving past human rights violations, why doesn't the Government issue a PERPPU (regulation in lieu of law) that reinforces the position of Komnas HAM?
- 2) What concrete efforts have been made by the State (government) of Indonesia to ensure that the process of resolving past human rights violations cases is carried out? Are there any efforts to bring together the National Human Rights Commission and the Attorney General's Office so that the problem is not complicated until now?
- 3) If the TRC is the policy choice, how does the Government ensure that the TRC does not negate the judicial process currently carried out by Komnas HAM?
- 4)

### **D. Fulfillment of non-derogable rights in a state emergency situation: Response to the Paragraph 9 of Concluding Observation**

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<sup>2</sup> "Mahfud MD Hanya Ingin Kasus Pelanggaran HAM Selesai, Secara Yudisial Maupun Non-Yudisial", Kompas.com, <https://nasional.kompas.com/read/2019/12/26/18192251/mahfud-md-hanya-ingin-kasus-pelanggaran-ham-selesai-secara-yudisial-maupun>.

22. Although it did not implement a security emergency in Papua, the Government of Indonesia's approach to Papua has not changed. The addition of troops and violence to civil groups continued, including restrictions on space.

23. The attack on the Papua students dormitory in Surabaya on August 16, 2019 triggered a massive wave of demonstrations related to the issue of Papua, outside Papua and inside Papua. By the Government, the existence of these demonstration actions was responded to repressively. The Coordinating Minister for Politics and Security, Wiranto, immediately made a statement about the coordination of law enforcement that legitimized the involvement of The Indonesian National Military (TNI) and The Indonesian National Police (POLRI) to stabilize security.

24. On August 24, 2019, The Indonesian National Military (TNI) searched the Puncak area in Papua, causing around 1,500 people to flee to the forest, making it difficult for them to get food. In that escape, 3 people died. One of them died being shot on his way to school. On August 28, 2019, the Military and the Police apparatus fired at peaceful protest participants in Deiyai, Papua and killed 6 people and many others were injured, including children. On September 1, 2019, the National Police Chief ordered the Papua and West Papua Police Chiefs to ban all forms of action in Papua.

25. The security approach adopted by the Government in dealing with Papuans who use their constitutional rights to express their opinions has claimed many lives and seized them of their fundamental rights as a human. In general, it can be said that the freedom of expression of the Papuan population, both in Papua and outside Papua, is still very limited. In each case, most were resolved through repressive and violent ways.

#### **Proposed List of Issues:**

- 1) Please explain in detail how the Indonesian Government's policies towards Papua? How to ensure there are no human rights violations in the midst of no external access, including the National Human Rights Commission and civil society, to the Papua region?
- 2) The stigma and stereotype among the security force and police often results in discrimination and violence against Papuan people, how does the Government eliminate and handle this stigma and stereotype?

#### **E. Abolition of Death Penalty: Response to the Paragraph 10 of Concluding Observation**

26. On 29 July 2016, Indonesia executed 4 convicted narcotics cases. A year later, the Indonesian Ombudsman discovered mal-administration of the execution of one of the four people. The Indonesian Ombudsman said the execution of one of the convicts should have been postponed, because at that time he was applying for clemency. Until 2020, although there was no official declaration from the government regarding a moratorium on the death penalty, there is no longer any execution of death row inmates.

27. However, the court still issued the death sentence in certain cases. Based on the monitoring of Indonesian NGOs, in 2017, Indonesia has 47 death sentences. In 2018 and 2019, the number of death sentences amounted to 80. As of October 2019, Indonesia had a total of 274 death row inmates who had not been executed.<sup>3</sup>

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<sup>3</sup> Based on the information from the Ministry of Law and Human Rights.

28. Until now, there are more than 30 criminal acts under 13 of Laws which include the death penalty as a punishment. Of the 13 laws, there are 3 laws that are often used in imposing capital punishment Law No. 35/2009 about Narcotics, Law No. 15/2003 about Terrorism and premeditated murder as stated in the Criminal Code (KUHP). There has been no revision of the articles which still contain the death penalty.

**Proposed List of Issues:**

- 1) If without a declaration, how can the Indonesian government ensure its commitment to discontinue execution?
- 2) Are there efforts made by the Government of Indonesia to ensure the implementation of the rights of death row inmates have been fulfilled in the legal process? For example, by building an evaluation team to review the case of death row inmates?

**F. Corporal Punishment in the Aceh Qanun: Response to the Paragraph 15 of Concluding Observation**

29. Caning is still continued as a policy choice in Aceh. In 2014, the Aceh Regional Government issued Qanun No. 6 of 2014 concerning *Jinayat* Law, which still applies caning. In 2015, caning punishment was carried out on at least 108 people in Aceh. In 2016, around 339 people were caned. Throughout 2015 to 2017, more than 530 people were sentenced to caning in Aceh. Throughout 2019, the Sharia Police or *Wilayahul Hisbah* in the city of Banda Aceh carried out the caning of 76 violators of the qanun regarding *Jinayat Law/Qanun*. In some cases, Qanun *Jinayat* in Aceh also applied to citizens who are not Muslim.

**Proposed List of Issues:**

- What efforts have been made by the Central Indonesian Government to ensure regional autonomy in Aceh does not violate human rights? Can the Helsinki agreement that includes aspects of rights protection according to the ICCPR be applied in Aceh at this time? Is there an evaluation of the agreement in the context of human rights enforcement?

**G. Excessive Use of Force and Extrajudicial Killing by the Police and Military: Response to the Paragraph 16 of Concluding Observation**

30. Based on data compiled by Elsam, during January to September 2017, 27 torture incidents were found which resulted in 43 victims of torture. Almost all incidents of torture that occurred were carried out by law enforcement officers, especially by the police which were allegedly carried out by more than 70 people. Torture also involved 2 TNI soldiers, 3 prison guards, 1 chief warden. In terms of victims of torture, Elsam noted that of the total 43 victims of the 27 torture events, 13 people died, and the remaining 30 were injured.

31. During the period November 2017 to July 2018, Elsam also recorded 36 cases of violence and threats of violence against environmental human rights defender (EHRD) occurred in



Indonesia with 55 actions, with 254 victims. There are 10 actors involved in acts of violence and threats of violence against EHRD. Of these, the police are the perpetrators who most often commit acts of violence and threat of violence. Of the total 36 cases, the police were involved in 25 cases. Satpol PP and Indonesian Military are in the second position with each involved in 4 cases.

32. In 2018, the Indonesian Police have shot dead 15 people suspected of being street criminals for the security of the 2018 Asian Games. Police officials issued orders to shoot dead against these “small-scale” criminal suspects. On July 2, 2018, just a month before the 18<sup>th</sup> Asian Games, the Jakarta Police Chief issued an order to its members not to hesitate to shoot street criminals.

33. In the following year, throughout 2019, Elsam noted 27 cases of violence that had befallen EHRD. These cases resulted in 128 individuals and 50 groups of EHRD being victims of acts of violence committed by both state and non-state actors. Of the total number of 39 actors, 17 actors are state actors, 10 of whom are actors from the police and 4 of them are from Indonesian Military. Satpol PP 2 actors and 1 actor village apparatus.

34. In 2019 there were also many excessive uses of force by the police in handling large mass actions, namely in the 21-21 May 2019 action and the rejection of the proposal of Penal Code Bill at the end of September 2019. In the May 21-23 2019 incident, 9 demonstrators died. In the whole series of proposal of Criminal Code Bill rejection demonstrations at the end of September 2019 resulted in 5 people died. The death of the victims in two major actions, along with hundreds of others injured, allegedly due to police repression in handling the actions.

35. Beside those two actions, the excessive use of force and extrajudicial killings by the police and military was also carried out in handling the wave of massive actions related to the issue of Papua, inside and outside Papua. As soon as the wave of action emerged, Coordinating Minister for Political, Legal and Security Affairs, Wiranto, immediately made a statement about the coordination of law enforcement that legitimized the involvement of the Indonesian Military and Indonesian Police to stabilize security.

36. On August 24, 2019, the TNI searched the Puncak area in Papua, causing around 1,500 people to flee to the forest, making it difficult for them to get food. In that escape, 3 people died. One of them died being shot on his way to school. On August 28, 2019, a joint military and police apparatus fired at peaceful protest participants in Deiyai, Papua and killed 6 people and many others were injured, including children.

#### **Proposed List of Issues:**

- 1) How the government of Indonesia ensure the accountability of military and police apparatus actions related to the extrajudicial killing, including also in conflict areas such as Papua?
- 2) How to ensure the procedures of prevention of violence implemented by the police officers during the demonstration, especially in Papua?

## **H. Protection of Religious Groups and Fulfillment of Right to Freedom of Religion and Beliefs: Response to the Paragraph 17 of Concluding Observation**

37. Instead of compensation, human rights violations against religious minority groups still occur frequently. On Saturday, April 4, 2020, the Board of Trustees of the Mayor of Tasikmalaya, visited the administrators of JAI (Jaringan Ahmadiyah Indonesia) Singaparna, Tasikmalaya, and gave a Joint Decree (SKB) on “Rejection of Mosque Renovations, Tower Construction and Worship Rejection of Mosque Renovations, Tower Construction and Worship Facilities and JAI Da'wah Activities in Badakpaeh, Cipakat, Singaparna, Tasikmalaya City.”

38. SKB is the result of a meeting held by the Regent of Tasikmalaya. Head of The Attorney of Tasikmalaya, Dandim 0612 Tasikmalaya, Tasikmalaya Police with the decision to close the JAI Singaparna Al-Aqso Mosque.

39. Deprivation of the right to a place of worship was also experienced by JAI Parakansalak, West Java, a month earlier. On March 13, 2020, Al-Furqon Mosque owned by JAI Parakansalak, Sukabumi, West Java, was forcibly closed by Municipal Police (SATPOL PP).

40. Meanwhile, there has not been any concrete effort from the central and regional governments to guarantee the rights of refugees (IDPs) of Syiah Sampang and Ahmadiyah in East Nusa Tenggara who were driven from their villages. These IDPs are still living in refugee camps and are not fit to live humanely and normally.

### **Proposed List of Issues:**

- 1) Has the government made concrete and systematic plans to ensure the rights of Ahmadiyah internal refugees in NTB and Shia Sampang are fulfilled? This also includes the fulfillment of basic rights, such as residence, employment, education, and so on.
- 2) Are there regulatory or practice efforts taken by the Government of Indonesia to ensure protection of vulnerable groups and minorities? Why do cases of violence still occur?

## **I. Arrangement of Detention in Criminal Procedure Code: Response to the Paragraph 19 of Concluding Observation**

41. Until this day, the revision of the Criminal Procedure Code has not yet been carried out. The length of detention of a suspect since being detained until brought to the court is very long, depending on the case, usually for 20 days and could be extended until 60 days.

## **J. Restriction of Freedom of Assembly and Association, Freedom of Opinion and Expression, and Freedom of Religion and Belief in the Societal-based Organization Law: Response to Paragraph 24 of Concluding Observation**

42. On December 2, 2016, the Government of Indonesia issued two regulations derived from Law 17/2013, namely: 1) PP 58/2016 concerning the Implementation of the Societal-based Organization Law and 2) PP 59/2016 concerning Organizations Organized by Foreign Citizens. Organizational registration arrangements in PP 58/2016 expand the scale of regulations on registration for organizations that are legal or not incorporated with tiered management through

the obligation to “report” the existence of the organization concerned in stages as contained in Article 8 paragraph (1) and paragraph (2) as well as Article 9. This rule increases the length of bureaucratic registration of mass organizations and indirectly confirms that mass organizations registration norms are a necessity and not voluntary.

43. In PP 59/2016, there is a discretion without limitation of time span or scheduling for the fulfillment of a series of procedures for principle licenses and operational licenses for foreign societal-based organizations. The process of verifying registration documents, as described in Articles 9 to 24, is not complemented by a measurable time allocation. In other words, this unrestricted discretion can be a bureaucratic tool for stalling that can lead to legal uncertainty in obtaining principle licenses and operational licenses for foreign societal-based organizations.

44. On July 10, 2017, the Indonesian government issued PERPPU 2/2017 on Amendments to Law 17/2013 which was later passed into Law 16/2017. In Law 16/2017, the government has the authority to revoke decisions (issuing permits for the establishment of mass organizations) or in other words, dissolve mass organizations without going through a judicial process. Law 16/2017 also imposes criminal provisions so as to enable the state to punish people not because of their criminal actions, but because of the status of membership in a societal-based organization.

45. On July 31, 2017, the Ministry of Home Affairs issued three ministerial-level regulations, namely 1) *Permendagri* (Regulation of Minister of Home Affairs) 56/2017 concerning Supervision of Mass Organizations within the Ministry of Home Affairs and Regional Governments; 2) *Permendagri* No. 57/2016 concerning Registration and Management of Societal-based Organization Information Systems; and 3) *Permendagri* 58/2017 concerning Cooperation between the Ministry of Home Affairs and Regional Government with Societal-based Organizations and Agencies or Institutions in the Field of Politics and General Government. The provisions in Article 14 through Article 16 of *Permendagri* 56/2017 confirm that the state uses a political security approach in regulating Indonesian mass organizations.

46. The provisions of article 1 number (3) jo Article 3 paragraph (1) and Article 5 of the Minister of Home Affairs 57/2017 shows the institutionalization of registration of mass organizations through a Registered Certificate (SKT). Furthermore, non-legal entity organizations are declared registered after obtaining SKT. The registration of this organization aims to create an orderly administration which is a key word for the government to control the existence of the societal-based organizations.

47. Through the registration of mass organization scheme, the government tried to shift the meaning of SKT, which initially only became an ‘instrument of voluntary’ data collection into an ‘instrument of recognition’.

48. The obligation to register through SKT ownership is clearly a violation of the right to freedom of association and is against the Indonesian Constitutional Court’s Decision No. 82 / PUU-XI / 2013 which states that registration of mass organizations is voluntary. In addition, there are impacts on the existence of societal-based organizations if they do not have SKT, including 1) not recognized by the government; 2) given a stigma as an illegal / illegal organization; 3) restrictions on access to resources (accessing grant funds, utilization of public facilities, requests

for public information, requests for research, conducting public opinion submissions (demonstrations), to public services); 4) prohibition of activities; 5) dissolution or revocation of the legal entity of the organization; and 6) criminalization of members or sympathizers of mass organizations. In this context, the government has made the Societal-based Organization Law as an instrument of restriction and created a much more stringent landscape for supervision of mass organizations in Indonesia.

49. In January 2016, the Ministry of Home Affairs and the National Unity and Politics Agency in a number of regions banned the existence of the Gerakan Fajar Nusantara (Gafatar). In fact, the Minister of the Interior issued SE No. 220/115 / POLPUM dated 14 January 2016 concerning Supervision of mass organizations to all Governors and Regents/Mayors throughout Indonesia to detect and supervise the activities of mass organizations, including *Gafatar* organisation. This rule shows that Law 17/2013 contains oversight and restrictions that are too broad. Oversight and restrictions based on religious values will ultimately narrow and hinder the fulfillment of the right to freedom of religion and belief.

50. The Minister of Home Affairs also issued Minister of Home Affairs Circular Letter No. 220/2065/POLPUM dated May 12, 2016 concerning Reprimand and Handling of Societal-based Organizations that Are Contrary to Pancasila as an effort by the government to strengthen the values and ideology of Pancasila. This rule has the potential to silence the critical attitude and control of citizens only because the government does not agree with their activities so that in the end it is often labelled as an anti-Pancasila organization.

51. In November 2017, the Head of the National Unity and Politics of *Batang* Regency, Central Java Province, stated that only beliefs that have been registered (have SKT) and have legal status can be written in the religion column on ID Card. The same thing was said by the Head of the Population Registration Service Division, the Population and Civil Registry Service of Batu City, East Java Province, that later the beliefs-based organizations must be recorded and have a SKT.<sup>4</sup>

52. The main problem in this regard is that the state has confused the population administration regime with the Societal-based Organization regime. In other words, the state makes the SKT an instrument of recognition (recognition) for groups of beliefs believers. In addition, the government's policy to require indigenous faiths/beliefs believers to have an organization first actually has confused the right to assembly and association regime (Art. 21 and Art. 22) with the right to freedom of religion and belief (freedom of thought, conscience, and religion, Art. 18).

#### **Proposed List of Issues:**

- 1) Considering the various explanations of the legal framework issues and implementation of the above policy, please provide an explanation of the actions taken by the State Party to ensure that the SKT is only used as an instrument of data collection, not an instrument of recognition and granting access to resources for societal-based organizations.
- 2) Please provide an explanation related to the efforts made by the State Party to overcome the multiple interpretations in the Societal-based Organization Law at the implementation

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<sup>4</sup> The report based on the Coalition of Freedom of Association that coordinated by YAPPIKA-ActionAid.

level by adopting the Constitutional Court Decree No. 82 / PUU-XI / 2013 concerning the Societal-based Organization Law (related to registration norms that are voluntary, tiered societal-based organizations, and the purpose of societal-based organizations) and the International Covenant on Civil and Political Rights.

- 3) Please provide an explanation regarding the efforts made by the State Party to address the increasingly widespread violations of human rights (violations of freedom of association and association, freedom of expression and expressing opinions in public, freedom of religion and belief, right to funding resources, right to public information, to the right to public services) due to the multiple interpretations of the Societal-based Organization Law articles
- 4) Please provide an explanation regarding the efforts of States Parties in overcoming the problem of overlapping arrangements for civil society organizations, specifically referring to the legal framework of membership-based organizations (membership organizations).

#### **K. Right to Religious Education and Absence of Student Rights to Refuse Religious Education in Schools: Response to Paragraph 26 of Concluding Observation**

53. The right to education of religion/belief for local faith believers has also been regulated in Ministry of Education and Culture Regulation (*Permendikbud*) No. 27/2016. The regulation allows believers in their educational institutions to not attend other religious studies. Belief-based organizations can send counselors to schools, or students can get grades from the organizations which will be included in the education report.

54. However, again in practice it is not as smooth as expected. Believers-students often get verbal intolerant harassment, generally from religious teachers. As an example, a Budidaya believer student was once called an atheist by a religious teacher in his school. Discrimination of the believers occurs even in places where they are supposed to educate. Atheism is also still considered an enemy of the state. The latest version of the Mass Organization Law still refers to atheism as an understanding that is contrary to Pancasila. This certainly has implications for the impossibility of students to refuse any religious education in their school institution.

**Proposed List of Issues:** When there are no regulations that guarantee the rights of minority religious groups and beliefs, how does the Indonesian Government guarantee the rights of followers of beliefs, indigenous religions, and minority religions that are not "recognized"?

#### **L. Silencing Criticism through the Law on Information and Electronic Technology: Response to the Paragraph 27 of Concluding Observation**

55. The revision on Law on Information and Electronic Technology (ITE) through Law No. 19/2016 could be considered as a failure because it does not abolish the criminal provisions (Articles 27, 28, 29) which are often used to criminalize freedom of expression that is legitimate in the online world. Only the criminal threat was reduced from 6 years to 4 years. Then the addition of Article 45B which includes the category of cyber bullying is also not appropriate because it actually gave birth to over-criminalization (which in the Criminal Code already regulated).

56. It is also important to highlight the Government's tendency to use articles on pollution and hate speech in the ITE Law in the context of silencing criticism in the Covid-19 situation. In addition to the Circular on the Handling of Speech Speeches that had previously been issued in 2015, there was a tendency from the National Police to use articles about hoax to criminalize individuals who criticized the Government's policy in dealing with Covid-19. Including policies such as the National Police telegram related to law enforcement during the pandemic became a tool for the police to act aggressively against critics of Government policies.

57. In a broader context, it needs to be a serious response related to the application of sufficiently rubbery articles in Law No. 11/2008 concerning Electronic Information and Technology, which has been revised through Law No. 19/2016 concerning Electronic Information and Technology.

58. In fact, in addition to changes in the duration of criminal threats, a number of articles often lead to the criminalization of information dissemination. For instance, the provisions in the ITE Law related to hate speech, insults, hoaxes are still vulnerable to being used to criminalize the journalists who cover. Similar case occurred, the criminalization of the former chief editor of *Banjarhits.id* using article 45A paragraph (2) of the ITE Law. He is considered to spread hate speech that offends Ethnic, Religious and Race groups through a press product published in *Banjarhits.id* titled "*Land Seized*" by Jhonlin, and the communities Complained to South Kalimantan Regional Police on 9 November 2019. Even though the Press Council has stated that this case is a journalistic dispute, South Kalimantan Regional Police and the Kota Baru District Attorney still brought it to trial at the Kotabaru District Court.

59. The police have actually issued a circular letter from the National Police Chief regarding the Handling of Speech Speeches, No. E / 6 / X / 2015 concerning Handling Hate Speech. This SE prevents the criminalization of freedom of expression, as well as acts of hate speech perpetrators in accordance with Article 20 of the ICCPR. But unfortunately, this Circular Letter is not implemented and in the field the police do not have a complete understanding of hate speech.

60. In addition to freedom of the press, which is also of concern in the issue of freedom of expression is the criminalization of activists who disseminate information through the internet. Two cases of criminalization of information dissemination include the case of whacking journalist Mr. Dandhy Dwi Laksono and lawyer Ms. Veronika Koman. Both are considered spreading false news doing hate speech.

61. There are also any other cases. First, the case of hacking and criminalization of democracy activist Raviopatra, Raviopatra, a public policy researcher and advocacy advocate for legislation who often voiced criticism of the administration, was arrested by the Metro Jaya Regional Police on April 22, 2020. Previously through his Twitter account, @raviopatra Raviopatra criticized President Special Staff Billy Mambrasar for allegedly being involved in a conflict of interest in government projects in Papua. He also wrote about his criticism of handling Covid-19 in the media Tirta (dot) id. The criticism is related to what has been done by Raviopatra, which is encouraging Indonesia to be more transparent and open.

62. Second, student activists organizing a public discussion "The Issue of the President's Dismissal in the Middle of the Pandemic Judging from the State Administration System" received terror and intimidation, to the threat of murder, intimidation to change the title to cancel the event, until an indication of criminalization of alleged treason. Even the Professor of Constitutional Law UII who was invited to be a guest speaker also experienced terror.

63. Some of the problems related to the ITE Law include: *First*, the application of this disinformation article does not recognize the category of disseminator as well as content creators and content disseminators. In this article only "broadcasters" can be convicted, it does not matter whether the disseminator has malicious intent or not in spreading the information.<sup>5</sup>

64. *Second*, in the article disinformation there are important elements such as "broadcasting news or telling such lies must intentionally or have the intention to cause trouble among the people". The absence of clear indicators of what is meant by trouble among the people makes this article a multi-interpretation article and under certain conditions lead to violations of the right to freedom of opinion and expression.

#### **Proposed List of Issues:**

- 1) Why is it that even though there has been a circular letter from the National Police Chief regarding the handling of hate speech, criminalization is still happening? Was there no attempt to ensure the police acted according to the National Police chief's rules or what?
- 2) When there are cases of freedom of expression of human rights defenders relating to the government or corporation, how can law enforcement continue to act independently and prevent themselves from criminalizing using the ITE Law?
- 3) Please provide an explanation about the absence of comprehensive national regulation and protection mechanism to protect human rights defenders.

#### **M. The silencing of Freedom of Opinion and Expression and Freedom of Assembly and Association of Papuan demonstrators: Response to the Paragraph 28 of Concluding Observation**

65. The New York Agreement which was held on August 15, 1962 in New York, United States of America, was commemorated by Papuan students throughout Indonesia. Throughout the observations, the initial series of commemorations began with a discussion held in Bandung on 14 August 2019, followed by commemorations by Papuan students in many regions of Indonesia the following day. The series of commemorations was followed by repressive actions by Indonesian security forces who tried to dismiss the event. On August 16, 2019, the Papuan student dormitory in Surabaya was surrounded because they did not put up a red and white flag. Papuan students are being yelled at by racist curses as well as threats.

66. The actions to those students triggered further mass actions by Papuan students outside Papua as well as by Papuans in the land of Papua itself. These massive mass actions were then

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<sup>5</sup> For the information, data said, that 65 percent of 132 million internet users in Indonesia trusting information in cyberspace without checking first.

responded with more repressive actions from the Indonesian security forces, also with the termination of internet connections (internet shutdown) and telephone lines and electricity in several areas in Papua.

67. In addition to restricting the dissemination of information, a series of actions related to the Papua issue also gave birth to many human rights violations both directly and indirectly by the State. From 14 August 2019 to mid-October 2019, HRWG noted that violations were still affecting Papuans and those who sympathized with Papuans.

68. State officials and civil militias are often used to disperse events related to the Papua issue both inside and outside Papua. Papuan student dorms in all over of Indonesia are surrounded; they were forced to fly the red and white flag, accompanied by inhuman treatment of their students.

69. On August 19, 2019, the Coordinating Minister for Political, Legal and Security Affairs Wiranto issued an official statement regarding the coordination of security issues. Point number (7) of the statement is alleged to be the legitimacy of the limitation of the right to freedom of opinion and expression as well as freedom of assembly.

70. On September 1, 2019, the National Police Chief ordered the Regional Police Chief of Papua and West Papua to ban all forms of demonstrations. Later, on August 21, 2019, the Indonesian Government terminated internet access (internet shutdown) in Papua. The Government through the Ministry of Communication and Information Technology (Kominfo) terminated internet access in the regions of the Provinces of Papua and West Papua by referring to Article 40 number (2a) of the ITE Law. The action was carried out recklessly without due process due law procedures. Termination of access is also done not only for content that is deemed unlawful but also for positive content, such as journalistic work. Resulting in obstruction of journalist work and freedom of the press in Papua.

71. Along with this internet shutdown the Government has also disseminated online disinformation several times and online propaganda about Papua. The government intervened several times upon news content and in cyberspace related to Papua. On August 28, 2019, the Government blocked a satirical content from the Australian media which criticized Indonesia's policy on Papua. On September 9, 2019, a Papuan students' dormitory in Surabaya was pelted with two sacks of snakes. The Indonesian National Police then asked the mass media not to report on the incident.

72. Based on Indonesian NGO Coalition monitoring, the Government of Indonesia is also criminalizing activists related to the Papua issue. The initial mass actions in Papua and all their human rights violations were not reported by Indonesian mass media. The Twitter account of Veronica Koman, a public lawyer who consistently defends the rights of Papuans, is the only source to access information about these actions including all the violations. By the Indonesian Government, Veronica Koman was accused of spreading hoaxes. The hoax the Government meant is the news of the siege of the Papuan dormitory in Surabaya which is then suspected to be a trigger for further mass actions both outside Papua and Papua itself. Later, Koman was named a suspect. Until now, she is in exile.



73. Criminalization does not only happen to Koman. A few days earlier, Spokesperson for the Indonesian People's Front for West Papua (FRI-WP) Surya Anta Ginting along with 5 other people were also arrested with treason article. Later it was discovered that they were detained in a windowless isolation room and forced to listen to Indonesian nationalist songs all the time. Attacks on human rights defenders were also experienced by Jakarta Legal Aid Institute (LBH Jakarta), Makassar Legal Aid Institute (LBH Makassar), Surabaya Legal Aid Institute (LBH Surabaya), KontraS Surabaya and Indonesian Legal Aid Center of Bandung (PBHI Bandung) because of their involvement in advocacy related to the Papua issue.

74. Based on monitoring and documentation conducted by ELSAM, on the fourth quarter (August-December) in 2019, criminalization of Papuan political activists has increased dramatically. The security forces are increasingly massive in arresting actions carried out by Papuans. Most of the arrests ended in detention. Data shows that as of January 28, 2020, there were 109 Papuan political prisoners who are still in prison.

#### **N. Additional update: Lack of Personal Data Protection: Additional Update on the CCPR Issues**

75. The vast amount of data exploitation has emerged in the past five years causing the violation of the right to privacy of Indonesian people (Article 17). This has happened in various ways such as an unlawful collection of personal data by both public and private institutions and arbitrary use of personal data of the citizens for various purposes such as direct marketing, political micro-targeting, and data-sharing without prior consent.

#### **Proposed List of Issues:**

- 1) The lack of comprehensive personal data protection regulation has led to uncertainty and obscurity regarding how citizen's personal data is being processed, how to ensure the data controller's responsibility and accountability in protecting the personal data?
- 2) How to guarantee the full enjoyment of a set of rights which are given by the international human rights instruments?

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## Profile of the Organisations

**Human Rights Working Group (HRWG)** - The Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG) was established by a the majority of NGOs working in different issues but share interest in human rights to serve the need for elaborate advocacy works already in place with the aim of maximizing the goals and putting more pressures on the Indonesian government to execute its international and constitutional obligations to protecting, fulfilling, respecting and promoting human rights in the country. Website: <https://hrwg.org/> email: [hrwg.indonesia@gmail.com](mailto:hrwg.indonesia@gmail.com) / [hrwg@hrwg.org](mailto:hrwg@hrwg.org)

**The Peoples Participation Initiative, and Partnerships Strengthening Foundation (YAPPIKA - a member of ActionAid International (hereinafter referred to as YAA))** is a non-profit organisation that standing and working together with some communities in Indonesia since 1991 in order to encourage government policies to improve public services in between the fields of education and health, and advocate for better enabling environment for civil society. YAA Website: <http://yappika-actionaid.or.id/>

**The Legal Aid Center for the Press (LBH Pers)** was founded on July 11, 2003 in Jakarta. Legal Aid Center for the Press (LBH Pers) was spearheaded by the Alliance of Independent Journalists and a group of young lawyers who shared the same dream of upholding freedom of the press and expression. Their establishment was also triggered by pressure and control of the media and journalists by many parties, including the government, businessmen, and even politicians, after the fall of Suharto in 1998. E-mail: [lbhpers@yahoo.com](mailto:lbhpers@yahoo.com)

**Lembaga Studi & Advokasi Masyarakat (ELSAM)** - The Institute for Policy Research and Advocacy, a human rights organisation, based in Jakarta, established since August 1993. To actively participate in the efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR), has become ELSAM's driving objective. At the outset, ELSAM's spiritual commitment was to develop a democratic political order in Indonesia by empowering civil societies through advocacy and promotion of human rights. Website: <https://elsam.or.id/>

**Arus Pelangi** - A non-profit organization & national federation of LGBTI community in Indonesia. Website: <https://www.aruspelangi.or.id/>