



**THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS
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Submission to Human Rights Committee

**List of Issues Prior to Reporting (LOIPR) on Indonesia's
anticipated 2nd periodic report under the International
Covenant on Civil and Political Rights (ICCPR)**

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The 129th session of the Human Rights Committee

I. INTRODUCTION

1. The National Commission on Human Rights of the Republic of Indonesia (Komnas HAM), hereby submits a List of Issues Prior to Reporting (LOIPR) to the Human Rights Committee to anticipate the 2nd Periodic Report of Indonesia under the International Covenant on Civil Rights and Politics in fulfilling its reporting obligations granted by the Treaty Body to Indonesia. Indonesia adopted the International Covenant on Civil and Political Rights on October 28, 2005. Komnas HAM's list of issues prior to reporting was intended to provide additional information regarding status of the implementation of the ICCPR in Indonesia.
2. The data provided in this report was collected from the results of consultations, field studies, complaints to the National Human Rights Commission, meetings and other related activities attended or organized by Komnas HAM. The report also considers national and international laws, as well as local and international reports and focuses mainly on the following themes:
 - a. capital punishment;
 - b. freedom of religion and belief;
 - c. torture and other cruel, inhuman, and degrading treatment or punishment;
 - d. freedom of association and association;
 - e. freedom of opinion and expression;
 - f. access to justice and excessive use of authority;
 - g. inhumane and demeaning treatment, and discriminatory practices against persons with disabilities;
 - h. racial and ethnic discrimination;
 - i. Papua;
 - j. impartiality, independence, and fulfillment of the rights of victims of gross violations of human rights;
 - k. criminal justice system in countering terrorism;
 - l. general elections;

PART I FUNDAMENTAL POLICIES

3. In general, the implementation of the ICCPR in Indonesia in the last 3 years has showed some positive and negative results. Both positive and negative results can be observed in the development of human rights policies and factual human rights situation. Some of the major events that inform the results include Concurrent Regional Elections in 2015, 2017, and 2018, as well as the first concurrent Presidential Election in 2019. In addition, incidents of violence occurred in Papua, including racially-motivated violence in

Surabaya in 2019, large forced evictions in several provinces, and mass protests and rallies that followed the formulation of several key legislations, such as the Criminal Code Bill and the revised Anti-Corruption (KPK) Law.

4. Some positive notes on the implementation of the ICCPR came as the results of the anti-discrimination policy against persons with disabilities in elections and access to employment, moratorium on capital punishment since 2016, and transparency of the court system. In addition, Komnas HAM has also improved its communication and coordination strategy in exercising its supervisory function with the Police, Regional Governments, and other stakeholders. Equally as important are several judicial decisions, especially the Constitutional Court Decision that recognize non-religious believers (*Penghayat*).
5. Some negative notes were observed in the implementation of the ICCPR that includes, among others, the rise of hate speech, criminalization of policy criticism, threats to human rights defenders, violence and acts of intolerance, excessive use of authority by law enforcement and security forces, as well as inhumane and degrading treatment.
6. As regards policies, among the important notes were the security approach in Papua that allowed violence to continue to occur. In addition, the Internet has yet to reflect optimal application of human rights principles with continuing policy of Internet shutdown by the government and personal data that has not been protected by laws, thus personal data leak often happens without proper legal response and the perpetrator are not held accountable. Current agrarian policy has not been formulated with optimal consideration of the rights of the people. In terms of correctional system, overcapacity still exists in correctional facilities and detention centers.
7. The national policy also still leaves room for impunity, particularly in cases of gross violations of human rights and fulfillment of victims' rights.
8. In addition to the above situation, in the past 3 years, there are also policies and legal policy plans that are in great relevance with the ICCPR, including Law on the Management of National Resources, Law on Combating Terrorism Criminal Acts, the Criminal Code Bill, and the Omnibus Law on Job Creation.
9. Komnas HAM considers that the process of changing the Indonesian Criminal Code (KUHP) becomes a reflection of Indonesia's criminal law politics. For this reason, Komnas HAM will ensure that the changes are in accordance with the principles and values of human rights.
10. The amendment of the Criminal Code still allow for death penalty although it is specific in nature and imposed as an alternative punishment. This is compounded by the lack of legal certainty and definite waiting period for death row inmates. Komnas HAM has observed that the revision has not been in line with efforts to abolish capital punishment.
11. Provisions on religious blasphemy/heresy, intervention of private affairs by the state, unclear prevailing laws and other problematic articles that if passed into the Criminal Code, would potentially result in human rights violations. This is due to ambiguity, legal uncertainty, and confusion among law enforcement officials and the public.
12. In the case of special crimes such as crimes against humanity, genocide, corruption, or crimes of different characteristics and principles than those of conventional crimes need to be regulated by a special provision in the Criminal Code Bill. Thus, concerns over ineffective law enforcement against special crimes due to differences in characters, approaches, and procedural law from those of conventional crimes can be avoided.

13. Public participation in the discussion of Revision of the KPK Law and the Criminal Code Bill has gained the attention of Komnas HAM. The Government and the House of Representatives as lawmakers have not involved the public enough in the process. This has led to protests against revision of the KPK Law and the Criminal Code Bill on September 24-30, 2019 in several cities. Komnas HAM noted that, following mass gatherings in Jakarta, 1,489 people were detained, 1,109 were released, and 380 were named suspects.¹

PART II THEMATIC ISSUES

a. Capital Punishment

14. The 1945 Constitution (constitution) recognizes the right to life. However, some of Indonesia's national laws still regulate the capital punishment, including the Criminal Code, the Terrorism Law, the Corruption Eradication Act Law, and the Psychotropic Substances Law. It is even imposed for criminal acts not categorized under 'most serious crimes'. Execution of capital punishment has not been carried out since 2016. However, until 2019, the Indonesian Court of Justice still imposed capital punishment in as many as 80 of its rulings. This figure has almost doubled from the previous year (2018) when only 48 rulings were made. In fact, until April 2020, capital punishment is still being imposed. Moratorium on capital punishment is only limited to the actual execution. By law, the punishment is still applicable.
15. Komnas HAM found indications of violations of fair and impartial judicial principles against suspects and/or defendants on death penalty, including in the capital punishment on children, torture in detention, provision of legal counsel and/or interpretation service during the judicial process until a court decision with permanent legal force, appeal, cassation, judicial review, or clemency is given. Komnas HAM draws attention to the case of Yusman, a child sentenced to death on May 21, 2013 due to an error in registering the year of birth. Aside from the age issue, Yusman, who did not speak Indonesian, was also not accompanied by an interpreter during the judicial process. During the investigation, Yusman was not accompanied by a lawyer. On February 23, 2017, Yusman was acquitted by a judicial review.
16. Komnas HAM took note of the progress of the Criminal Code Bill. Capital punishment is no longer listed as principal criminal sanction. It now becomes a special criminal sanction imposed as an alternative punishment and in a non-absolute manner. However, capital punishment in the Criminal Code Bill still applies to various criminal acts including criminal acts that are not included in the category of most serious crimes. Komnas HAM recommends that Indonesia immediately abolish capital punishment in national law in a gradual and planned manner over the next five years, by starting to limit the types of crimes punishable by death penalty, conducting a comprehensive moratorium on capital punishment both in terms of judgment and the execution.
17. Komnas HAM noted that up to October 2019 there were a total of 271 death row inmates. Out of this number, as of April 2020, as many as 60 people were in the waiting period of more than 10 years, among whom 5 people had been in the waiting period for more than

¹ Findings of the September 24-30, 2019 Incident of the Student Rally on Revision of the KPK Law and Criminal Code Bill, Komnas HAM, January 2020.

20 years and one of them was 82 years old. The Criminal Code Bill stipulates an article that needs to be evaluated and assessed to change the sentence for those who have served 10 years of waiting period. Komnas HAM, based on a study of this waiting period, has obtained expert information and observed the factual situation, assessing that a five-year period is sufficient for evaluation and assessment, and that a ten-year period is considered too long.

List of issues:

- 1) How does Indonesia make an action plan to abolish certain provisions of the law that stipulate death penalty, including efforts to review the Criminal Code Bill to ensure the abolition of death penalty?
- 2) How does Indonesia guarantee the implementation of fair trials in accordance with the principles of fair trials?
- 3) How are the supervision and imposition of sanctions for violations by judicial officials carried out, and to what extent have these sanctions been imposed in recent years?
- 4) How can the evaluation and assessment policy for the 10-year waiting period be changed to 5 years in accordance with the results of the Komnas HAM's study?
- 5) Can Indonesia implement a moratorium on the death penalty, while legally abolishing capital punishment? Explain the plan and procedure for this.

b. Freedom of Religion and Belief

18. Komnas HAM received 74 public complaints regarding alleged violations of the right to freedom of religion and belief in 2014, 87 in 2015, 97 in 2016, 21 in 2017, 21 in 2018, and 23 in 2019. The victims were made up of individuals or groups of various adherents of religions and beliefs, including Islam, Christianity, Catholicism, Hinduism, Buddhism, and Kaharingan. Meanwhile, the perpetrators were either individuals, groups, or government officials. These series of incidents related to freedom of religion can be divided into three categories: prohibition or destruction of houses of worship resulting from the Joint Ministerial Decree; enforcement of the blasphemy provision by the state and the persecution of non-mainstream religious groups as experienced by the Ahmadiyya, Shia, and Gafatar communities, and; application of the blasphemy provision with the use of mass mobilization. The third case happened to Basuki Tjahaja Purnama, who was sentenced to two years in prison by the North Jakarta District Court in 2017 and Meiliana, who was sentenced to 18 months of imprisonment by the Medan District Court for complaining about the volume of the Mosque speaker in Tanjung Balai, North Sumatra, in 2018. The third category also intersects with freedom of opinion and expression, in which a person would be silenced by the threat of the blasphemy provision.
19. There are still regulations that contradict the right to freedom of religion and belief, such as Presidential Decree No. 1 of 1965 concerning Prevention of Religious Abuse and/or Blasphemy (Law No. 1/PNPS/1965) and Law on Prosecution Service that regulates BAKORPAKEM (Coordinating Board for the Monitoring of Community Religious Groups). BAKORPAKEM was formed through the Attorney General's Decree No. KEP-108/JA/5/1984 based on Law No. 1/PNPS/1965 and currently also refers to the Law on Prosecution Service.
20. In 2018, the High Prosecutor's Office of Special Capital Region of Jakarta launched the *Smart Pakem* application to monitor religious beliefs and groups deemed "deviant". This

application was born under the pretext of educating the public about various kinds of religious beliefs and groups in Indonesia, including those that were included in the heretical list by the government and the Indonesian Ulema Council (MUI). Among the injured party of this was the prominent figure Gerakan Fajar Nusantara (Gafatar), Ahmad Musadeq, who was sentenced to five years in prison in 2017 by the East Jakarta District Court.

List of issues:

- 1) How does Indonesia ensure the protection of freedom of religion and belief with regulations such as the PNPS No.1 of 1965 still in effect? Do you have an action plan to revoke it?
 - 2) Provide an explanation of the BAKORPAKEM mechanism to ensure that there is no violation of freedom of religion and belief, especially with the use of *Smart Pakem* technology?
 - 3) What is the action plan to abolish BAKORPAKEM as it is not in accordance with the Constitution and the ICCPR?
21. From 2015 to 2018, Komnas HAM received as many as 21 complaints related to oppositions over the construction of places of worship, with the following classification: unapproved Building Permit (6 cases), closing down, vandalism, and destruction of places of worship (3 cases), arson at a house of worship (1 case), criminalization (1 case), obstruction of worship (1 case), no recommendation on the establishment of places of worship (2 cases), intimidation (1 case), and non-compliance with court decisions (1 case). The factual case number is greater than the recorded number and can be obtained from various reports of Human Rights organizations in Indonesia. Some of the examples include the attempted construction of a church in Bantul Regency, Spc Region of Yogyakarta (2019) and obstruction of the construction of the Asy-Syuhada Mosque in the Aerujung Housing Complex, Girian Permai Village, Bitung City, North Sulawesi (2018). Some of the obstruction cases of construction of places of worship over the past years remain unresolved, as happened to the Church of GKI YASMIN, Bogor, West Java. The most recent case was the dispute over the Saint Joseph Catholic Church in Karimun Regency, Riau Islands.
22. The numerous cases stemmed from the provisions contained in the Joint Ministerial Regulation of the Minister of Religious Affairs and Minister of Home Affairs (PBM) No. 8 and 9 of 2006 concerning Guidelines for Implementing Duties of Regional Leaders/Deputy Regional Leaders in Maintaining Religious Harmony, Empowering Religious Harmony Forums, and Establishing Houses of Worship, which regulate the establishment of houses of worship to maintain social consensus and harmony. The PBM is also further regulated in certain regions by more stringent rules requiring more approvals. This has resulted in minorities in such regions finding more difficulties to establish places of worship. This can be observed, for example, in Aceh where it initially required 60;90 to 90;120. This condition also indicates conflicting national with regional regulations.

List of issues:

- 1) How does Indonesia ensure that there is no discrimination in the construction of places of worship?

- 2) How does Indonesia ensure that PBM 8 and 9 of 2006 will be reviewed to ensure equal rights in the establishment of places of worship, including reviewing local regulations related to this matter?
 - 3) How does Indonesia strive to continuously develop awareness and tolerant attitudes towards differences, especially in establishing houses of worship?
23. Many victims of violations of religious freedom have experienced acts of physical violence, property violence, and even eviction from their area of origin. Until now some of the victims are still being displaced, as experienced by the Ahmadiyya community who fled in Transito, and Shiites from Sampang who sought refuge in Sidoarjo. This happened due to the application of PNPS 1 of 1965, Joint Ministerial Decree, and Persecution.

Issue:

What has the government done to restore the victims' rights and how much longer will the victims be displaced?

24. Komnas HAM welcomes Constitutional Court Decision No. 97/PUU-XIV/2016 issued on October 18, 2017 and read at an open Plenary Session on November 7, 2017, concerning Judicial Review of Law No.23 of 2006 concerning Population Administration in conjunction with Law No.24 of 2013 concerning Amendments to Law No.23 of 2006. The Constitutional Court's decision is of great importance in the recognition of "religious beliefs" in the Population Administration System. The Constitutional Court's decision was seen by many as an entry point for the restoration of the rights and dignity of the believers, adherents of ancestral religions. This is important considering adherents of ancestral religions have experienced both discrimination and stigmatization. Notwithstanding, the follow-up implementation of the Constitutional Court Ruling is still limited.
25. Komnas HAM considers violations of the right to freedom of religion and belief to occur because of: a) very strong pressure from intolerant groups; b) weak knowledge and awareness of the central and regional government apparatus; c) regulations at the central and regional levels that conflict with human rights principles; and d) local government policies that prioritize certain groups; e) weak law enforcement against perpetrators.

List of issues:

- 1) How does Indonesia build awareness of tolerance by promoting the protection of minority groups?
- 2) How can Indonesia ensure reliable law enforcement against the perpetrators?
- 3) How can Indonesia ensure the protection and respect for the rights of non-religious believers?

c. Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment

26. Komnas HAM took note of acts of torture and other cruel, inhumane, and degrading treatment or punishment in 2017, when 99 cases were reported, 2018 (120), and 2019 (94). In addition to the data obtained by Komnas HAM, acts of torture and especially inhumane and degrading treatment are still reported in mainstream media and social media. Inhumane and degrading treatment is often found in the form of forced head-shaving, strip-down, and degrading gesture in the legal process.

27. In addition to the above conditions, overcapacity in correctional facilities and detention centers has resulted in poor, inhuman condition that often undermines human dignity. Based on the data as of October 31, 2019, a total of 266,057 people occupies the maximum correctional capacity of 129,948 all over Indonesia. This means that the excess capacity reaches 105%. This is also one of the findings of the Cooperation for the Prevention of Torture (*Kerjasama untuk Pencegahan Penyiksaan*) as a collaborative platform between five state institutions facilitated by Komnas HAM.

List of issues:

- 1) How does Indonesia ensure zero tolerance for torture or other cruel, inhuman, and degrading punishment, including imposing sanctions to law enforcement officials and correctional officers in an accountable and transparent manner?
- 2) Is there any guarantee to recover of the rights of victims of torture and how effective is the recovery for victims?
- 3) How will the ratification of the OPCAT ensure that correctional facilities and detention centers comply with the human rights principles?

d. Freedom of Association and Organization

28. Komnas HAM's review of Law Number 17 of 2013 concerning Community-Based Organizations (Ormas Law) suggests that the registration of CBOs as a prerequisite for access to resources will create an environment that is not conducive to the growth and development of organizations. The *a quo* law requires all non-governmental organizations to register and obtain a Registered Certificate (SKT) from the government and must report their activities regularly. The interpretation of SKT is widening as a form of legitimacy of CBOs. This also applies to followers of beliefs, religious minorities, and indigenous peoples. SKT ownership is also a prerequisite for organizations to become election observers in several regions. This law contradicts the ruling of the Constitutional Court Number 82/PUU-XI/2013 which cancels SKT as a precondition for the establishment of CBOs and cannot be used as a basis for the dissolution of an CBO by the Government.
29. In 2017, the Government issued Government Regulation in Lieu of Law Number 2 of 2017 concerning Amendment to Law Number 17 of 2013 concerning Community-Based Organizations (Perppu 2 of 2017) which abolished the judicial process in dissolving CBOs. The Indonesian Hizbut-Tahrir (HTI) organization became the first organization to be dissolved without a judicial process following the issuance of Perppu 2 of 2017. The Perppu has been passed into Law Number 16 of 2017. Several other CBOs that have also been dissolved without going through proper judicial process include Gafatar, the Teluk Jambe Farmers Union, and the *Pembebasan* (Liberation) Organization.
30. At regional level, Komnas HAM documented several events that include, among others, a rally on April 29, 2019, in Pontianak that got disbanded with violence as it was considered to be pro-LGBT movement. On April 18, 2020, the Jogja Food Solidarity meeting to help the people affected by COVID-19 at the Jogja regional office of the Indonesian Forum for Environment (WALHI) was dissolved with intimidation because it was deemed not to comply with health protocols.

List of issues:

- 1) How can Indonesia ensure there is no discriminatory action against organizations without SKT in accordance with the Constitutional Court's decision, including

guaranteeing the organization's activities from all acts of violence or other actions that reduce freedom of association?

- 2) How does Indonesia guarantee a credible and fair legal process according to the principle of a fair trial to test every violation of freedom of association so that what happened to Gafatar, HTI, Teluk Jambe Farmers Union, and the *Pembebasan* Organization do not recur?
- 3) How does Indonesia guarantee the right to freedom of assembly peacefully from acts of violence, threats, and dissolution?

e. Freedom of Opinion and Expression

31. Komnas HAM took note of the excessive restrictions on freedom of opinion and freedom of expression. During the period of 2017-2019, Komnas HAM received 62 complaints of alleged violations of freedom of opinion and freedom of expression.
32. Violations of public opinion are still frequently occurring. Generally, they were under the pretext of applying Law No.9 of 1998 concerning Freedom of Expressing Opinion in Public. In reality, its implementation is also supported by Regulation of the Head of Indonesian Police Number 7 of 2012 concerning Procedures for the Provision of Service, Security, and Delivery of Public Opinion.
33. Freedom of opinion and expression on the internet is often considered a crime without clear differentiation between criticism of policies and other restrictions that are in accordance with principles of human rights. It happens because Article 27 of the Information and Electronic Transaction (ITE) Law makes room for multiple interpretations in its implementation. Freedom of opinion and expression are easily interpreted as pornography, treason, or religious blasphemy, contempt and defamation. In addition, it also applies to journalists, even though the freedom of press is guaranteed by the Press Law No. 40 of 1999.
34. Application of the provisions regarding defamation, contempt, and blasphemy is often used to limit freedom of expression, including freedom of the press. In 2019, there were 53 reported cases. This is a much lower number compared to 2018, when 64 cases were reported, while the quality of this violence has not changed, mostly by the security forces. For violence against journalists specifically, the pattern of committed violence varies from physical violence to intimidation and persecution.
35. Violations of freedom of opinion and expression are also often threatened due to the multiple interpretations of Article 28 paragraph (2) of the ITE Law, which prohibits a person from intentionally and unlawfully spread information intended to incite hatred or hostility towards individuals and/or certain groups based on ethnicity, religion, race and inter-group relations (SARA). This provision threatens the freedom of opinion and expression.
36. However, in terms of freedom of expression in public, Komnas HAM still observes some negative notes. Among the recorded information was an event that took place in a rally in 21-23 May 2019 between two groups of supporters of the presidential candidate (Prabowo Subianto and Joko Widodo), where 10 (ten) people were reported dead and another 200 injured, as well as the event in 24-30 September 2019. Komnas HAM also monitored the protest rally against revision of the KPK Law and the Criminal Code Bill on September 24-30, 2019. In the September 2019 event, Komnas HAM

identified 5 dead victims, along with many injured and 15 journalists who fell victim to violence.

37. Other cases also drew significant public attention. Dandhy Laksono was arrested for his jokes about the violence in Jayapura and Wamena and was accused of inciting hate speech. The ITE Law was also used against Ananda Badudu and Veronica Koman who were considered to have violated the ITE Law. Saiful Mahdi, a lecturer at Syiah Kuala University (Unsyiah) University, was charged by the ITE Law for expressing his criticism directly to the academics through WhatsApp group regarding irregularities he found in the Civil Service Exam. The same law was also used against musician Ahmad Dani.²
38. The suspension of internet service policy was carried out in Papua in August 2019 by the Ministry of Communication and Information on the grounds of security and order in Papua and its neighboring regions on the basis of Article 40 paragraph (2a) and (2b) of the ITE Law.
39. With regard to the suspension of internet service carried out by the Ministry of Communication and Information, it should be noted that suspension should be carried out by an independent body. In addition, there is no mechanism for recovery in such case of suspension of internet service.

List of issues:

- 1) How is the mechanism for restricting freedom of opinion and expression not contradictory to a person's rights according to the principles of human rights, including the application of the multi-interpretable ITE Law?
- 2) The MOU with the Police is a positive modality to guarantee freedom of opinion and expression. How does Indonesia promote the effectiveness of the MOU between Komnas HAM and the Police in guaranteeing freedom of opinion and expression in an accountable and transparent manner, as well as the MOU between the Press Council and the Police?
- 3) How can internet service management guarantee accountable and independent freedom of opinion and expression so that incident like the internet shutdown in Papua, the 21-23 May and 24-30 September 2019 events, will not be repeated without accountability and transparency?
- 4) How does the legal framework in the future accommodate potential conflicts between freedom of opinion and expression and individual reputation, as part of provisions of the civil law?

f. Access to justice and excessive use of authority

40. Komnas HAM took note that fulfilment of rights to justice has not been carried out properly. This is particularly evident in agrarian conflicts, mining, eviction, or cases involving minority, vulnerable and marginal groups. State officials have not worked

² SAFEnet compiled the cases in the Supreme Court and noted that, in 2018, there were 292 cases related to the ITE Law, more than double the previous year (140). Cases in 2018 even exceeded the total cases from 2011 to 2017 (216 cases). The total number of cases related to the ITE Law in Supreme Court over in the last five years has reached 508 cases (SAFEnet, Treacherous Path towards Digital Rights SAFEnet Annual Report, Denpasar: SAFEnet, 2018).

impartially and professionally in accordance with the prevailing laws and principles of human rights, making them appear to be partisan instead of mediators who provide justice and protection. For three years (2017-2019), Komnas HAM received 38 complaints on violence in 2017, 44 complaints in 2018, and 42 complaints in 2019. In fact, out of all the complaints that Komnas HAM received in the last 5 years mentioned police as the most widely complained party.

41. In some of the reported cases, the follow-up procedure has been conducted appropriately, with a number of complaints relating to the slow response of the police in following up on public complaints. On the other hand, specifically for complaints relating to abuse of power by police officers, there are still reported cases of intimidation carried out against complainants by the investigators.
42. Komnas HAM appreciates the State's recognition of Indigenous Communities as provided in Article 18B (2) of the 1945 Constitution and other national laws. However, the House of Representatives and the Government have yet to formulate the Indigenous Community Law as mandated in the 1945 Constitution. Provisions on the existence and rights of indigenous and tribal peoples in different laws have an impact on legal uncertainty, which then resulted in the lack of access of indigenous and tribal peoples to justice.
43. Komnas HAM took note that, in the last three years, there have been quite a number of both reported and unreported cases relating to the criminalization of customary land farmers. The tradition of burning land carried out by indigenous and tribal peoples is part of the agricultural system and is generally based on local wisdom. Law No. 32 of 2009 concerning Environmental Protection and Management recognizes local customs that include land burning. Komnas HAM noted that law enforcement officials often ignore the practice of farming that incorporates local wisdom and generalize land burning as carried out by corporations. Tens and even hundreds of marginalized customary land farmers were criminalized for their farming activities.
44. Komnas HAM also received complaints about the seizure of customary land under the pretext of investment. Complaints in the last 5 years suggest the weak mechanism of protection of the customary rights of indigenous and tribal peoples. Agrarian policies and reforms by the Government have not been implemented properly. Consequently, land disputes and social conflicts have resulted in violence, such as the conflict that occurred in Aru Islands Regency. The Central Government's plan for investment in cattle breeding and sugar cane plantations in a customary land of the Komkey community was met with opposition. In October 2017, the Komkey community, who refused the plan, was intimidated during the Minister of Agriculture's work visit to Aru.
45. Komnas HAM also noted the lack of understanding of the Regional Government regarding the protection of remote indigenous communities. For example, in 2018, the Mausu Ane tribal community was forced to relocate by the Central Maluku Regency Government because community's forest is located in the government's planned logging area. The relocation of the Mausu Ane tribe from the interior of Seram Island was intended to protect the Mausu Ane tribe. However, the relocation is contrary to the wishes and choices of the Mausu Ane to live and settle in the forest. The Mausu tribe believes that the forest is their ancestral land that must be preserved.
46. The Komnas HAM data still indicate existing restrictions on detainees to receive legal counsel and visits from family members. Several complaints to Komnas HAM suggested restricted access to detainees.

List of issues:

- 1) What are the steps to ensure that there will be no more acts of violence or excessive use of authority by law enforcement officials, and that the procedures for the investigation and sanctioning of these officials in an accountable and transparent manner will be followed?
- 2) What are the steps that have been taken to ensure access to justice, especially with regard to complaints to law enforcement, are given in an expedient and accountable manner, and access to legal assistance for detainees are provided?
- 3) What have the Government and the House of Representatives done to ensure respect and protection of indigenous and tribal peoples as mandated in the 1945 Constitution?
- 4) How can law enforcement officials ensure access to justice for indigenous and tribal peoples?
- 5) How can law enforcement officials better understand the diversity of agricultural systems practiced by indigenous and tribal peoples, including the underlying local wisdom?
- 6) How can law enforcement officials better understand the national legal system that recognizes local wisdom and legal pluralism in environmental management?

g. Inhumane and Degrading Treatment, and Discriminatory Practices towards Persons with Disability³

47. Inhuman and Degrading Treatment Practices still occur in Social Rehabilitation Centers for Persons with Mental Disabilities. Degrading acts such as shackling or locking up mentally ill persons in a cell still persist. The shelter is unfit for habitation, threatens the health of its inhabitants, and is detrimental for their survival. One nursing home even administered psychotic substances for each of its inhabitants without proper health screening from a psychiatrist.
48. Komnas HAM took note of several cases involving persons with disabilities in criminal cases have not been resolved optimally and fairly. Access to justice in the legal system remains an obstacle for persons with disabilities. One example of this is evident in the case of sexual violence experienced by a person with disabilities, which was never resolved because they victim was thought to have no legal capacity, particularly in giving testimony.
49. Komnas HAM also noted that discriminatory practices still persist in access to employment. Discrimination in Civil Service and State Corporate Employee Exam still occurs despite policies to provide protection in this regard.
50. Komnas HAM appreciates the issuance of Law No. 8 of 2016 concerning Persons with Disabilities. This law is expected to reduce discrimination and protect persons with disabilities from potential human rights violations. However, Komnas HAM still observed several cases of workplace discrimination due to disability reasons. As a result, employees may lose their rights at work. This is closely related to the ongoing stigma against persons with disabilities. Some laws and policies provide prerequisites for physical and mental health for people seeking access to public employment and

³ Factual situation regarding disability was also reported to CRPD in *Written Contribution of Komnas HAM on the 13th session of CRPD*.

services. Komnas HAM considers that the State has not fully carried out the mandate of the law.

List of issues:

- 1) How does the Government conduct supervision and protection of mental disabilities in social rehabilitation institutions, including evaluating and formulating policies to ensure zero degrading treatment in these institutions?
- 2) What are the concrete steps to guarantee access to justice for persons with disabilities who become victims of violence, especially those with mental disabilities?
- 3) How important are special procedures for law enforcement so that legal access for persons with mental disabilities can be guaranteed?
- 4) Can the state ensure that policies have been made to eradicate discrimination against people with disabilities, particularly in accessing employment, public services, and other treatments, including the elimination of stigma?
- 5) What is the main cause of the Government's inaction in implementing the provisions of Law No.8 of 2016, mainly with regard to the stipulation of implementing procedures of the Law, including the establishment of the National Disability Commission?

h. Racial and Ethnic Discrimination

51. Komnas HAM recorded at least 101 racial and ethnic discrimination in the period of 2011-2018. The various public complaints include a wide range of problems such as restrictions on public services, the rise of ethnic/identity politics, breaking up of traditional rituals, discrimination of land ownership rights for minority groups, and unfair access to employment.
52. A Komnas HAM Survey (2018) shows that racial and ethnic differences are recognized as beneficial/facilitating. Primordialism becomes an important value held by the community. The level of social segregation in the community remains high with an approval rate of more than 80%. The potential for racial and ethnic discrimination has a significant probability, indicating the permissive attitude of some people towards racial and ethnic discrimination. More than half of the respondents say they will take action if they receive racial and ethnic discrimination. Conversely, more than half of respondents will not respond immediately if other parties receive racial and ethnic discrimination.
53. In August 2019, racism towards a Papuan student in Surabaya was found to have triggered tensions in the Papuan community. Racism has led to continued racial-based violence in Papua.

List of issues:

- 1) What effort has been put in to build awareness of respect for the equality of all persons without discrimination of race and ethnicity, including avoidance of making jokes in public?
- 2) How effective is the monitoring mechanism of the protection of race and ethnicity as regulated in Law Number 40 of 2008?

- 3) What is the latest development on the law enforcement on racism incidents in Surabaya? Has it been conducted in accordance with the principles of human rights, including efforts to mitigate the resulting racial-based violence in Papua?

i. Papua

54. The number of incidents of human rights violations and acts of violence, including armed violence in Papua and West Papua is quite high compared to other regions in Indonesia. Several prominent events have been reported to constantly occur. They include armed violence and displacement in Nduga, massive violence that followed the racially-motivated incident in Surabaya, the 2019 Wamena Case, and other cases of violence.
55. Based on the information collected by Komnas HAM, the recurring violence in Papua and West Papua occurred as a result of security management policy in the region. This security management mechanism has not been in keeping with the approach that promotes peace and dialogue between all parties to end violence.
56. Another issue is impunity and neglect of access to justice and protection. Some of the existing cases have not been followed up by legal actions. The judicial process has not been consistent with the nature of the incident, and some did not even receive a follow-up. Among these cases was the Pania case, in which 4 people were killed while more than 20 were injured in 2014.
57. Komnas HAM took note of the ignorance of reports of public complaints by the Police. At the end of 2019, Komnas HAM received a complaint from the city of Sorong that chronicled how a clash between two groups of warring communities had resulted in one killed victim and nine burned houses. The complainant was a victim whose house was burned down in the incident. The day prior to the incident, vandalism of the complainant's house by a group of people was reported to the police but it was ignored. The police had failed to protect and fulfill the right to justice and the right to security.
58. Several incidents in Papua have caused in a number of deaths. The Bloody Wamena case on September 23, 2019, shows that, as a result of the riots, many people fell victim to the incident as authorities open fire blindly and shot them dead without distinguishing victims from the perpetrators. One of the shot victims was a 17-year-old high school student in Wamena, along with several other family members. The most recent case was the mile 34 case in which two civilians became victims of accidental shooting.
59. On February 4, 2019, Jayawijaya Regional Police officers interrogated a robbery suspect using snakes wrapped around the perpetrators in an effort of eliciting a confession. Papua Regional Police Chief Inspector General Martuani said he had commissioned an investigation through the Papua Provincial Police's Division of Profession and Internal Security, and a Police Brigadier (2nd Class) with initials of TMP was proved to have violated the code of ethics and was not professional in performing his duties, and therefore subject to a sanction.
60. In mid-August 2019, approaching the 74th anniversary of Indonesia's independence, racial incidents broke out against a number of Papuans in Surabaya. It spread into a bloody event in Papua and West Papua. This incident was followed by attacks on migrants, especially in Wamena. In the previous year, armed groups attacked 31 PT Istaka Karya workers on December 2, 2018, in Nduga, Papua, and it led to an attack on December 3, 2018, on the Indonesian army posts, killing an army member and injuring

another member. The two cases resulted in an increase in the Army/Police joint security operations that led to violence against civilians and massive displacement. Both cases added to the fact that violence still occurs in Papua, both vertically and horizontally. This indicates that the security approach has not successfully resolved the violence and human rights violations in Papua.

61. In addition to the abovementioned problems, there were also identified cases of political prisoners, the term and legal position of the people of Papua, the Indonesian Government calls them criminal detainees. One of the main problems that led to this polemic was security governance in Papua.

List of issues:

- 1) How to ensure that Papua and West Papua are safe and peaceful, far from violence, including armed violence?
- 2) What is the security management policy in Papua and West Papua, and what is the legal basis for using military force in dealing with armed groups?
- 3) What are the efforts and steps to create peace in Papua and West Papua by all parties, including armed groups?
- 4) How to ensure that impunity is ended immediately, especially in cases that receive wide public attention, and how to ensure access to justice and that protection can be enjoyed by all Papuans and West Papuans?
- 5) What is the latest development on the judicial process of racially-motivated incident in Surabaya and the Papua and West Papua incidents?
- 6) What is the effort to fight the stigma of racism towards the people of Papua and West Papua?
- 7) How can access to justice be enjoyed by everyone, including Papuan Indigenous Peoples?

j. Impartiality, Independence and Fulfillment of the Rights of Victims of Gross Violations of Human Rights

62. Komnas HAM has finished investigating and submitting the investigation files of 12 cases of human rights violations to the Attorney General. Some cases were pending resolution for nearly 20 years, most of which more than 10 years. The lengthy resolution based on Law No. 26 of 2000 has resulted in the lack of guarantee in the fulfillment of justice. The death toll, as a result, is increasing.
63. In 2019, the Government planned to come up with policies that would potentially create impunity, such as the establishment of the National Harmony Council (DKN), and reconciliation for the Talangsari Incident without involving the victims and the Integrated Team (*Tim Terpadu*).
64. Until now, there has been no comprehensive recovery policy for victims, including recognition, fulfillment, and the right to truth. On the contrary, the victims' rights were hampered by the burden of proof, which requires a court ruling and guilty verdicts of the suspects. This only prevents access to recovery and compensation for the victims. Such obstruction was experienced by victims of gross human rights violations in the Tanjung Priok incident.

65. Komnas HAM assessed the ongoing situation of impunity that lasted a long time due the lack of independence, impartiality, and professionalism in law enforcement. This is evident from the law enforcement of gross human rights violations, which are strongly influenced by political interests.
66. The following table lists events of Gross Violations of Human Rights and the time of submission to the Attorney General:

No	Peristiwa	Diserahkan Pertama Kali ke JA	Terakhir Diserahkan Kembali ke JA
1	Tahun 1965-1966	23 Juli 2012	27 Desember 2018
2	Peristiwa Penembakan Misterius 1982-1985	23 Juli 2012	27 Desember 2018
3	Talangsari 1989	16 September 2008	27 Desember 2018
4	Trisakti, Semanggi I dan II (1998-1999)	29 April 2002	27 Desember 2018
5	Kerusuhan Mei 1998	06 Januari 2005	27 Desember 2018
6	Penghilangan Paksa 1997-1998	21 Nopember 2006	27 Desember 2018
7	Wasior (2001) Wamena 2003	03 September 2004	27 Desember 2018
8	Pembunuhan Dukun Santet 1998	12 Nopember 2018	27 Desember 2019
9	Simpang KAA 1999	13 Juni 2016	27 Desember 2018
10	Jambu Keupok 2003	14 Maret 2016	21 Desember 2018
11	Rumah Geudong 1989-1998	28 Agustus 2018	27 Desember 2018
12	Paniai 2014	11 Februari 2020	14 April 2020

List of Issues:

- 1) What efforts have been made by the government to resolve gross violations of human rights as a guarantee of the right to justice for victims?
 - 2) How will a gross violation of human rights case be resolved without impunity?
67. Some regional governments have taken the initiative to start restoring the rights of victims of gross human rights violations. For example, this was done by the Palu City Government. This mechanism was replicated by several other regional governments. Nevertheless, this initiative is still limited.
68. The longer the resolution of gross violations of human rights, the more victims will suffer. Justice will be delayed, as is the victim's right to remedy. Until now, efforts to fulfill the rights of victims of gross human rights violations are still far from the expectations of the public and victims.

Issue:

What has the government done to restore the rights of victims of gross human rights violations?

k. Criminal Justice System in Countering Terrorism

69. On June 21, 2018, Law No. 5 of 2018 concerning Eradication of Criminal Act of Terrorism was passed. Currently the government is proposing a Presidential Regulation on the Duties of the Indonesian National Army in Countering Terrorism. Law No.5 of 2018 and the draft Presidential Regulation are problematic as they add to the paradigm of counterterrorism from the criminal justice system and war model. This is reflected in the regulation of military involvement in the handling of criminal act of terrorism

through Article 41 paragraphs (1), (2), and (3) of Law No.5 of 2018 and provisions of the draft Presidential Regulation on military authority, which broadly includes deterrence, prosecution, and recovery. The implication of this is that these regulations are threatening the supremacy of law enforcement in Indonesia as a democratic state.

70. Law No.5 of 2018 provides articles that will potentially create violations of human rights, such as the length of the detention period of up to 21 days, wiretapping of up to 2 years (1 year and extended 1 year). However, as this is regulated under the criminal justice system, legal procedures are indeed in place (to name a few, there is a provision on the requirement of a court order), including accountability for anyone who commits a violation, which is clearly regulated in the Law. There is also an oversight mechanism by the House of Representatives through a special oversight mechanism as regulated in Article 43J of Law No.5 of 2018.
71. With the plan to involve the armed forces in the draft Presidential Regulation in handling criminal act of terrorism, there will be greater potential of threat to the law enforcement mechanisms and human rights violations. The reasons for this is firstly, the army is not part of the law enforcement apparatus, and secondly there is no proper legal control mechanism of its involvement. Thirdly, there is the coercive characteristics attached to the army. The army should only be involved as assisted personnel and in the most serious threat scheme. The army should not be provided as the main law enforcement agency as stipulated in the Presidential Regulation.
72. In addition to aforementioned cases of potential human rights violations, Komnas HAM also received complaints with regard to the handling of terrorism by the police. On September 4, 2019, Komnas HAM through its representative office in Central Sulawesi received two reports of Counterterrorism Special Detachment 88 actions related to the arrest and detention of three suspected terrorists in Palu where arrest warrant and disclosure of detention location were not given to the family. An act of sexual harassment against the suspected terrorist's wife was also reported as documentation was made while she was half-naked.
73. President Joko Widodo verbally rejected the return of 689 Indonesian citizens from the territory of the Islamic State of Iraq and Syria (ISIS), many of whom were children and women. An in-depth analysis would be needed in this regard considering there is not a single fact on the reasons for leaving, be it ideological reasons, relocation with family, economic purposes, or any other factor. Therefore, the government cannot immediately reject their return. Based on Law No.12 of 2006 concerning Citizenship, Indonesia does not recognize the concept of stateless. Likewise, in accordance with Government Regulation No.2 of 2007 concerning Procedures for Acquiring, Revoking, and Cancelling Citizenship of the Republic of Indonesia, they do not automatically lose citizenship just because they went to an ISIS territory.

List of issues:

- 1) How to ensure that the policy to combat terrorism is consistent with the criminal justice system paradigm through improved accountability of the process and compliance with principles of human rights?
- 2) What efforts have been made by the Police with regard to improvements of its institution and personal conduct of its officials, including criminal liability in handling terrorist acts?

- 3) What is the arrangement of House of Representatives' oversight team with regard to the handling of terrorism crimes in collaboration with institutions like Komnas HAM?
- 4) What is the official policy regarding the handling of Indonesian citizens in the ISIS region, and how does Indonesia carry out its international responsibility as a member of the UN Human Rights Council and UN Security Council in resolving these issues?

I. General Elections

74. The results of Komnas HAM monitoring in 14 provinces in the organization of concurrent general elections on April 17, 2019, suggest indications of human rights violations, especially the right to vote, in which voters were required to present Electronic Identity Cards (KTP-el) and be domiciled in the electoral location for at least the last 6 months. Some of these problems were reported, among others, in Central Kalimantan, where only 85% or 1,753,224 voters were registered, and in East Java, where 4,000,000 remaining voters did not yet have a KTP-el⁴.
75. The KTP-el ownership policy also has implications for the low fulfillment of voting rights for vulnerable groups, particularly:
 - a. detainees and prisoners, as a result of not having a KTP-el and/or not being registered while serving a sentence. Such cases are reported from results of monitoring in North Sumatra, where around 20,089 out of 32,122 correctional facility residents lost their right to vote; in East Kalimantan, 3,789 were able to vote out of the total 27,809 residents; in East Java, 50% of the 14,562 residents in Porong Class I Correctional Facility and Medaeng Detention Centers were registered to vote; and in the Spc. Capital Region of Jakarta (Salemba Detention Center) only 1,480 detainees out of 4000 detainees were able to vote;
 - b. Hospital patients and their families, with no special polling station being provided, depriving these people their voting rights. If there are any, it usually depends on the polling station in the neighboring areas, where mostly would allocate only one hour (12.00 PM - 01.00 PM) and 2.5% of the reserved ballots. This was the case in H Adam Malik General Hospital, Medan, (out of the 200 patients, only 2 voted); Abdul Wahab Sjahanie Hospital, Samarinda (the general elections organizer did not arrive); Dr. Soetomo General Hospital, Surabaya (out of 1400 patients and 225 employees, only 215 people voted); Bekasi General Hospital (375 hospitalized patients, organizer did not come); St. Carolus Hospital (organizer did not come until 30 minutes before finish time)
 - c. In general, persons with mental disabilities could not use their constitutional right to vote even though the decision of the Constitutional Court No. 135/PUU-XII/2015 and General Elections Commission (KPU) has lifted the prohibition for persons with mental disabilities to vote as long as they don't have a doctor's certificate stating that they cannot use their right due to loss of consciousness. In reality, the Constitutional Court's decision has not been fully obeyed and differing interpretations were given. For example, 340 patients at Prof. Dr. M. Ildrem Mental Hospital, Medan City, where no one voted; at Atma Husada Mahakam Hospital,

⁴ Laporan Komnas HAM RI terkait Pemantauan Pemilihan Umum Presiden dan Legislatif 2019.

East Kalimantan, only 19 out of 27 patients voted; at Jiwa Lawang Hospital, Surabaya, out of 500 patients, only 22 were facilitated to vote.

- d. Some indigenous community members who did not have KTP-el and/or were not yet registered as voters.
76. The 2019 election was marked by violent acts by officials, especially in handling the mass protest in front of the Election Supervisory Body (Bawaslu) office on May 21-23, 2019. Komnas HAM released an investigative report on October 29, 2019, detailing data on complaints of 32 (thirty two) people reported missing and have been found, 10 (ten) fatalities that include 9 (nine) people who were killed by live ammunition in Jakarta, including 1 (one) victim in Pontianak, West Kalimantan. Nevertheless, so far there has been no known follow up on Komnas HAM's recommendation to the Police to investigate and prosecute the perpetrators. These police violence cases have not been met with responses that fulfill the sense of public justice.
77. In organizing the 2019 elections, the 553 organizing officers and 92 supervisors died, while thousands more suffered from illness. This condition is closely related to how the electoral administration system was designed, where each polling station received 300 registered voters and 5 ballot boxes, added with poor simulation of the elections. The resulting outcome was various dynamics in the voting day, the lack of anticipated need/requirement for more human resources, time, and the absence of health posts, causing deteriorating impact on health and even death.
78. Komnas HAM corresponded to the President of the Republic of Indonesia with a letter Number: 077/Election Team/IV/2020 dated April 28, 2020 in an appeal for the President postpone the concurrent elections in September 2020. The government then decided to postpone it only 3 (three) months to December 2020. The implication is that KPU must continue phasing in June 2020. Komnas HAM still has concern over the organization of the next elections when COVID-19 pandemic is not yet over, creating potential threats to the right to health, the right to life, and the right to a sense of security for all the involved parties, which include organizers, candidates, and voters. Therefore, it is necessary to prepare at least proper health protocols in the preparatory stage of the general elections, while ensuring accountable, honest, and fair elections.

List of issues:

- 1) What is the mechanism for ensuring that anyone who is 17 years old and/or married has the right to vote in the General Election?
- 2) What would be the solution to the problem of vulnerable groups, especially prisoners and detainees, hospital patients and persons with disabilities, including mental disabilities, to obtain their voting rights?
- 3) What are the legal consequences of excessive use of force against protesters who express their opinions or organize a rally, and how can impartiality be guaranteed (both for those who support and oppose the government)?
- 4) How does the government ensure protection of the right to health and the right to life of general elections organizers so that incidents like the one that happened with the 2019 General Election can be avoided?
- 5) How does the government ensure that concurrent regional elections during the COVID-19 outbreak still reflect the principles of fairness and accountability (both in the implementation and the election results), while guaranteeing the right to life and the right to security of the people and general election organizers?
