



**KOMISI NASIONAL HAK ASASI MANUSIA  
REPUBLIK INDONESIA**

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**THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS  
(KOMISI NASIONAL HAK ASASI MANUSIA-KOMNAS HAM)**

**SUBMISSION FOR THE PREPARATION BY  
THE HUMAN RIGHTS COMMITTEE OF A LIST OF ISSUES TO BE  
CONSIDERED DURING THE EXAMINATION OF THE INITIAL  
REPORT OF INDONESIA  
Submitted December 2012**

**With Regard To  
UNITED NATIONS HUMAN RIGHTS COMMITTEE  
107<sup>th</sup> Session  
11 to 28 March 2013**

**Introduction**

1. This submission is made by the Indonesian National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia-Komnas HAM-hereafter the Commission). It summarizes a number of issues that the Commission suggests should be considered by the Human Rights Committee during the examination of the initial report of Indonesia regarding the implementation of the *International Covenant on Civil and Political Rights* (ICCPR). The Commission believes that those issues are relevant to the Committee in considering Indonesia's implementation of the ICCPR.
2. This submission does not provide a complete assessment of Indonesia's compliance with the ICCPR, but only focus on the relevant recent and current areas of Commission work.

**Article 2  
Equal protection of rights in the Covenant**

3. Article 2(3) of the ICCPR states that “... *any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities*

*of judicial remedy. To ensure that the competent authorities shall enforce such remedies when granted”.*

4. The Commission is aware that the Government Regulation No. 3 of 2002 makes the remedies available for victims of gross violations of human rights in the forms of restitution, compensation, and rehabilitation. The Commission, however, is of the view that the Government Regulation No. 3 of 2002 is not effective based on the following reasons:
  - a) the discontinued investigation process by the Attorney General with regard to cases with indication of gross human rights violations although the inquiry of these cases had been completed by Komnas HAM for a long time. The cases are: a). the Trisakti 1998, Semanggi I 1998 and Semanggi II 1999 incidents (TSS 1998-1999); b). the May Riot 1998 incident, c). the Wasior 2001-2002 incident and the Wamena 2003 incident); d). The summary execution-style killings 1982- 1985 (penembakan misterius-petrus/mysterious shootings); e.). the Case of 1965-1966 Tragedy.
  - b) In 2006 the DPR made recommendation for the President to establish an ad hoc Human Rights Court to hear the case of the Enforced Disappearances and to provide rehabilitation and compensation to the victims. The President, however, has not yet established the ad hoc Human Rights Court nor provided the rehabilitation and compensation to the victims.
5. The Commission is of the view that there should be an urgent need to make accountable persons who commits violation of ICCPR rights as the Commission observed that the State did not shown genuine willingness to uphold human rights, especially in prosecuting perpetrators of gross human rights violations. The pattern of thought that legal or moral prosecution is part of retaliation politics, especially in the military, indicated that impunity of human rights violations was still existed. This can be seen through the discontinuation of investigation and the unwillingness of the President to implement the DPR recommendations mentioned above and also the refusal of several members of state apparatus to cooperate with Komnas HAM regarding the implementation of *projustitia* inquiry on alleged gross human rights violations.

### **Article 3 Equal rights of men and women**

6. The regional governments' authority to govern their own territory is part of the implementation of regional autonomy. However, this authority had produced regional regulations related to particular religion and discriminative in nature on particular groups, especially women, which are violating human rights. There were at least 22 cities and districts implementing regulations based on Islamic law, among others, “anti pornography” regulation, obligation to wear veil for students and prohibition of women to travel alone at the evening. The Commission considered that the regulations should be repealed since they caused misuse of power and authority of the state apparatus and violated human rights, such as, freedom of movement and right to work especially for women.

## **Article 6**

### **Right to life**

7. The death penalty has not yet been abolished from the Indonesian legal system. Until the end of 2012, Indonesia still has at least 11 legislations which imposes death penalty, among others are the Law on Narcotics, the Law on Psychotropic Substances, the Law on Eradication of Terrorism, and the Law on Criminal Acts of Corruption. In this regard, it should be noted that the Human Rights Committee states:” *[w]hile it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the ‘most serious crimes’.. It should noted also that “the Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure”* (see HRC General Comment 6, 1982).
8. The Commission is in the opinion that Indonesia is not limiting the use of the death penalty to only the most serious crimes as the Indonesian domestic laws imposes death penalty to the crimes which are not considered as the most serious crimes under the international law.
9. The Commission underlined that the right to life is non-derogable right at any conditions and by anyone as governed in the 1945 Indonesian Constitution as well as the Act No. 39/1999 on Human Rights. It should be noted that many countries in the world have banned death penalty in their legal system, or have limited death penalty only for particular cases such as war and other state emergency.
10. Thus the Commission recommends:
  - a. Indonesia should take measures to progressively abolish the death penalty in its legal system. First action should be taken is that the death penalty should be imposed only for the most serious crimes.
  - b. Indonesia should ratify Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

## **Article 7**

### **Freedom from torture or cruel, inhuman or degrading treatment or punishment and Article 9 Liberty and security of person**

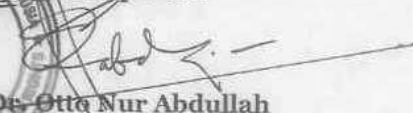
11. The Commission received 5,444 numbers of complaints between January and November 2012. As happened in the last three years, the Indonesian National Police is on the top with 1,635 reported cases comprises of, among others are:
  - a). the arbitrary arrest and detention (134 cases), case of shooting and violence committed by police (104 cases), and torture (39 cases).
12. In this regard, the Commission pays special attention to the work of the Indonesian National Police in handling the case of terrorism, especially in Poso, Central Sulawesi. The Commission observed that the Police was not using careful procedure which may lead to human rights violations, among others are the violations of liberty and security of persons of the civilian

- populations who are not involved in terrorism and the uncared procedure in handling the persons allegedly involved in terrorism.
13. The Commission is fully aware that the Indonesian Constitution as well as the Law No. 39 of 1999 on Human Rights contains provision which prohibit torture. The Commission, however, is in the same view as Committee against Torture in which the Committee restates its previous recommendations and the recommendations made by the Special Rapporteur on Torture on his report on Indonesia, that Indonesia should, *“without delay, include a definition of torture in its current penal legislation in full conformity with article 1 of the Convention (against Torture)”*.
  14. The Commission urges Indonesia to implement without delay its plan to ratify the Optional Protocol to Convention against Torture (OP-CAT) as it is stated in its Human Rights National Action Plan of 2011.
  15. The Commission urges Indonesia to conduct a comprehensive evaluation regarding the work of the Police in handling the case of terrorism in order to be in line with human rights. The Commission is of the view that a comprehensive approach, including a preventive measures and dialogue, should be used in handling and combating terrorism.

## **Article on 18**

### **The right to religion**

16. The right to religion is ensured in Indonesian Constitution as well as the Law No. 39 of 1999 on Human Rights and recognized as a non derogable right. The Commission, however, concerned that several problems occurred in the implementation of the right to religion. The intrusion of the right to personal freedom, such as freedom of religion and to worship according to his/her religion or belief experienced by, among others, the Ahmadiyah adherents. The Commission also observed that the prolonged discrimination experienced by particular religious adherents to practice their religion or belief through the determination of the Joint Regulations between Ministry of Religious Affairs and Ministry of State Affairs No. 9 Year 2006 and No. 8 Year 2006 on the Guidelines for Head or Vice Head of Regions to Carry Out Maintenance of Tolerance between Religious Adherents, Empowerment of Religious Adherents Forum and Establishment of Religious Places.
17. The Commission is of the view that Indonesia should review existing laws and policies and also –if necessary- revoke or amend the laws to ensure their compatibility with the right to freedom of religion or belief in order to be in line with Indonesia’s Constitution and its international human rights obligations.

Jakarta, 28 December 2012  
The Indonesian National Human Rights Commission  
Chairperson  
  
Dr. Otto Nur Abdullah

