



**KOMISI NASIONAL HAK ASASI MANUSIA
INDONESIA**

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**Submission with regard to the UPR mechanism
Submitted by the Indonesian National Human Rights Commission
Related to Indonesia for the 1st session
scheduled in April 2008**

Introduction

1. As mentioned in the Annual Report of the Indonesian National Human Rights Commission (hereafter the Commission) 2005, the Commission acknowledged the importance of the new mechanism namely “Universal Periodic Review (UPR)” of the United Nations Human Rights Council. Thus the Commission considered that it is important for the Commission to submit information on human rights situation in Indonesia with regard to the review of Indonesia under the UPR mechanism to be held in April 2008.

Methodology

2. The Resolution 5/1 stated that the submission should be developed “through a broad consultation process...”, thus the Commission involved in many NGOs meetings and discussions related to UPR mechanism and, together with NGOs conducted a consultation in which the Government, among others are the Department of Law and Human Rights, Department of Foreign Affairs, Department of Home Affairs, the Office of Attorney General, the Office of the Coordinating Ministry of Politics, and The Indonesian National Army and other National Institutions. In developing this submission the Commission also written input from other National Institutions, i.e. The National Commission on Violence against Women.

Normative and Institutional Framework

3. The Commission was aware that the year 2005 - 2006 could be considered as a new era for human rights promotion in Indonesia. Particularly, in October 2006 Indonesia had ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the International Covenant on Civil and Political Rights (ICCPR, 1966). Both instruments are considered as the International Bills of Rights for the promotion and protection of human rights all over the world. Nevertheless, it should be noted that, Indonesia has not yet ratified the Optional Protocol of the International Covenant on Civil and Political Rights.
4. The Commission noted that Indonesia has also ratified and acceded to a number of international human rights instruments including, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Elimination of Racial Discrimination, and all core conventions of the International Labor Organization. The Commission, however, concluded that there were no significant changes in the enforcement of rule of law and human rights in Indonesia. Many of international human rights instruments ratified by Indonesia

have yet fully implemented. The Government has not yet conducted harmonization and socialization as the initial measure post-ratification period.

5. The Commission appreciated the enactment of several laws which is conducive for the human rights promotion and protection, particularly human rights of women. The laws, among others, are The Law No. 23/2004 on the Elimination of Domestic Violence, the Law No. 21/2007 on the Suppression of the Crime of Trafficking in Person, the Law No. 12/2006 on Citizenship, the Law No. 13/2006 on the Witness and Victim Protection. In this regard, it should be noted that the Police established a Unit of Women and Children Service to protect and handle cases of women and children.
6. Bearing in mind that under the Act No. 26/2000 on Human Rights Court, the Commission is the only institution to conduct the inquiry. The Commission, however, give emphasize to several weaknesses and deficiency of the Act No. 26/2000 on Human Rights Court that has deterred the judicial process of resolving gross human right violation has already identified. Thus, the Commission recommended for the amendment of the Law. The weaknesses have been identified among others are:
 - 1.1. Lack of rules of procedure and evidence of its own;
 - 1.2. Inaccurate adoption or translation of certain relevant provisions on mechanism to solve possible different conclusions of the inquirer and the investigator;
 - 1.3. Lack of provisions relating to the initiation of proposals to establish ad hoc Human Rights Court;
 - 1.4. Lack of provisions conferring the inquirer with sub poena power
 - 1.5. Inadequacy of protection for victims and witnesses.
7. In practice, The Commission pointed out that these weaknesses could be seen through, first, the completion of gross human rights violations cases, which are: (a) the discontinue 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 Trisakti 1998, Semanggi I 1998 and Semanggi II 1999 incidents (TSS 1998-1999), the May Riot 1998 incident, the Wasior 2001-2002 incident and the Wamena 2003 incident); and (b) 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, in this regard, the inquiry on enforced disappearance incidents in the context of crimes against humanity. Nevertheless, The Commission underlined there was several efforts taken by the Commission, the Office of Attorney General and House of Representatives to settle the problem of interpretation provisions relating to the initiation of proposals to establish ad hoc Human Rights Court;
8. The Constitutional Court (Mahkamah Konstitusi or MK), in its decision No. 006/PUU-IV/2006 in December 2006 had determined that the Act No. 27 Year 2004 on the Truth and Reconciliation Commission did not comply with the 1945 Constitution and that the Act No. 27 Year 2004 on the Truth and Reconciliation Commission did not legally binding. The decision of the Constitutional Court had created negative impact on the enforcement of justice and human rights in Indonesia, particularly with regard to the settlement of gross human rights violations cases occurred before the enactment of the Act No. 26 Year 2000 on Human Rights Court. However, the Commission considered that the decision of the Constitutional Court should not negate the idea of national reconciliation to strengthen the unity of the nation as intended by the People's Consultative

Assembly (Majelis Permusyawaratan Rakyat or MPR) in its decision No. V/MPR/2000.

9. The reconciliation efforts should be conducted through many methods, among others, through enactment of legislations comply with the 1945 Constitution and international human rights instruments or through political policies regarding rehabilitation and amnesty in general. Therefore, the alternative (non-judicial) process to solve gross human rights violations is still possible according to article 47 of the Act No. 26 Year 2000 on Human Rights Court through the formulation of a new draft of legislation on the Truth and Reconciliation Commission. However, it should be noted that the reconciliation process as non-judicial alternative settlement of gross human rights violations cases occurred before the enactment of the Act No. 26 Year 2000 on Human Rights Court will need political willingness of all parties.
10. Furthermore, The Commission also 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.
11. It should be recognized that, Indonesia has independence National Human Rights Commission which accredited status A. Nevertheless, with regard to the Law No. 39/1999 on Human Rights in which the Commission is regulated, the Commission also identified many fundamental weaknesses that deter the independence and function of the Commission. Thus, the Commission recommended for the amendment of the Law No. 39/1999. These fundamental weaknesses were reflected in the notes of the International Coordinating Committee as follows:
 - a. The importance of legislative immunity for members and staff of the Commission in the exercise of their duty and refers the Commission to the General Observation on immunity;
 - b. That the representation of women amongst Commissioners is low;
 - c. That the position, duties, responsibilities and organizational structure of the Secretariat are currently set forth in a Presidential Decree and should rather be established through Commission regulations and policies to ensure independence and autonomy; and
 - d. The Sub-Committee refers the Commission to the General Observation on cooperation with other human rights institutions.

Promotion and Protection of Human Rights on the Ground

12. Looking at the human rights condition in Indonesia, The Commission concluded the condition conducive for the implementation of human rights in Indonesia has yet been fulfilled. The Commission was fully aware that the realization of the economic, social and cultural rights is progressive in nature. However, in the context of the fulfillment of economic, social and cultural rights, the budget allocation for several sectors affected directly on the people's welfare had not shown significant progress. State budget mostly allocated to pay foreign debts and interest. It led to the lack of budget allocation for health and education which decisively hinder the fulfillment of economic, social and cultural rights of the people. The policy to revoke the subsidy for fuels which has caused the people become farther and farther away from right of adequate standard of living.
13. The Commission noted that certain regulation does not reflect the willingness of the state to implement the economic, social and cultural rights. A number of

regulations such as the Act on Electrical Energy, the Act on Water Resources, and the Act on Oil and Natural Gas, as well as the revision of the Act of Employment Affairs had shown the market influence over the Government policies.

14. The Commission concerned that some problems also still occurred in the implementation and fulfillment of economic, social and cultural rights, such as: (a) increasing number of unemployment which shown the unfulfilment of the right to work; (b) forced eviction practices of the people who stayed in land areas belonged to other parties without proper compensation or settlement occurred in urban and remote areas; (c) the hot-mud flow disaster which covered a large area and caused people to leave their home and lost their jobs. This was considered as a violation to the right to survival and the right to good and healthy environment. The Commission pointed out specific cases in the area of economic, social and cultural rights should also be highlighted:

a. **The case of Migrant workers.** The Commission appreciated the invitation of the Indonesian Government to the United Nations Special Rapporteur for the Rights of Migrant Workers, Jorge Bustamante in December 2006. The Commission, however, considered that the Indonesian government policies toward migrant workers have yet taking the worker's side. The Commission observed, these workers, especially women workers are often ill-treated during departure, transit, work places and return). Cases of document forgery, violations of work contracts, unpaid wages, fraud, persecution, physical abuse and sexual harassment often occurred. The Commission underlined that the Terminal III at the International Soekarno-Hatta Airport as the departure and arrival gateway for the migrant workers. In this regard, the Commission underlined the call of migrant workers for the Government to close this terminal since many acts of enforced payment, ill-treatment, fraud, and sexual harassment occurred in this terminal. The Commission noted that until the end of 2006, the Government has yet found any solution to this matter. In this regard, the Commission might recall the report of the Special Rapporteur for the Rights of Migrant Workers which states that many Indonesia migrant workers have experienced human rights violations. These violations were mostly faced by women and children migrant workers. They were raped, forced to become prostitutes and experiencing other types of violence. Some other violations they experienced were long hours of working without breaks, unscheduled payment of wages and even unpaid wages, as well as mental abuses.

b. **Cases of mass hunger and starvation (*busung lapar*).** These cases occurred in several regions has illustrated the inability of the State to comply with its obligation to fulfill the right to adequate food which closely related to the right to life. Constant media news on the case of starvation had forced the Government to declare these cases as an extraordinary lack of nutrient. However, the Government seems to consider this problem as natural disasters, which is curative, emergency and ad hoc approach in nature. The response of the State in managing the problems has shown the insensitivity and denial of its obligation to fulfill the right of the people to be free from hunger.

c. **The problem of human trafficking.** This problem has become more serious due to related institutions and agencies at national and regional levels have yet coordinated with one another. This coordination, particularly at regional level, is very important since trafficking in person

is trans-border crimes, particularly among ASEAN countries. The Commission observed that to settle this problem the ASEAN countries should refer to the ASEAN Declaration against Trafficking in Persons Particularly Women and Children signed on 29 November 2004. Moreover, in looking towards combating trafficking as a transnational crime, reference could be made to the ASEAN Declaration on Transnational Crime dated 20 December 1997, whereby ASEAN has sought to establish a Regional Network to prevent and combat human trafficking.

15. The Commission concerned that several problems also occurred in the implementation and protection of Civil and political rights, among others: (a) The implementation of freedom of speech in public places still followed by acts of violence and even some atrocities; (b) The continued acts of violence either conducted by the state apparatus or radical groups in the community. These were considered as violation of the right to personal safety and also the right to the protection of privacy, honor and dignity of a person; (c) 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; and (d) The prolonged discrimination of 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.
16. The death penalty has not yet abolish from the Indonesian legal system. Until the end of 2006, Indonesia still has at least 11 legislations which contain death penalty. Until September 2006, 134 prisoners in Indonesia are waiting for the executions of the death penalty. 37 of this number are foreign citizens and 97 are Indonesian. The majority of the prisoners were found guilty of crimes related to drugs (narcotics). The Commission underlined that the right to life is non-derogable right at any condition 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.
17. 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, 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 withdrawn because they caused misuse of power and authority of the state apparatus and violated human rights, such as, freedom of movement and right to work.
18. With regard to the Government's Human Rights National Plan of Action, the Commission acknowledged there are more than 400 committees that have already established to implement the Plan all over the regions. The Commission, however, noted that the two National Plan of Action (1999-2004 and the second/2004-2009), are too centralized-oriented. Consequently, the problems of

human rights and fundamental freedoms at the local levels are not adequately addressed. Thus, the Commission recommended that local authorities and local communities/NGOs should be involved in the process of development and implementation. The Commission also recalled to the Government to implement the action plan, especially the ratification of international human rights instruments as scheduled, i.e. Optional Protocol of the Convention against Torture, The Rome Statute, Convention on the Protection of the Rights of Migrant Workers and their families, etc.

19. The Commission appreciated to Indonesian Government that achieved a progress with regard to the United Nations mechanism, namely special procedures by issuing invitations to the United Nations Special Rapporteur /Special Representatives. Nevertheless, the Commission considered that the State shall issue standing invitation for all thematic special procedure. This will give a guarantee the continuous access for the special representative or other UN body to monitor the human rights situation in Indonesia.

Jakarta, 20 November 2007
The Indonesian National Human Rights Commission
Chairperson



Ifdhal Kasim