

The Adoption of 4th Cycle of the Universal Periodic Review (UPR) Indonesia: New Commitments and Responsibilities that Must be Implemented by the State

On March 21, 2023, through the official website of the UN Human Rights Agency (OHCHR), the Government of Indonesia (GoI) provided the adoption of its 269 recommendations received from the (UPR) 4th Cycle on November 9, 2022 at the Palais De Nations, Geneva, Switzerland. Based on a set of recommendations received, 55 recommendations were rejected through noted status, 5 recommendations were partially supported while 210 recommendations were given supported status.

The Coalition of Indonesian Civil Society Organizations for UPR consisting of Amnesty International Indonesia, ASEAN SOGIE Caucus, Arus Pelangi, KontraS, KIKA, Indonesia FreeToBeMe (FTBM) Coalition, SAFEnet, Transmen Indonesia appreciates the GoI decisions to accept most of the recommendations received and we regret that GoI neglected some of the recommendations.

The recommendations neglected the ratification of the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR) which focused on a moratorium on the death penalty, bringing in a Special Rapporteur to Papua for independent investigations into cases of violence and torture, ratification of the Rome Statute, and the repeal of Article 27 paragraph 3 of the Information and Electronic Transactions (ITE) Law regarding defamation. On the other hand, the GoI made its commitment to ratify the OP-CAT and ICPPED.

The GoI does not pay attention equally to some of the issues mentioned. Especially on the death penalty issue, not a single recommendation has been given a supported status, starting from the ratification of the OP-ICCPR to a moratorium on the death penalty. In fact, the imposition of the death penalty violated the provisions of Article 28 I of the 1945 Constitution that the right to life cannot be reduced under any circumstances. From 2020 to September 2022, 66 death sentences were handed down in Indonesia. In fact, many things were later overlooked by the government related to the death penalty process, such as the phenomenon of the waiting list which has an effect on psychological and physical pressure on prolonged delays in executions, unfair trials, and the precautionary principle of judges when examining and deciding death penalty cases.

The GoI is also reluctant to give access to the UN High Commissioner for Human Rights to investigate all forms of violence that occurred in Papua. In fact, in 2015 the GoI promised to provide access to Foreign Citizens (WNA), including foreign journalists, to visit Indonesia. However, this policy changed in 2019 when the GoI through a statement by the Coordinating Minister for Political, Legal and Security Affairs at that time, Wiranto, to limit access to visits for the reason of anticipation of foreign parties wanting to ride the riots in Papua.

As a flashback, human rights fulfillment in Papua is experiencing a stagnant condition and is not getting better. This can be seen from the 40 cases of violence that occurred in 2020¹, 39 in 2021², and 48 in 2022³ experienced by the civilians perpetuated by the Police and the national army as the main actors. In this 4th cycle, the GoI did not support recommendations on the efforts to investigate, the accountability and impunity prevention by the security forces as the root cause of the human right abuses in Papua. Yet, during this period of time along with deteriorating human rights conditions in Papua, the GoI has inaugurated 4 New Autonomous Regions (DOBs) which potentially cause new forms of violence against civilians.

The coalition also highlighted that although the government is making efforts to ratify the OP-CAT and ICPPED, the two recommendations have always been mentioned since UPR cycle 1-3. But the government refused to commit to ratification of the Rome Statute. In fact, the Rome Statute states the position of the International Criminal Court (ICC) as an international institution that can exercise its jurisdiction over parties who commit crimes against humanity. Looking at the series of incidents of gross human rights violations, ranging from the 1965 incident to Paniai, Indonesia has gone through various periods of succession of presidents who were reluctant to resolve them. Even though Indonesia has Law No. 26 of 2000 which discusses crimes against humanity which was adopted through the Rome Statute,

The government also only committed to record seven recommendations related to freedom of opinion, association and peaceful assembly, and the protection of human rights defenders. Member states such as the United States, Luxembourg, Estonia, Switzerland and Norway have urged the GoI to revise or revoke problematic articles in the Criminal Code, Law no. 17 of 2013 on non-government organization, UU no. 19 of 2016 on Amendments to ITE Law Number 11 of 2008 and other regulations. Meanwhile, France urged the Indonesian government to support International Cooperation for Information and Democracy.

The lack of commitment by the Indonesian government to respect, protect and fulfill the rights to freedom of opinion, association and peaceful assembly, as well as the right to defend human rights and protect human rights defenders, is very worrying. Based on the Amnesty International Indonesia report released in October 2022, during the period from January 2019 to May 2022, there were at least 328 cases of physical and digital attacks against civil society, with at least 834 victims. These victims included human rights defenders, activists, journalists, environmental defenders, students and demonstrators, and the alleged perpetrators were state and non-state actors. As of December 2022, the latest monitoring data from Amnesty International Indonesia shows an increase in the number of victims to at least 1,021.

Of the many cases of suppression of freedom of expression in Indonesia, some of the cases that have received public attention include criminal and civil threats against women human rights defenders, Fatia Maulidiyanti, simply because she disseminated the findings of a research which

¹Kontras human rights day notes 2020, p. 26

²Kontras human rights day notes 2021, p. 59

³Kontras human rights day notes 2022, p. 53

alleged the involvement of a public official in the practice of illegally reducing military forces at mining sites in Intan Jaya, Papua. In Wadas Village, Purworejo, Central Java, residents' efforts to protect land from mining operations were met with excessive use of force by security forces which resulted in several injuries and the arbitrary detention of 11 civilians. Recently, a religious leader, Pastor Chrisanctus Paschalis Saturn alias Father Paschal, was reported to the police by a public official in Riau as he discovered the public official's alleged involvement in the business of illegal migrant workers.

In regards to the recommendations related to sexual orientation, gender identity & expression and sex characteristics (SOGIESC) the government supported 8 out of 13 recommendations. We regret that in their comments the government stated that they need to carefully consider each recommendation related to LGBTQIA+ people due to no international convention that specifically protects LGBTIQ people. Apart from that, in their comments the government also ensures that everyone is equal before the law and that there are no provisions criminalizing LGBTIQ people in Indonesian national law.

This is not in line with the reality that occurs at the grassroots. Discriminatory acts against LGBTIQ people are increasing and becoming more structured. For example, no LGBTIQ organization in Indonesia is able to officially register an organization if the words lesbian/gay/bisexual/transgender/waria are included in the organization's constitutional documents. The rise of bylaws and ordinances that discriminate against LGBTIQ people has also become a trend, especially after the passing of the Criminal Code, one of the most recent was the passage of the 2021 bylaw on the Prevention and Management of Sexual Deviant Behavior (P4S) in Bogor City, West Java which intends to 'rehabilitate' LGBT people. We also noted discourses about the issuance of anti-LGBT bylaws in the cities of Medan, Makassar, Garut and Bandung.

In conclusion, we reiterate our key recommendations to the government of Indonesia to:

1. Undertake serious steps to implement the 210 recommendations supported in the 4th cycle of the UPR;
2. Stop neglecting and continue to pay attention to the 55 noted recommendations and 5 recommendations partially supported.

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