

Komisi Nasional Anti Kekerasan terhadap Perempuan
(National Commission On Violence Against Women - Komnas Perempuan)

National Human Rights Institution Independent Follow-up Report

on the review of Indonesia Follow up Report on
the implementation of
the International Covenant on Civil and Political Rights in Indonesia

submitted to
UN Human Rights Committee

A. Introduction

1. The National Commission on Violence Against Women (“Komnas Perempuan”), is one of the specific national human rights institutions aiming to build a conducive situation for the elimination of all forms of violence against women in Indonesia. Established under Presidential Regulation No. 65 of 2005 as its legal basis, the mandates of this Commission include a) public education, awareness and participation, b) monitoring and fact finding, d) proposing changes to law and policies, and e) strengthening national, regional and international networks.
2. As a national human right mechanism, Komnas Perempuan is actively involved in international human rights mechanism, including preparing the independent reports for Universal Periodic Review, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, Covenant on Economic, Social and Cultural Rights (CESCR) Committee, and Covenant on Civil and Political Rights (CCPR) Committee and other instruments ratified by Indonesia. Komnas Perempuan has not only presented her findings, but also contributed to strengthen gender perspective, and integrate it into the international instruments. Komnas Perempuan also urges the implementation of international recommendations made thereunder at the national and regional levels.

B. Comments on Follow up Recommendation

3. After careful examination and monitoring of how recommendations from CCPR Committee have been implemented in Indonesia, and observation of Government of Indonesia’s follow-up report, Komnas Perempuan, in her capacity as an independent mechanism, will hereinunder convey her conclusions.

Recommendation 8

4. Regarding the past human rights violations, Komnas Perempuan holds the position that victims' access to truth, justice, reparation and guarantees of non-recurrence have not yet been fulfilled by the State. Komnas Perempuan has recorded gender based violence cases, particularly on sexual violence experienced by 61 women and girls in Aceh¹, 135 women in Papua² during the military operation, 122 women during 1965 incidents³ and 85 women during May 1998 riots⁴. The perpetrators in those incidents seem to be granted with impunity. Law No. 27 Year 2004 on the Truth and Reconciliation Commission (TRC), which was annulled by Constitutional Court in 2006, has created a legal vacuum.
5. Although judicial procedure to seek justice hasn't been achieved, victims' rights to truth and reparation are immediate to be fulfilled. In regards to that, Komnas Perempuan, with strong support from civil society organizations and other National Human Rights Institutions, has urged local governments' initiatives to provide redress for past human rights violation, interalia :
 - a. Aceh Province: Qanun Aceh No.17 of 2013 on Truth and Reconciliation Commission (TRC) was issued on 27 December 2013 as an initiative from Aceh's People Representative Council. Early December 2015, this Council established a Selection Committee of TRC's Commissioners consisting of five members (two men and three

¹ There are 61 cases of sexual violence from 103 violence against women which spread in 13 cities/district in Aceh, Aceh Besar Regency, Southwest Aceh Regency, North Aceh Regency, East Aceh Regency, Langsa, Central Aceh Regency, Aceh Tamiang Regency and Benar Meriah Regency. Cases that occur during military operation, peace dialogue, post-peace MoU and in between those phase. Source: "Experience of Aceh Women : Seeking for Justice from Time to Time", Special Rapporteur of Aceh National Commission on Violence Against Women and Network of Aceh Women Human Rights Monitoring, 2006

² There are 261 cases of violence perpetrated by the state and communities between 1963 and 2009. This includes 138 cases by security/military personnel, of which 67 are cases of sexual violence. Source:- Enough is Enough! Testimonies of Papuan Woman Victims of Violence and Human Rights Violation 1963-2009, a report prepared by National Commission on Violence Against Women (Women Commission), Women Working Group of Papuan People's Assembly and the International Center for Transitional Justice (ICTJ) Indonesia, 2009

³ There are 165 cases of sexual violence and 120 cases of sexual violence perpetrated by security/military personnels. Source: Gender-based Crimes against Humanity: Listening the Voices of Women Survivors of 1965: Women's Human Right Monitoring Report, Komnas Perempuan, 2007.

⁴ 13-15 May 1998 Fact Finding Team Report

- women). This committee has a mandate to propose 21 candidates. The Council will elect 7 (seven) Commissioners among whom 2 (two) are women. The Commissioners will serve from 2016 until 2021.
- b. Palu Municipality: Palu Municipal Government has issued the Mayor Decision No.25 of 2013 on Regional Human Rights Action Plan. Mayor addressed his apology to victims of 1965 human rights violation. The Government also prioritizes access to health, housing and sanitation services, and employment for victims and their family. As policy reinforcement, the Municipal Government signed an MoU with the National Commission on Human Rights (“Komnas HAM”), Komnas Perempuan and Witness and Victim Protection Agency (LPSK). Komnas Perempuan bears the tasks to strengthen the capacity of the state officials related to their human rights and gender knowledge, and to promote Palu as a women’s right-friendly municipality. Komnas Perempuan in on the view that this process is part of effort to urge transitional justice and institutional reform. Therefore, the guarantee of non-recurrence will be uphold by next local leader and state apparatus.
- c. Special Capital Region of Jakarta: Special Capital Region of Jakarta City Administration in cooperation with Komnas Perempuan and victims’ community built a memorial site of May 1998 tragedy. The memorial *Prasasti Jarum Mei* was built on the mass grave of May Tragedy victims at Pondok Ranggon cemetery as a sign of symbolic recovery, recognition of the victims’ right to truth and a symbolic effort to guarantee non-recurrence. Furthermore, the City Administration labels this memorial site as a local heritage and includes it in Jakarta City Map. Apart from it, The City Administration also built Trisakti Memorial Site, another tribute to May 1998 tragedy.
- d. Papua Province: Papuan Legislative Council has issued a Special Bylaw No. 1 of 2011 regarding the Restoration of the Rights of Papuan Women Victims of Violence and

Human Rights Violation. This bylaw was proposed by Network of Papuan Women Human Rights Defenders (“TIKI”), Papuan People Assembly (“MRP”) and Komnas Perempuan. This bylaw ensures the reparation of Papuan indigenous womens’ rights, including prevention and protection from violence in domestic and public sphere. Unfortunately, this bylaw has to be signed by the Governor prior to its implementation.

6. In regard to having an appropriate measure to resolve past human rights violation, Government of Indonesia has indicated to take national reconciliation. Komnas Perempuan has not been formally involved with the key ministry who initiate this process. The process is still on early stage. Komnas Perempuan urges that the national reconciliation will prioritize not only on victims’ recovery but also judicial process to prosecute and punish the perpetrators. Past human right violation cases should be resolved immediately since victims and witnesses are getting older. To delay resolving past human right violation cases which occur either in armed conflicts, such as in Aceh, Papua, Maluku, Poso or religious-based conflicts (Ahmadiyah, Syiah, GKI Yasmin, HKBP Philadelphia, and Aceh Singkil) will contribute to impunity and enable similar conflicts to occur again in the future. Furthermore, Komnas Perempuan has recorded that there is an increasing number of discriminatory bylaws pertaining to religion and morality from 365 in August 2014 to 389 in September 2015. Only several of these bylaws have been amended or annulled.

Recommendation 10

7. Based on data of General Attorney in August 2015, there are 4 women (two foreigners and two Indonesians) who face death row in Indonesia. On the other hand, there are 225 Indonesians, who are waiting for their execution overseas. Human rights groups and activists have been advocating either to abolish death penalty or to urge de facto moratorium on the death penalty in Indonesia. There are challenges in addressing this issue, interalia: a) Death

penalty is still believed to be acceptable punishment in mainstream Islamic perspective in Indonesia; b) Death penalty is still very much supported by the public since it is mostly applied for drugs related cases; c) The lack of understanding about human rights among policy makers, and opinion makers, including public solicitors in Indonesia; d) Death penalty is contained in Indonesian Criminal Code.

8. Komnas Perempuan has taken several strategic measures to reinstate de facto moratorium on the death penalty, including:

a. Suspension of Mary Jane Veloso's execution: Komnas Perempuan worked to propose suspension to this Philippine female migrant worker. After 3 days monitoring which includes obtaining information from Mary Jane at Wirogunan Prison, Komnas Perempuan sent her fact-finding report to the President of the Republic of Indonesia and wider public. We recommended that Mary Jane Veloso's case should be suspended until a verdict has been made on the crime of trafficking in which Mary Jane was a victim and was used as a drug courier. Komnas Perempuan has taken this measure not only to abolish death penalty in Indonesia, but also to revitalise Indonesia's bargaining power in saving Indonesian migrants workers overseas who are also facing death execution. Mary Jane Veloso case is one in which Government of Indonesia deserves an appreciation for listening to recommendations made by Komnas Perempuan, other national human rights institutions and voices of civil society organizations and wider public, all of which have resulted in the suspension of the execution. This case can constitute a potential entry point to reinstate de facto moratorium for death penalty.

b. Measures taken to urge death penalty abolishment through state agencies, religious institutions and public awareness: Komnas Perempuan has conducted constructive dialogues with the Supreme Court, Ministry of Foreign Affairs, Attorney General Office and other related ministries about the abolishment of death penalty. Komnas Perempuan

urges several points, interalia: a). Death penalty is incompatible with human rights and constitutes a cruel and inhuman punishment; b). Death penalty will not result in any deterrence effect nor will it guarantee to decrease crimes; c). Death penalty strengthens impunity and takes out opportunity to prosecute and punish the main perpetrators; d). Women are more vulnerable to become victims, since migrant workers, especially undocumented migrants are often targetted by syndicates, as they are lured to enter into quasy intimate relationship; e). Death penalty does not just punish the person in death row, but also his/her entire family. Komnas Perempuan is currently finalizing a research on the impact of death penalty on family members of the death rows, prior to and pursuant to execution, as well as those who were acquitted.

c. Komnas Perempuan conducted a thematic research on “Islam: A Religion of Humanity; A Study to Minimize the Gap Between Concepts And Practice of *Hudud*”. This research was aimed at providing a comprehensive understanding to state officials and public related to context of the presence of Islamic Law, especially *qishas* (punishment in the form of equal retaliation) and *hudud*. Through understanding Islamic Law context, state officials are expected to improve current national legal system that ensures justice for women. This research concludes that death penalty in Islam is not a mandatory, as it constitutes only one of the ways to obtain justice. It means that it is possible not to punish through death penalty but to ensure that justice principles are applied for either victims or perpetrators

Recommendation 12:

9. Female circumcision is not always similar to female genital mutilation (FGM). Female circumcision, which is also known as “khitan” can be performed in many ways. Those are including to scratch the clitoris using razor blade, piercing the labia minora until it bleeds, dab certain herbs, such as betel leaves or smashed turmeric root on the genital area or rubbing it using cotton swabs. Female circumcision in Indonesia is considered more as a tradition or cultural practice. However, the practice is often religiously justified that girls on whom circumcision is performed will become a good and devoted Muslim woman. Therefore, abolition of female circumcision will be strongly challenged by some Muslims who believe that this practice is part of their religious teaching. On the other hand, not all Muslim communities perform this harmful practice.
10. The Ministry of Health issued Regulation Number 1636/Menkes/Per/2010 regarding female circumcision which grants permission to perform this harmful practice. This regulation was made in response to the objections addressed by religious groups who considered the prohibition as restriction to practice their religious teachings. Komnas Perempuan is in the view that the regulation constitutes a setback in the effort to eliminate violence against women as they facilitate the continuation of female circumcision. This situation was also highlighted in Concluding Observation of CEDAW Committee. As a result, the Ministry of Health responded the CEDAW concluding observation by issuing the Minister of Health Regulation No. 6 of 2014 which annuls the earlier Regulation Number 1636/Menkes/Per/XII/2010 on Female Circumcision. This new Regulation emphasizes that female circumcision doesn't have medical urgency therefore the State will not allow the performance of this practice. Unfortunately, article 2 of this Regulation still provides loopholes for Syara' Health Consultative Assembly (“MPKS”) to regulate the practice of female circumcision:

“The State grants mandate to Syara’ Health Consultative Assembly to issue guidelines on how to perform female circumcision to ensure the good health and safety of the women on whom this practice is performed, and not allowing the practice of genital mutilation.”

11. The above article 2 still allows female circumcision for anyone who wants to practice it, without any State intervention and facilitation. Consequently, the recent Regulation does not constitute any solution to end the practice of female circumcision in Indonesia. Moreover, the situation can be worse since female circumcision will be difficult to be monitored because the practice is not under any health jurisdictions. Komnas Perempuan is highly concerned that the Ministry of Health doesn’t impose any sanctions to health workers who still perform female circumcision. The State should totally prohibit female circumcision and conduct a wide campaign on violence, discrimination and the impact of female circumcision on women’s life.

Recommendation 25

12. The Constitutional Court, through its decision No.140/PUU-VII/2009, states that Law No. 1 of 1965 on the Abuse and/or Blasphemy of Religion is not in contradiction to the Constitution. However, the court also acknowledges that revision of such Law can bring improvement, in particular to the criteria of defining blasphemy. The term blasphemy itself can be interpreted into many meanings, such as “to disgrace”, “to stain”, “to mislead”, or to “spread hatred.” These various possible interpretations can be misguided when it comes to law implementation. In the Judicial Review process, the Constitutional Court affirmed that Law No.1/1965/PNPS didn’t have clear material elements, thereby potentially leads into misinterpretation in its application. Unclear terms include “inaccurate interpretation”, “main substance of religion”, and “blasphemy”. Elements of crimes that are contained in this Law,

such as words like “hostility”, “misuse”, or “blasphemy”, “interpretation which deviates from main substance of religions” are also not clear.

13. The concept of blasphemy does not comply with international laws that place individuals as subject of human rights protection. Blasphemy, on the other hand, focuses on providing protection to religious institutions. In this context, it is highly excessive for the State to “judge”, “criminalize” and impose punishment toward certain religion or faith. In many blasphemy cases, the court often takes sides with the majority religions. Judges often fail to distinguish between various interpretations which are common and acceptable in religious traditions and activities that spread hostility/hatred. As a result, those who spread hatred remain free.
14. In legal framework, the concept of blasphemy is absurd since there is no clear indicator to define the limit of blasphemy. Komnas Perempuan recorded various attacks towards Ahmadiyah and Shia community (Sampang, Madura) as an impact of this provision. The similar situation also applied to Muhammad Yusman Roy (Malang), Sumardi Tappaya (South Sulawesi), Mahesa Kurung Indonesian Martial Arts Institution (Bogor), Lia Aminudin or Lia Eden (Jakarta) related to allegation of act of crime that is blasphemy.
15. Komnas Perempuan is concerned that the sense of security felt by women has been deteriorating with the increased number of intolerance and criminalization cases faced by religious minority groups. Those include violence, intimidation, sexual harassment and threat of rape. The burden of being a single parent is faced by wives of the leaders of criminalized communities, such as Ahmadiyah, Shia, Bahai, and Pentacostal Church communities in Indonesia. They also must face stigmatization and exclusion by the neighboring communities. At the same time, they are expected to support their families and communities. As their faith is not recognized by the State, they face difficulty in registering their marriage,

in accessing employment, health facilities and other government aids. If they are unable to register their marriages, the women (and children) born out of such marriage will lose legal protection, and, as the birth certificate only provides the name of the mother, then the woman may carry stigma as being an immoral woman for having a child out of wedlock. The difficulty in obtaining birth certificate also leads into the difficulty in accessing education, which requires birth certificate in applying for schools. In addition, almost all forms to access employment, job promotion, health and government aids require the citizens to tick one of the six “recognized” religions as their religious affiliation.

16. To ensure the enjoyment of people’s rights to freedom of religion and faith, State has to optimally meet their three obligations below under human rights law: a) To respect all religions and faiths, without judging whether they are true or false, in terms of their theological views; b) To protect the freedom of religion and beliefs of all people and to prevent a third party from stopping or hampering people to enjoy their rights or from forcing people to convert to their religion or faith; c) To fulfill the rights of all people who practice their religion and belief, such as to allow people to base their religious or moral education on their religion and belief and to allow people build and pray at their house of worship.
17. Under our 1945 Constitution, the state has obligation to protect the right of freedom of religion and beliefs, as set forth in Article 28 E, and Article 29 therein. Moreover, Indonesia ratified the International Covenant on Civil and Political Rights through Law No. 12 of 2005, which guarantee freedom of religion and beliefs (Article 18). This right has to be seen equal as other rights, such as the right to life, the right to be free from torture, the right to access justice, the right to food, clothes, and housing security, the right to education and the right to sense of security.

18. Currently, the Government of Indonesia through the Ministry of Religious Affairs has drafted a Bill on the Protection of Religious Communities which is expected to provide solution to many religion-related problems in Indonesia. The objective of this law is to ensure protection to all religious communities and to support their right to practise their religion and faith. Article 29, paragraph 2 of 1945 Constitution has not explicitly governed on how protection of religious communities will be provided. Therefore, this article needs to be elaborated and translated into an implementing regulation. The Bill on the Protection of Religious Communities also addresses religious teachings and preaches, house of worship, and blasphemy.

19. Related to this Bill on Protection for Religious Communities, the government has to be willing to listen to voices coming from religious minority groups who have very often become victims and are seeking justice until today. This bill should not bear any shortcomings as those in Law No.1 of 1965 on PNPS which allow several groups to hide behind the possible multi-interpretation of the provisions contained therein, only to justify their misleading and intolerant actions.