



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Initial reports of States parties**

**Indonesia\***

[19 January 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **I. Introduction**

1. The Government of the Republic of Indonesia welcomes this opportunity to provide the Human Rights Committee with its combined initial and first periodic report on measures giving effect to the undertakings of Indonesia under the International Covenant on Civil and Political Rights (“the Covenant”) in accordance with article 40 thereof. The organization of this periodic report follows the general guidelines of the Human Rights Committee regarding the form and content of periodic reports to be submitted by States Parties (CCPR/C/66/GUI/Rev.2).

## **II. Implementation of specific provisions of the Covenant**

### **Article 1**

#### **Self-determination**

2. The preamble to the 1945 Indonesian Constitution affirms “... that independence is the inalienable right of all nations” and “... that the people of Indonesia hereby declare their independence ...”. This implies that Indonesian independence is a political manifestation of the right to self-determination.

3. Furthermore, with reference to the declaration in article 1 of the International Covenant on Civil and Political Rights Indonesia considers that the term, “right to self-determination” appearing in this article does not apply to a section of people of a sovereign independent State and cannot be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of a sovereign and independent State.

4. According to the aforementioned declaration, Indonesia is of the view that there are two aspects in the implementation of paragraph 1 of article 1 of the Covenant. The first aspect is about the right to determine the political status of a nation in relation to the determination of its status and position as an independent State in the international community. The second aspect is about the right to manage economic, social, and cultural potentials in relation to the implementation of rights to develop a particular territory in a sovereign and independent State. The view of Indonesia on the right to self-determination is in line with the perspective of the international community as contained in general recommendation No. 21 (1996) of the Committee on the Elimination of Racial Discrimination.

5. Indonesia expressed the external aspects of the right to self-determination through its Proclamation of Independence (“Proklamasi Kemerdekaan”) on 17 August 1945, after approximately 350 years of Dutch colonization and 3.5 years of Japanese occupation. The implementation of the right to self-determination was a consensus of all Indonesian people comprising various ethnic groups from different territories. These ethnic groups voluntarily, with full conviction and consciousness, were committed to establishing a nation, named Indonesia. Such consciousness was expressed through their struggle for independence, which reached its peak near the end of World War II. At that time, the national founding fathers proclaimed Indonesian independence from Japan before the attempt of the Dutch and their allies to re-colonize Indonesia. The Proclamation, declared on 17 August 1945, was followed by recognition from States, particularly those in Asian and African regions.

6. The actualization of the internal aspect of the right to self-determination to develop economic, social, and cultural potentials, is stated in Articles 18, 18A and 18B of the Constitution, which regulates regional government in implementing full autonomy

(regional autonomy), with the exception of State affairs, which by law is considered as the central government's affair/authority.

7. The implementation of regional autonomy is governed by Law No. 32 of 2004 in conjunction with Law No. 8 of 2005 in conjunction with Law No. 12 of 2008 on Regional Government. Regional Autonomy, as defined by the Law, is aimed at accelerating the achievement of social welfare through service improvement, community empowerment and public participation as well as enhancing competitiveness. These should take into account the democratic principles of equality, justice, specialty and particularity, as well as the local potential and diversity within the framework of the Unitary State of the Republic of Indonesia (NKRI).

8. The aforementioned Law regulates that governmental affairs are classified into two types. The first type refers to the affairs derived from the absolute authorities held by the central government, i.e. foreign policy, defense, security, justice, monetary and fiscal, as well as religious affairs. The second type refers to the affairs carried out concurrently by all levels of authorities, ranging from central, provincial, to district/municipality level which cover 31 fields of government affairs as provided for by Government Regulation No. 38 of 2007 on Division of Government Affairs between Central, Provincial, and District/Municipality Government Levels. In this regard, each regional government, implementing the policy, is responsible for managing various local potentials and the government's financial resources; for collecting tax and local retribution; for obtaining profit sharing; and for managing local means and other resources in a lawful manner as mandated by Law No. 33 of 2004 on Financial Balance Between Central and Regional Government as well as the regulation of its implementation provided for by Government Regulation No. 55 of 2005 on Equalization Funds and Law No. 28 of 2008 on Local Taxation and Retribution.

9. In addition to economic matters, under the provisions of legislation governing Regional Government, each region can hold regional elections for the head of region and the deputy head as well as the regional legislature directly elected by the people at the provincial and district/municipality levels. The election is conducted democratically, based on the principles of direct, general, free, confidential, honest, fair and accountable standards, as stipulated by Government Regulation No. 49 of 2008 on the Third Amendment to Government Regulation No. 6 of 2005 on the Election, Appointment, and Dismissal of Head of Region and its Deputy Head.

10. Furthermore, Law no. 32 of 2004 on Regional Government regulates the establishment of a region which may be a merger of several neighboring regions or regional territories or an expansion of a region into two regions or more based on the public aspirations in the region. This aims at improving the effectiveness of regional government. During the periods of 2004-2009, there were 205 new regional autonomies consisting of 7 provinces, 164 districts and 34 municipalities, contributing to 524 overall regional autonomies in 33 provinces, 398 districts, and 93 municipalities.

11. There are still some challenges related to the application of the decentralization policy, which in most cases have resulted from incompatibility of the regional laws and regulations with the national ones. These include regulations on natural resources management. In coping with these challenges, the Central and Regional Government continue to improve coordination and harmonization of several regional regulations, in accordance with Law No. 10 of 2004 on the Establishment of Legislation, Presidential Regulation No. 61 of 2005 on Procedures to the Formulation and Management of National Legislation Program, Presidential Regulation No. 68 of 2005 on Procedures to Legal Drafting, Government Regulation in lieu of Law, and relevant Government Regulations and Presidential Regulations. Measures to harmonize and coordinate regional regulations are, inter alia, enhancing the capacity of regional legislatures and governments in drafting

regulations, revising and revoking the Regional Regulations that are considered to be incompatible with the national legislations. During the period of 2005 - 2009, the central government revoked 1,480 regional regulations that were incompatible with national legislations; 6 of them were on mining.<sup>1</sup>

12. In a broader context, another challenge of regional autonomy is the public demands for special regulations to reduce underdevelopment in certain regions, especially in terms of economic, social and cultural development. In response to such aspirations, the Government has applied special autonomy in three provinces: Papua, West Papua and Nanggroe Aceh Darussalam.

13. With the enactment of Law No. 35 of 2008 on the Stipulation of Regulation in lieu of Law No. 1 of 2008 on Amendment of Law No. 21 of 2001 on Special Autonomy for Papua Province into Law, West Papua Province now has 33 members of the Assembly of Papuan People (MRP) in charge of, inter alia, giving approval to the draft of Special Regional Regulation for West Papua Province before it is stipulated to become the Special Regional Regulation for Papua Province. In order to carry out the enforcement of human rights, the Government has established a representative of the National Commission for Human Rights (Komnas HAM) for Papua and West Papua Provinces.

14. The second special autonomy is applied in Nanggroe Aceh Darussalam Province. Having reached a peace settlement, the government is committed to accelerating development through special autonomy that recognizes the cultural and economic privileges of Nanggroe Aceh Darussalam Province, particularly its Islamic values, adopted by Law no. 11 of 2006 on Aceh Government. The Law includes the establishment of a number of Islam-based institutions that remain subject to national law. Those are: Sharia Court, Ulama's Consultative Assembly, Qanun and Sharia police, as well as Wali Nanggroe institution as a cultural symbol. The Law also regulates the establishment of Aceh-based political parties, Independent Election Commission (KIP) and the management of natural resources by the Aceh government. To date, Aceh has conducted governor/vice governor elections and 20 district regents/mayors elections that were held simultaneously in 2006 for the period 2006 - 2011 and were considered to be fair, honest and democratic. In terms of local financial management, Aceh has managed a budget of Rp 11.009 trillion from 2008 to 2010.

15. Although the implementation of these special autonomies has been going well, there are challenges in optimizing its achievement. For example, the special autonomy in Papua Province has not yet been able to produce Provincial Regulations and Special Regional Regulations as technical guidelines for the implementation of special autonomy. Meanwhile in Aceh, various local institutions, such as political parties, still require capacity building assistance.

16. To overcome these challenges, the Central Government continues to monitor and evaluate the implementation of these special autonomies. Currently, the Central Government is undertaking performance evaluation and financial audit as a whole for Special Autonomy in Papua and West Papua Provinces. As for Special Autonomy in Aceh, the Government provides assistance in fields that are deemed to be required, such as the study of limited revision on government regulation on financial assistance to local political parties.

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<sup>1</sup> According to data provided by the Ministry of Home Affairs

## Article 2

### Equal protection of rights in the Covenant

17. Indonesia has ensured non-discrimination in the protection of the rights provided for in the Covenant through national legislations, particularly the 1945 Constitution (Article 28 and Chapter XA on Human Rights). Article 28I Paragraph (2) of the Constitution states that every person shall have the right to be free from discriminatory treatment on any grounds whatsoever and shall have the right to protection from such discriminatory treatment.

18. This protection is also regulated in Law no. 39 of 1999 on Human Rights in Article 3 Paragraph (3), which states that everyone has the right without any discrimination to protection of human rights and fundamental freedom.

19. Indonesia's accession to the International Convention on the Elimination of All Forms of Racial Discrimination on 25 July 1999 by Law No. 29 of 1999 has further strengthened the principle of non-discrimination in Indonesia. This means there is no difference between the understanding of non-discrimination in Indonesia and at the international level. The recognition of the principle of non-discrimination was further reinforced when Indonesia enacted Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination.

20. The 1945 Constitution and the existing legislations mention that the principle of non-discrimination applies to "every person", which means that its enforcement does not distinguish between Indonesian citizens and foreign citizens. In its practice, Indonesia has taken several measures in the form of regulations, policies and concrete programs to implement the principle of non-discrimination. The implementation of the Criminal Procedure Code is without prejudice to whether the person has nationality (or is even stateless). Their rights are guaranteed according to the applicable law.

21. The Indonesian Government has also applied integrated minimum service standards in order to improve the quality and the quantity of public services. These standards ensure the availability of access and non-discriminatory treatment by government officials. Legal and human rights dissemination have also been carried out for law enforcement and military officials to ensure the absence of discriminatory practices within the scope of their duties.

22. The Government has also ensured the non-discriminatory principle as one of the main pillars in the drafting of regulations. In this regard, it should be noted that in the past, there were issues concerning discriminatory treatment against citizens of Chinese descent by the State. However, the Government has issued administrative regulations to revoke the discriminatory practices against that group. For example, the issuance of Presidential Instruction No. 26 of 1998 on Elimination of the Use of Terms "Natives" and "Non Natives," and the issuance of Presidential Decree No. 6 of 2000 that revoked the Presidential Instruction No. 14 of 1967 on Chinese Religion, Belief, and Traditions as it is considered discriminatory. Further measures in the elimination of discrimination against the referred group were taken by the government in Presidential Decree No.19 of 2002 on establishing Lunar New Year as a national holiday. In addition, elimination of discrimination, particularly for Chinese descendants, was regulated in Presidential Decree No. 56 of 1996 on Indonesian Nationality Documentation and Instruction of the Minister of Home Affairs No. 25 of 1996 on Implementation Guideline of the Presidential Decree No. 56 of 1996, one of which regulates the revocation of bylaws on Nationality Documentation for Chinese and their descendants for civil administration purposes.

23. Within the national institutional frameworks, the promotion of non-discriminatory principles constitutes one of the important pillars of the mandates of the existing national institutions dealing with human rights issues namely, the National Commission on Human

Rights which was established in 1993; the National Commission on Violence Against Women, which has existed since 1998; the National Commission for Child Protection, which was set up in 2002; the National Commission for Elderly People, which was established in 2004 , and the Ombudsman of the Republic of Indonesia, which was established in 2008.

24. Furthermore, remedies are made available for victims of discrimination based on Government Regulation No. 3 of 2002 in the forms of restitution, compensation, and rehabilitation. Compensation and rehabilitation are granted by the Government based on the decision of the Human Rights Court, which has obtained permanent legal force, while restitution is granted by “perpetrators” or third parties based on the decisions of the Human Rights Court.

25. The performance of Indonesia in implementing non-discriminatory policies is relatively satisfactory, according to a survey conducted by the United Nations Development Programme (UNDP), Indonesian statistics, BAPPENAS (the National Development Planning Agency) and the Ministry of Home Affairs, as concluded in the 2009 Indonesia Democracy Index. The index of these rights reached 88.92%. The number is obtained through measuring three indicators, which are written rules that are discriminatory on the grounds of gender, ethnicity or against vulnerable groups; actions taken or statements made by regional government officers/officials which are discriminatory on the grounds of gender, ethnicity or against vulnerable groups; threats of violence or use of violence by people for reasons associated with the gender or ethnicity of the victim and/or vulnerable groups<sup>2</sup>

### **Article 3**

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

26. Indonesia guarantees the fulfillment of the rights in the Covenant without distinction of rights between men and women. As stated by the 1945 Constitution and national law, the provisions governing the rights of the Covenant started with the words “any person” or “every citizen”. The meaning embodied in the words is that there is no gender distinction: men and women are equal before the Constitution and its implementing legislations.

27. In 1981, Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women, which was promulgated by Law No. 7 of 1984. The ratification of this convention was primarily intended to improve the national legal system in the efforts towards women empowerment. The ratification was also a momentum to provide women with greater opportunities in taking roles and fulfilling their rights in the legal framework and affirmative action policies, as an effort to enhance their roles in various aspects of development. In order to affirm and enforce the Convention, Indonesia is currently in the process of drafting a Law on Gender Equality.

28. The Government has enacted Law No. 80 of 1957 on the Ratification of International Labour Organization (ILO) Convention No. 100 (1951) concerning Equal Remuneration. Moreover, by Law No. 21 of 1999, the Government has also ratified ILO Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation.

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<sup>2</sup> “Measuring Democracy in Indonesia: 2009 Indonesia Democracy.” Jakarta: UNDP, 2009 (pp. 44, 53-54)

29. Furthermore, Law No. 39 of 1999 on Human Rights specifically mentions, and emphasizes, in Articles 20, 38, 41, and 45 to 51, women rights and equal rights between men and women. In addition, human rights education is also regulated and stressed to be implemented at various levels without any discrimination between men and women.

30. In order to provide a better guarantee of the protection of women labour and to provide equal opportunities between men and women in employment, Indonesia has already ratified Law No. 13 of 2003 on Labour, and Law No. 39 of 2004 on Placement and Protection of Indonesian Migrant Workers in Foreign Countries that provides a legal basis for the protection of Indonesian labours, both at home and abroad.

31. In fulfilling the right to citizenship, the provisions of Law No. 12 of 2006 on Citizenship emphasizes that a woman who is married to a foreigner will be able to retain her citizenship as long as she does not hold dual citizenship. Children born in such marriages, including girls, are given a limited right to dual citizenship until they reach 21 years old.

32. With regard to the fulfillment of women's rights in marriage, and to found a family, Indonesia has enacted Law no. 39 of 1999 in which Article 10 Paragraphs 1 and 2 state that everyone has the right to marry legally; to found a family; and to bear children, and marriage shall be entered into only with the free and full consent of the intending spouse, in accordance with prevailing legislation. According to the Law, men and women equally have the right to marry without any discrimination. This is reaffirmed in 5 sub paragraph (a) of Law No. 52 of 2009 on Population Growth and Family Development that every resident has the right to found a family and bear children through a legitimate marriage. It is also stated that to be legally married the minimum age for men is 19 years old and for women is 16 years.

33. In relation to the protection of women from violence, sexual harassment, exploitation, and trafficking in persons, Indonesia has enacted Law No. 23 of 2004 on the Elimination of Domestic Violence to provide protection to women and children from violence in the domestic domain. In addition, Law No. 44 of 2008 on Pornography, and Law No. 21 of 2007 on Combating of the Criminal Act of Trafficking in Persons, are also used as the legal basis to prevent and combat such crime.

34. In connection with the issue of women's freedom of movement, there is no prohibition for women to move, according to Law No. 23 of 2006 on Population Administration, or to migrate abroad, in accordance with Law No. 6 of 2011 on Immigration. However, the freedom of movement is not absolute and may be restricted in certain conditions, such as in a state of emergency.

35. Non-discriminatory treatment for foreigners, especially women, is guaranteed in national laws and regulations. Each article of the Law governing non-discrimination always refers to every person, regardless of their citizenship. This equal treatment is regulated by Law No. 12 of 2006 on Citizenship. For instance, a foreign woman married to an Indonesian man is given the privilege right to change her citizenship to become Indonesian. There is also Law No. 6 of 2011 on Immigration, which guarantees equal service provided to women, both foreign and Indonesian.

36. As for the implementation of those provisions, the Government has issued various policies related to gender equality. The President has appointed a Minister of Women Empowerment with initial nomenclature as Junior Minister for Women Affairs since 1978, who is tasked with formulating policies to empower women in various aspects of life.

37. In 2009, the Government established the Ministry of Women Empowerment and Child Protection based on Presidential Regulation No. 47 of 2009. The Ministry is specifically responsible for the implementation of the elimination of all forms of

discrimination against women and enhancement of the role and status of women in Indonesia. Since its establishment, the Ministry has provided regular reports on the progress in implementing the provisions of the Convention on the Elimination of All Forms of Discrimination against Women to the Committee on the Status of Women. The Ministry also serves as a focal point in policy making, facilitating cooperation and initiating mechanisms for the protection of women and girls. The Ministry's establishment is followed by the issuance of Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development.

38. At the policy level, the Government has issued various policies to ensure gender equality and justice in the enjoyment of development achievement to the people, both men and women. The policy was stated in the State Policy Guidelines from 1978 to 2004. In order to implement the Gender Mainstreaming Strategy, the Government strengthened the sustainable gender responsive policies, in line with the application of the principles of good governance and sustainable development as emphasized and stipulated in Mid-Term National Development Planning for the period 2004-2009 and 2010-2014.

39. In order to optimize the achievements in eliminating discrimination and violence against women and enhancing women's role and status in Indonesia, various Government institutions in central and regional levels have carried out programs both independently and in an integrated manner. In line with the targets of the Millennium Development Goals, efforts to empower women are conducted by the issuance of a policy on Gender Responsive Budget (GRB), which is integrated into the planning of government budgeting. GRB promotes equality for women and men in gaining access, benefits, and participation in decision-making and control over resources as well as equality of opportunity in selecting and enjoying the outcomes of development. The GRB is formulated by utilizing gender analysis in preparing the Terms of Reference (ToR), considering the issues of gender disparity and possible improvements in Gender Budget, and preparing Gender Budget Statement (GBS) according to the Ministry of Finance Regulation No. 104 of 2010 on Guidelines for Establishment and Review of Budgeting Planning for Ministries/Institutions 2011.

40. Efforts in women's empowerment in politics have shown some positive developments. In the legislative body, the Government provided opportunities to women to become members in the legislative body by giving a 30% quota through Temporary Special Measures. In the 2004 Election, 11% of 560 members of parliament were women and in the 2009 Election the figure increased to 17 %.<sup>3</sup> Moreover, a Women's Parliamentary Caucus has been established to actively collaborate with the Government and civil society to promote the formulation of pro-women Law. At the executive level, women have held many positions such as president, governor, minister, high-ranking official, regent/vice regent, mayor/vice mayor, regional police chief, and district/municipality police chief. The overall percentage of men and women in public service is almost equal: 56% of men and nearly 44% of women.<sup>4</sup> At the informal level, there are a lot of women who are actively involved in organizations and non-governmental organization in the public and political fields.

41. In term of protecting women from violence, according to Law No. 23 of 2004 on the Elimination of Domestic Violence, the Government has established an Integrated Services Center for Women and Children Empowerment in each province of several districts and municipalities in Indonesia, with a total of 121 service centers now in operation. Relating to that, the Indonesian Police has issued the Indonesian Police Chief Regulation No. 10 of

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<sup>3</sup> According to data provided by the Ministry of Home Affairs

<sup>4</sup> According to data provided by the Ministry of Home Affairs

2007 on Organization and Working Procedure of Women and Children Service Unit in the Police Force, in the interest of those who are the victims of crime; the Indonesian Police Chief Regulation No. 3 of 2008 on the Establishment of Special Service Room, for women and children as victims of crime (including human rights violations); and the Procedures of Inspection for Witnesses and/or Victims of Crime. The service is now available in every regional police in 31 provinces and around 500 Police in local levels across Indonesia. In August 2010, the Standard Minimum Service on Division of Integrated Services for Women and Children as Victims of Violence, which includes trafficking in persons issues, was launched. As an example of the implementation of the Standard Minimum Service, each district/municipalities is obliged to have at least two community health care centers particularly designed to prevent and respond to violence against women and children.

42. The Integrated Services Center for Women and Children Empowerment (P2TP2A), and the Special Service of Police helped in handling 143,586 abuse cases in 2009. According to P2TP2A and Police records, during 2009, 534 domestic violence cases were addressed in 13 provinces in Indonesia (West Nusa Tenggara, East Nusa Tenggara, Bali, Southeast Sulawesi, Gorontalo, North Maluku, East Kalimantan, South Kalimantan, Central Kalimantan, Yogyakarta, Lampung, and Jambi). The highest number of cases, 235, was in Southeast Sulawesi; while the lowest, two cases each, were in North Maluku and Jambi.

43. In the protection for women against trafficking in persons, according to Law No. 21 of 2007 on Combating of Criminal Act of Trafficking in Persons, it is further specified in Government Regulation No. 9 of 2008 which basically regulates the procedures and mechanisms for integrated services in addressing the victims of trafficking in persons. For that purpose, Presidential Regulation No. 69 of 2008 was enacted to regulate the Task Force on the Prevention and Settlement of Criminal Act of Trafficking in Persons. The consideration to establish the Task Force is that the settlement of crimes of trafficking in persons requires cooperation from various parties, as they are related not only to the crime itself, but also to other fundamental matters, such as poverty, education, human rights issues and gender equality.

44. In the fulfillment of the rights of an individual who is deprived of liberty, the Government has implemented various policies which protect women detainees against discrimination during detention. The Government currently has nine correctional facilities for women and a special facility for girls. When women are imprisoned in a regular correctional facility, they will be placed separately from the men. The Government has also assigned female officers to perform inspection of women prisoners. According to Rule 37 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) and Independence Treatment Policy, the Government gives men and women prisoners equal access to vocational education and family visits. In relation to reproduction function and gender roles, the Government provides special treatment to women prisoners who are pregnant, and in labor, breastfeeding, parenting and caring for their children in the correctional facility.

45. Related to the fulfillment of women's access to justice, particularly concerning access to fair trial and legal assistance, the Government provides legal assistance and information on legal affairs through the District Courts throughout Indonesia. This program was led by the Supreme Court for the period of 2004-2010 through Services Program and Legal Aid. During 2010-2014, the program is being implemented through the General Court Management Improvement Program, which is not focused on women as well as the poor. As for legal assistance, the Supreme Court (namely the Religious Court through Religious Court Management Improvement program) has been working with the group of Women as the Heads of Household (Perempuan Kepala Keluarga/PEKKA) by giving legal assistance to women, especially women in poverty, in providing marriage records needed for divorce processes and implementing mobile court (sidang keliling) in order to bring

legal services closer to the community. In addition, according to the National Strategy on Access to Justice, which was launched in 2009, there are eight areas of strategic plan, one of which is the plan of action to expand women's access to justice and eliminate all forms of violence against women.

46. The Government has also taken various measures and efforts to ensure the fulfillment of women's right to life, particularly in accordance with protection to maternity and infants. The most effective measure to reduce the Maternal Mortality Rate (MMR) taken by the Government is through increasing the number of assisted deliveries by skilled health personnel in health facilities and improving antenatal care (ANC). Both measures have helped to reduce maternal mortality in Indonesia. The maternal mortality rate was 390 per 100,000 in 1991 which dropped to 228 per 100,000 in 2007 (IDHS).<sup>5</sup> In addition, Mother's and Reproduction Health is regulated in Law No. 36 of 2009 in Article 71 to Article 77 and Article 126. As the follow-up to this Law, the Ministry of Health has prepared a draft of Government Regulation on Mother's and Reproduction Health Service.

47. Meanwhile, the Government's measures to reduce child, infant, and neonatal mortality in Indonesia are carried out through providing immunization. This effort had helped in reducing child mortality from 97 in 1991 to 44 per 1,000 live births in 2007 (IDHS).<sup>6</sup> Similarly, the infant mortality rate decreased from 68 to 34 per 1,000 live births in the same period. The neonatal mortality rate has also declined, albeit relatively slowly, from 32 to 19 deaths per 1,000 survivors.

48. In the field of education, efforts in women empowerment are being undertaken through a gender mainstreaming program (PUG), which integrates gender issues into the process of planning, implementation, monitoring and evaluation of policies, programs and national development activities. In 2008, the PUG in education was conducted in 32 provinces, except for West Papua, and in 33 provinces in 2009. Following the implementation of the PUG program in education, one of the achievements was the increase in female participation rates for elementary schools (SD) level that reached 13,018,152, secondary school (SMP) level at 4,428,568, and high school (SMA) level at 2,037,957.<sup>7</sup>

49. Meanwhile, in the health sector, the Ministry of Health of the Republic of Indonesia has followed up by issuing a joint agreement with the State Minister of Women Empowerment and Child Protection to implement gender mainstreaming in the health sector through Letter of Joint Agreement No. 07/MEN.PP&PA/5/2010 and No. 593/MENKES/SKB/V/2010 on 12 May 2010.

50. At the local level, efforts to ensure equality between men and women in the fulfillment of their rights are pursued through the establishment of a special government institution that handles issues of equality for women's rights at the provincial and district/municipality level. Such government institution was initially called the Regional Bureau of Women Empowerment and was subsequently integrated into the organizational structure of local government, in accordance with Government Regulation No. 41 of 2007 on the Organization of Regional Bodies. In addition, the equal rights of women and men at the regional level are also regulated by the Minister of Home Affairs Regulation No. 15 of 2008 on General Guidelines for the Implementation of Gender Mainstreaming in the Region. A number of local governments have formulated and implemented local laws that guarantee gender equality, such as Banten Province's Regulation No. 10 of 2005 on Gender Mainstreaming in Regional Development, Banten Governor Regulation No. 39 of 2006 on

<sup>5</sup> According to Indonesia Demographic and Health Survey

<sup>6</sup> According to Indonesia Demographic and Health Survey

<sup>7</sup> According to data provided by the State Ministry of Women Empowerment and Child Protection

Guidelines for the Regional Action Plan for Gender Mainstreaming and Lampung Governor Instruction No. INST/02/B.VIII/HK/2002 on Gender Mainstreaming.

51. In order to encourage women's empowerment in the fulfillment of the rights contained in the Covenant and the protection of women against violence, the Government continues to disseminate the importance of gender equality and the protection of women against violence – through dialogue with religious leaders and communities; the enforcement of policies for political parties to conduct political education to women constituents; and access to related information, including legal counseling regarding non-discriminatory and gender equality principles. The Ministries/Institutions concerned have also provided education on human rights for law enforcement officials to prevent discrimination and violence against women. The Ministry of Law and Human Rights has scheduled activities at the national dissemination of human rights in the National Action Plan on Human Rights (RANHAM).

## **Article 4**

### **States of emergency**

52. The 1945 Constitution Article 12 states that “the President may declare a state of emergency”. The terms and the consequences of emergency conditions are stipulated by law. In accordance with Article 11 of the Constitution, in the case of a state of emergency resulting in war or threat of war, a statement of war will be declared by the President with the Parliament's approval.

53. The Government has regulated the limitations of rights in the state of emergency through the Regulation in lieu of Law No. 23 of 1959 on Amendment of Law No. 74 of 1957 and the Declaration of the State of Emergency.

54. Article 1 Paragraph 1 of Regulation in lieu of Law No. 23 of 1959 states that the President/Commander-in-Chief of the Armed Forces shall declare that all or a part of the Republic of Indonesian territory to be in a state of emergency with the levels of civil emergency or military emergency or a state of war, when:

(a) The security or law and order all over the territory or in a part of the territory of the Republic of Indonesia are threatened by rebellion, disturbances or the effects of natural disaster so that they cannot be overcome in a normal way by the existing apparatus;

(b) A war or cloud of war arises due to the territory of the Republic of Indonesia being violated in any manner whatsoever;

(c) The security and the existence of the State are in danger or there are substantiated reasons to believe, or under specific circumstances it can be established that there is a situation leading to the emergence of threat to the security and existence of the State.

55. Articles 3, 4, 5, and 6 of Regulation in lieu of Law No. 23 of 1959 set the supreme control of a state of emergency, including civil emergency, military emergency and the state of war. The supreme control in a state of emergency shall be carried out by the President/Commander-in-Chief of the Armed Forces as the central civil emergency authority/central military emergency authority/central war authority. Meanwhile, in the regions, civil emergency control shall be exercised by the regional head of (a rank) not lower than the second level region as regional civil emergency authority. As for the state of military emergency, the highest control shall be performed by the highest military commander, of (a rank) not lower than the Army Regiment Unit Commander or Navy/Air Force Unit Commander equivalent to the Regional Military Emergency Authority.

56. As provided in Regulation in lieu of Law No. 23 of 1959, the limitation of rights by the State in a state of civil emergency and military emergency is permitted, but shall be limited and regulated by the legislations to prevent the misuse of authority which may harm the society. The authority in the limitation and derogation of the rights are entitled to the civil/military emergency authority.

57. However, the limitation of rights in a state of emergency does not include non-derogable rights. This is as stipulated in the 1945 Constitution and Law No. 39 Year 1999 on Human Rights which set the rights whose fulfillment shall not be derogated under any circumstances. In particular, Article 28I paragraph (1) of the 1945 Constitution and Article 4 of Law No. 39 of 1999 regulates that the right to life, the right to be free from torture, the right to freedom of thought and conscience, the right to be free from slavery, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively, are human rights that cannot be diminished under any circumstances whatsoever.

58. The limitation of rights in a state of emergency, as provided for in Regulation in lieu of Law No. 23 of 1959, is set by the authorities in accordance with the level of emergency, which consists of civil emergency, military emergency, and war. The limitation of rights in civil emergencies provided for in Article 13-20 Regulation in lieu of Law No. 23 of 1959, are as follows:

(a) The right to freedom of opinion, including the right to seek, obtain and impart information and opinion;

(b) The right to freedom from intervention of privacy, family and communications (correspondence);

(c) The freedom of assembly and association;

(d) The freedom of movement and to migrate.

59. The limitation of rights under military emergency under Article 24-30 Regulation in lieu of Law No. 23 of 1959, including the following:

(a) The right to freedom of opinion, including the right to seek, obtain and disseminate information and opinion;

(b) The right to freedom of assembly;

(c) The right to freedom of choice of residence;

(d) The right to freedom of movement and to migrate;

(e) The right to liberty and personal security.

60. The limitation of rights in a state of war under Article 37-45 Regulation in lieu of Law No. 23 of 1959, including the following:

(a) The right not to be interfered with (intervention) individual freedom, family, and communications (correspondence), as well as the ownership of goods;

(b) The right to freedom of opinion, including the right to seek, obtain and disseminate information and opinion;

(c) The right not to perform compulsory labor;

(d) The right to freedom of movement and to migrate.

61. In relation to the state of war, Indonesia ensures the protection of the non-discrimination principle in a state of emergency/war with reference to the principles contained in the Geneva Conventions on international humanitarian law; inter alia, a clear

distinction between combatants and non-combatants and the protection of civil defense, cultural objects, critical infrastructure and power plants. In addition, the non-discrimination principle is also applied by the Government in the use of weapons; inter alia through the ratification of the prohibition of the use of landmines through Law No. 20 of 2006 on the Ratification of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Landmines and on Their Destruction.

62. In addition, in a state of emergency, Indonesia is committed to implementing the provisions of the protection of human rights contained in various human rights instruments and international humanitarian law which have been ratified. In this regard, Indonesia has ratified all the conventions on humanitarian law through Law No. 59 of 1958. One of the international obligations set out in the Convention which is applicable in a state of emergency is the granting of access to a neutral State within the territory of war (notice to airmen and notice to mariners). Furthermore, the law also contained therein the obligation to grant the International Committee of the Red Cross (ICRC) access to the territories of armed conflicts.

63. In addition, Indonesia also commits to not exercising torture and other cruel, inhuman, or degrading treatment in any state of emergency, including civil emergency, military emergency, a state of war or threat of war, or other emergency situation. This is as stipulated in Regulation of Commander of the National Military No. Perpang/73/IX/2010 dated 27 September 2010 regarding the prohibition of torture and other cruel, inhuman, or degrading treatment in the enforcement of law within the National Military, as the embodiment of the international obligations of Indonesia under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

64. Following the ratification of the International Covenant on Civil and Political Rights in 2006, Indonesia has yet to apply a state of emergency. Previously, Indonesia had imposed Civil Emergency in Aceh in 2004 through Presidential Instruction No. 1 of 2004 on the Implementation of Integrated Operations in the State of Emergency with the Level of Civil Emergency and Presidential Decree No. 43 of 2004 on the Statement of Changes in Status of State of Emergency with the Level of Civil Emergency in the Province of Nanggroe Aceh Darussalam. The state of civil emergency in Aceh has been revoked through Presidential Regulation No. 38 of 2005 on the Abolition of the State of Emergency with the Level of Civil Emergency in the Province of Nanggroe Aceh Darussalam.

65. The rights that are limited during the application of a state of emergency will be immediately restored once the emergency status is revoked by the Government. Should there be any rights derogated, the Government may provide remedies following the end of the conflict as governed by the provisions applied. An example of the recovery of rights in the post-conflict situation is as stipulated in Article 3 of the Helsinki Memorandum of Understanding on the granting of amnesty and restitution for former members of the Free Aceh Movement (GAM) by the President. Article 3 Paragraph 1 states that the Government of Indonesia grants amnesty to all persons who have participated in GAM activities as soon as possible and not later than within 15 days of the signature of the Memorandum of Understanding. Whereas in Article 3 Paragraph 2, as citizens of the Republic of Indonesia, all persons having been granted amnesty or released from prison or detention will have all political, economic and social rights, as well as the right to participate freely in the political process, both in Aceh and on the national level, including the rights to seek employment in the police and military forces units in Aceh. In addition, the Government will also take measures to assist persons who have participated in GAM activities to facilitate their reintegration into the civil society, including economic facilitation of former combatants, pardoned political prisoners and affected civilians through the Reintegration Fund. This fund is used, inter alia, for agricultural land opening assistance, employment, and social security.

## Article 5

### Non-derogable nature of fundamental rights

66. As already mentioned in paragraphs 54-67, the 1945 Constitution and Law No. 39 of 1999 on Human Rights guarantee the fulfillment of non-derogable rights under any circumstances. However, limitations of other rights are permitted under Article 4 of the Covenant. The 1945 Constitution Article 28J (2) states that in exercising his/her rights and freedoms, every person shall abide by the limitations established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

67. Law No. 39 of 1999 Article 73 also states that the rights and freedoms stipulated in this law can only be limited by and based on law, for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others, morality, public order, and national interest. In accordance with the explanation of Article 73, limitations referred to in the article are not applicable to the non-derogable rights by taking into account Article 4 and Article 9.

68. In its implementation, limitations to the rights other than non-derogable rights are set with strict requirements regulated by law. Some examples of limitations are as follows:

(a) Article 10 paragraph (1) of Law No. 9 of 1998 on Freedom of Expression in Public states that the expression of opinions in public and as referred in Article 9 (including rally or demonstration) must be notified in writing and be submitted to the Police no later than 3 x 24 hours prior to the event. Article 15 of the Law states that the act of expressing public opinion could be dismissed if it failed to meet the provisions aforementioned;

(b) Law No. 12 of 1995 on Correctional Institutions states that the treatment of prisoners adheres to certain requirements, including the use of isolation rooms and handcuffs. Police Standard Operating Procedure (SOP) also strictly requires such treatment;

(c) Limitations on the implementation of the right of assembly and association are stipulated in Law No. 8 of 1985 on Civil Society Organizations (CSOs) which states that the Government can dismiss/suspend CSOs and their executive boards if they conduct activities that may disrupt public security and order, receive funding from foreign countries without the consent of the Government, and provide assistance to a foreign party which is harmful to the interests of Indonesia. However, it should be noted that there have not been any CSOs disbanded by State court decision;

(d) Limitations are also regulated in the Law on Combating Criminal Acts of Terrorism. Article 28 of the Law regulates that the arrest of persons involved in terrorism can be conducted up to 7 x 24 hours. Meanwhile, Article 25 states that a person can be detained for a maximum period of six months. Furthermore, closed investigation to the suspect without any legal assistance can be conducted no later than three days. Wiretaps planted on communication devices to people suspected of criminal act of terrorism can also be conducted. In order to ensure the implementation of the tasks of law enforcement officers does not violate the rights stipulated in the Covenant, the establishment of initial evidence as the basis for the arrest and investigation shall go through the examination process by the Head or the Deputy Head of the District Court;

(e) Limitations on the freedom to receive and impart information are stipulated by Law No. 14 of 2008 on Public Information. Article 6 Paragraph 3 and Article 17 of the Law specify the types of information that are not accessible freely by the public. Law No. 40 of 1999 on the Press also states the prohibition of the substance of published

advertisements. Law No. 32 of 2002 on Broadcasting also states the prohibition of broadcast content (Article 36 Paragraph 5). In addition, the Government also has the authority to monitor and prohibit the contents of printed materials by Law No. 4/PNPS/1963.

69. If violations of the law have occurred in exercising the limitation of the rights, the Government guarantees the rights of persons/parties to file complaints to the competent institutions, as well as requesting protection and remedy. For example, in the limitations of freedom of the press, publication license may be revoked if the press has published misleading/incorrect information. Furthermore, in accordance with Law No. 10 of 2008 on the Election of Members of Parliament, the press can apply for a judicial review if there is a violation in the revocation of publication license.

## **Article 6**

### **Right to life**

70. Indonesia views the right to life as a fundamental right. The 1945 Constitution, Article 28A, states that everyone has the right to life and the right to survival and existence. Law No. 39 of 1999 on Human Rights, Article 9, also states that every person has the right to life, survival and improvement of his/her living standard; every person has the right to life with peace, security, happiness, and prosperity; and every person has the right to a decent and healthy environment.

71. Indonesia also recognizes the right to life as non-derogable rights. The 1945 Constitution and Law No. 39 of 1999 on Human Rights determine that the right to life cannot be derogated under any circumstances. Article 28I paragraph (1) of the 1945 Constitution and Article 4 of Law No. 39 of 1999 state that the right to life, the right to freedom from torture, the right to personal freedom, freedom of thought and conscience, the right to freedom of religion, the right to freedom from slavery, the right to recognition as a person and equality before the law, and the right to freedom from prosecution based on the law that applies retroactively are human rights that should not derogate from one under any circumstances, and by anyone.

72. In Indonesia, respect for the right to life is granted even before one's birth. The right is guaranteed by Law No. 39 of 1999 on Human Rights, Article 53, which states that every child has the right to life since inside the womb, the right to survival and to improvement of living standards. This is a very important provision since not only does Indonesia recognize the right to life, but also recognizes the beginning of life in the womb.

73. The guarantee of the right to life in the Indonesian Constitution has been the basis of the enactment of various legislations and policies relating to the protection of the life of Indonesian citizens, including the legislation on war, the prohibition of nuclear weapons, the prohibition of chemical weapons, as well as the death penalty.

74. The death penalty in Indonesia is regulated by Presidential Act (Penpres) No. 2/PNPS/1964 on Proceeding of Death Penalty, which states, inter alia, that the execution should be carried out by shooting. Regulations on the use of the death penalty as maximum penalty for certain crimes are set forth in various provisions in the Penal Code.

75. In addition to the Penal Code, there are several laws and regulations that impose the death penalty as a maximum sentence such as the Law on Narcotics, the Law on Psychotropic Substances, the Law on Eradication of Terrorism, and the Law on Criminal Acts of Corruption, in particular in Article 2 paragraph (2). Under the said Laws, the death penalty only applies to certain grave crimes, such as drug trafficking, murder, corruption and terrorism.

76. In the implementation, the existence of the death penalty, apart from its purpose of preventing crime, is also as a manifestation of retributive justice. However, the application of the death penalty in Indonesia is selective only to crimes damaging the young generation, or causing the death of a large number of people. The death penalty is only applied as the last resort, and carried out after the case has permanent legal force. In this regard, the chances are open for a prisoner on death row to use all of his/her rights, both through ordinary and extraordinary legal efforts, to request for waiver of the penalty. Such efforts are judicial review and clemency, as the last resort for the convicted. In the judicial review process, the Supreme Court shall consider the juridical, sociological and political elements of the death penalty case, which may increase the possibility of the granting of the waiver.

77. The issue of the death penalty, as part of the Indonesian Penal System, has been the subject of robust debates among various groups in the community. There have been pros and cons mirroring the discussion in the international fora. The issue had been submitted to judicial review by the Constitutional Court. Indeed, in 2007 the Constitutional Court conducted a constitutional review of Law No. 22 of 1997 on Narcotics against the 1945 Constitution Articles 28A and 28I paragraph (1). Through its decision No. 2-3/PUU-V/2007, the Constitutional Court decided that the Law, particularly on the provision of the death penalty, is not contradictory to Articles 28A and 28I paragraph (1) of the 1945 Constitution. The main reasons on which the Court based its decision are that in the application of capital punishment, justice to be delivered on the basis of law must be considered from various perspectives, such as the merit of the punishment itself, types of crimes subject to capital punishment, and the perspective of victims and their families. However, the Law has been replaced by Law No. 35 of 2009 on Narcotics and it still preserves provisions on the death penalty.

78. Persons on death row are entitled to seek remission, clemency, abolition, and amnesty, from the President. Article 14 of the 1945 Constitution states that the President may grant clemency and rehabilitation, by taking into account the consideration of the Supreme Court. Meanwhile, the President may grant amnesty and abolition by taking into account the consideration of the Parliament. Provision for granting remissions is stipulated in Presidential Decree No. 174 of 1999 and Government Regulation No. 28 of 2006 on the amendments to Government Regulation No. 32 of 1999 on the terms and procedure of the implementation of correctional inmate rights. Provision of the granting of clemency is regulated in Law No. 22 of 2002 on Clemency.

79. As of January 2011, there were 118 persons on death row all over Indonesia. Among them, five persons have been granted clemency, of which four will serve lifetime sentences and one will serve twelve years in prison. Of the 113 remaining, none has been executed as the legal efforts have not completed, while three of them passed away prior to the execution.

80. All persons sentenced to the death penalty in Indonesia are adults. This is in line with Law No. 39 of 1999 on Human Rights, Article 66, Paragraph 2, which states that death penalty or life imprisonment should not be enforced for children in conflict with the law. In conclusion, even though the death penalty is still being implemented in Indonesia, it is limited by various safeguards based on the right to life as guaranteed by the Constitution. For example, the death penalty shall not apply to children and pregnant women, and shall only apply to the most serious crimes and only as the last resort.

81. The right to life also underlies various prevention measures to the removal of one's life, such as enforced disappearance, genocide, war, and the use of weapons of mass destruction. The commitment of Indonesia to guarantee the right to life is shown by the signing of the International Convention on the Protection of All Persons from Enforced Disappearance on 27 September 2010 in New York. By signing the Convention, Indonesia shows its positive attitude and commitment to guarantee the protection of one's

right to life. Once the Convention is ratified, it will be harmonized into national legislation in order to strengthen the legal basis at national level to protect people from enforced disappearance.

82. Indonesia has also set out provisions to prohibit the act of genocide in Articles 7 and 8 of Law No. 26 of 2000 on the Human Rights Court. The Law states that genocide is a serious crime against humanity. Furthermore, the Law also explains that the principle of retroactivity can be applied to such crime.

83. Indonesia has enacted various legislation on the prevention of war based on the principles of the right to life, namely: the 1945 Constitution Article 11 Paragraph 1 and Article 12; Law No. 3 of 2002 on National Defense; Law No. 23/Prp/1959 on the Determination of a State Hazard (civilian and military emergency in the stages for the prevention of war); and Law No. 34 of 2004 on Armed Forces. Considering that the impact of a war can eliminate one's life, Indonesia views war as the last resort ("ultimum remedium") after peaceful measures to settle disputes fail.

84. With regard to weapons of mass destruction that endanger the life and safety of mankind and may deprive the right to life, Indonesia maintains the principle of upholding the safety of the nation and the country from the danger of nuclear weapons. Indonesia is also committed not to create, try, own or use nuclear weapons.

85. However, Indonesia welcomes the use of nuclear technology for peaceful purposes, inter alia as a source of energy. In this regard, Indonesia has ratified the Convention on the Physical Protection of Nuclear Material by Presidential Decree No. 49 of 1986, and Amendments in 2009 by Presidential Decree No. 46 of 2009 on the ratification of Amendments to the Convention on the Physical Protection of Nuclear Material. Currently, Indonesia supports the United Nations efforts to finalize two conventions on combating terrorism, namely the Comprehensive Convention on International Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism. The commitment of Indonesia has also been demonstrated since the early beginning by the ratification of the Treaty on the Non-Proliferation of Nuclear Weapons on 12 July 1979. In addition, Indonesia has also enacted Law No. 8 of 1978 on the ratification of the Non-Proliferation Treaty of Nuclear Weapons and Law No. 9 of 1997 on the Ratification of the Treaty of Nuclear Weapons Free Zone in Southeast Asia.

86. With regard to the existence of chemical weapons as a kind of weapon of mass destruction, Indonesia has specific legislation on the prohibition of the use of chemicals as weapons as stipulated in Articles 12 to 15 of Law No. 9 of 2008. The prohibition includes the production, transfer to the jurisdiction of Indonesia, as well as transfer to another State without notification to national authorities. However, Indonesia still allows the transfer of chemical substances for research, medical or pharmaceutical purposes.

87. With regard to Indonesia's commitment to ensure the fulfillment of the right to life, the efforts to protect the right are not only carried out at the national level, but also at the regional and international level, in which Indonesia has played an active role in encouraging the creation of global security.

88. At the regional level, Indonesia continues to play an active role in Southeast Asia through the Association of Southeast Asian Nations (ASEAN) to promote an integrated region with a stable, prosperous and peaceful community, which can generate benefits for its member countries. In 1971, Indonesia was one of the pioneers in the establishment of ZOPFAN (Zone of Peace, Freedom and Neutrality) which outlines Southeast Asia as a region of peace, safe, neutral, and free from competition as well as influence of countries outside the region. Indonesia was also one of the prime movers in the creation of the Treaty on the Southeast Asia Nuclear Weapon-Free Zone which has been ratified by Law No. 9 of 1997.

89. At the international level, the Indonesian Government has made various efforts to promote world peace and security. Indonesia has actively contributed to the United Nations Security Council, including by becoming a member in the period of 1 January 2007 to 31 December 2008. Indonesia was also previously elected as a non-permanent member of the Security Council in the period of 1973-1974 and 1995-1996. Furthermore, Indonesia had sent peacekeeping forces to various countries in conflict. Indonesia has participated in 24 United Nations peacekeeping operations (UNPKO) since the United Nations Emergency Forces (UNEF) in Sinai in 1957. Indonesia ranked 17th on Troops/Police contributing Countries, with total personnel of 1,692. As of 31 May 2011, Indonesia has been actively involved in six UNPKO in six countries, namely Congo (MONUSCO, 192 personnel), Liberia (UNMIL, 1 personnel), Sudan (UNMIS, 16 personnel), Darfur (UNAMID, 146 personnel), Lebanon (UNIFIL, 1,434 personnel), and Haiti (MINUSTAH, 10 personnel).<sup>8</sup>

## Article 7

### Freedom from torture or cruel, inhuman or degrading treatment or punishment

90. The 1945 Constitution clearly states that every person in Indonesia has the right to freedom from torture or inhuman treatment. Article 28G part 2 of the 1945 Constitution states that every person has the right to freedom from torture or acts of degrading treatment and deprivation of the right to obtain political asylum in other countries. This legal guarantee is very important since the Constitution is the supreme hierarchy of the Indonesian legal system. Furthermore, Indonesia has also been a Party to the Convention against Torture and Other Forms of Treatment and Cruel Punishment, Inhuman or other Degrading Treatment since 1998

91. For Indonesia, torture, as stipulated in Article 1, Section 4, Law No. 39 of 1999 on Human Rights, is clearly defined as any act committed intentionally, which causes severe pain or suffering, whether physically or mentally, in order to get a confession or information from a person or a third person, punishing him for an act by him or by a third person, or is suspected of having committed or intimidating or forcing a person or a third person for any reason based on any form of discrimination, in which the pain or suffering is practiced by or at the beginning of or with the consent, or known by public officials or other person acting in an official capacity. From the article, it is clear that the definition of torture as interpreted in Indonesia is more extensive and comprehensive, covering acts of torture not only by public officials, but also individuals. This definition is even broader than the definition set forth in the Convention against Torture. Other provisions governing the prohibition of torture are stipulated in Law No. 39 of 1999 in Articles 33, 34, 67, 69, 71, 72, 74, 101, and 104.

92. Indonesia has also issued various legislation to prohibit torture, including Law No. 23 of 2004 on Domestic Violence. In Article 5, the Law on Domestic Violence explicitly states that it is prohibited for anyone to commit domestic violence to persons in their household by means of physical, psychological, sexual violence or negligence. The law explains that physical violence is defined as acts that cause pain, illness, or serious injury, while the definition of psychological violence is an act which results in fear, loss of confidence, loss of ability to act, a sense of helplessness, and/or severe mental suffering for a person.

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<sup>8</sup> Data provided by the United Nations Department of Peacekeeping Operations, downloaded from [www.un.org/en/peacekeeping](http://www.un.org/en/peacekeeping)

93. In providing protection to children from abuse, Indonesia has enacted Law No. 23 of 2002 on Child Protection. Article 13 of the Law states that every child has the right to be protected from being the target of persecution, torture, or the imposition of inhumane punishment.

94. Indonesian legislation also provides special protection for those who are categorized as vulnerable groups. Article 5 (3) of Law No. 39 of 1999 on Human Rights states that any person who is part of a vulnerable group, is entitled to better treatment and protection with regard to specialty.

95. As the implementation to the commitment of Indonesia to the protection of all persons from torture, and as part of bureaucratic reforms within the Indonesian National Military (TNI), TNI has issued Regulation No. Perpang/73/IX/2010 dated 27 September 2010 on Opposition to Torture and Other Cruel Act in the Law Enforcement by TNI.

96. Indonesian Police has enacted Chief of Indonesian Police's Regulation (Perkap) No. 8 of 2009 on the Basic Guidelines of the Implementation of Human Rights Principles and Standards in the Exercise of Police Duties. The regulation has set the provision of human rights enforcement in the exercise of police duties, including measures of investigation and inquiry. The mechanism to supervise inquiry and investigation is set in Perkap No. 12 of 2009 on the Supervision and Control of Handling Criminal Cases by the Police. In addition to Perkap No. 12 of 2009, the Indonesian Police has internal mechanisms to investigate its members suspected of committing an act of torture; from the perspective of professional code of ethics, disciplinary violations and criminal law. In 2009, disciplinary action had been given to five members of the Indonesian police force who had committed torture in investigation. Furthermore the case had been submitted to the Public Court.

97. Provision to prohibit acts of torture by the Civil Service Police Unit is stipulated in Government Regulation No. 32 of 2004 on Civil Service Police Unit. Article 7 of the regulation states that as members of the Civil Police Service, public order officers must uphold the rule of law, human rights and other social norms in society.

98. In the context of the correctional system, there are several technical guidelines that provide guarantees for the protection of every prisoner from inhumane, cruel and degrading treatment, inter alia:

(a). Regulation of the Minister of Justice No. M.04-UM.01.06 1983 on Procedures for Placement of Prisoners and the Discipline of Prisoners in Correctional Facilities;

(b). Instruction of the Minister of Justice No. JC5/30a/10 of 1964 dated 20 July 1964 on the Prohibition of the use of Ball and Chain Shackles to the Prisoners;

(c). Instruction of the Minister of Justice No. JC5/19/18 of 1964 on the Release of Prisoners Detained without Legal Arrest Warrant;

(d). Regulation of the Minister of Justice No. M.04-UM.01.06 of 1983 on Detention and Care of Detainees, and Order of State Detention Center.

99. In addition, there are some regulations that provide special protection to women and children inmates from torture such as:

(a). Law No. 12 of 1995 on Correctional Facilities, which regulates the treatment program for women inmates in Women Correctional Facilities and for juvenile inmates in Juvenile Correctional Facilities;

(b). Minister of Justice Regulation No. M.04-UM.01.06 1983, which sets the rule for body searches on women detainees, which should be performed by women officers;

(c). Government Regulation No. 31 of 1999 on Treatment and Assistance to inmates which regulates the distinction of treatment programs between adults and juveniles in the correctional facilities.

100. Another effort to prevent torture and abuse in Correctional Facilities is the enactment of Standard Operating Procedures on handling inmate complaints in the Correctional Facilities. Furthermore, Indonesia has also established an Ombudsman for Correctional Facilities managed by the Directorate General of Correction of the Ministry of Justice and Human Rights, in collaboration with the Ombudsman of the Republic of Indonesia. The Ombudsman is set to improve the quality of public services to inmates in correctional facilities.

101. Supervision on the possibility of acts of torture at the Correctional Facilities is also done by regulating the conduct and authority of correctional facilities officers, and by establishing sanctions and penalties for the officers who commit torture and abuse detainees/inmates. Sanctions can be enforced in the form of administrative punishments or criminal prosecutions.

102. The fulfillment of the right to freedom from torture is also given to prisoners on death row in the form of execution by shooting, in private and in the simplest manner possible to ensure that the convict would not suffer from the punishment, as stipulated by Presidential Regulation No. 2/PNPS/1964.

103. In line with the principle against torture, in connection with extradition, expatriation, and repatriation, Indonesia adheres to the principle of non-refoulement, either to countries that have already eliminated or still apply the death penalty. Indonesia has always proposed a provision so that an extradition request shall not be granted if there is substantial reason to believe that a person will be subject to torture or cruel inhuman or degrading treatment or punishment in another country. This matter is stipulated in Law No. 1 of 1979 on Extradition. This provision has been incorporated into one of the clauses in Indonesia's extradition treaty with nine countries which stated that extradition cannot be implemented if there is a real threat of torture. This principle is also applied to refugees and asylum seekers who use Indonesia as a place of transit.

104. The regulations mentioned above have ensured the absence of penalties which contain the elements of torture, cruel, degrading and inhuman treatment, especially to inmates or detainees. Nevertheless, there are still a number of challenges in the implementation of these regulations.

105. The main challenge is the fact that the term "torture" is not recognized in the current Penal Code. The code only recognizes the act of maltreatment, which is stipulated in Article 351 with a maximum penalty of 2 years 8 months. In order to accommodate the definition of torture in the Penal Code, currently Indonesia is in the process of revising its Penal Code. The draft of the new Penal Code has incorporated the definition of torture and the punishment for perpetrators of torture, stating that, "Anyone who performs torture will be punished by at least 3 years and maximum 15 years of imprisonment."

106. Another challenge is the absence of regulation governing medical experiments on humans, especially those who are detained or imprisoned. To overcome this matter, the Government has included the regulation on medical experiments in the draft of the new Penal Code, which states that anyone performing torture or other inhuman treatment including biological experiments will be subject to imprisonment of at least 3 (three) years and maximum 15 (fifteen) years. In addition, the Government has enacted Law No. 36 of 2009 on Health, which regulates medical practice in general. The Law provides that any medical experiment shall be carried out with the consent of the subject. In addition, Indonesia has also set a special protection for convicts in connection with medical care in Government Regulation No. 58 of 1999 on the Terms and Procedure of Care for Detainees.

107. Indonesia's commitment to fulfilling the right of a person to freedom from torture is also implemented by various efforts including dissemination of information regarding the prohibition of torture. In this case, Indonesia has conducted socialization, dissemination and distribution of published materials to various groups and law enforcement officials. In addition, the Indonesian National Military and the Indonesian National Police have respectively published a handbook for internal use containing brief information regarding the prohibition of torture. The handbook is mandatory for all police and military personnel as guidance in performing their duties without committing torture and persecution.

## **Article 8**

### **Prohibition of slavery**

108. The 1945 Constitution recognizes that the right to freedom from slavery is a non-derogable right, as stated in Article 28I paragraph (1).

109. The national legal framework governing the prohibition of all forms of slavery and human trafficking is stipulated in Law No. 39 of 1999 on Human Rights. Article 20 of the Law states unequivocally that no one shall be held in slavery or servitude. The Government prohibits all forms of slavery or servitude, slave trade, trafficking of women, and all acts of any similar purpose.

110. In addition, Indonesia has enacted Law No. 19 of 1999 on the Ratification of ILO Convention No. 105 (1957) on the Abolition of Forced Labour. The ratification of the Convention has created a national law that specifically prohibits anyone from performing forced labor, including prison labor, compulsory work, forced labor for labor disciplinary, to punish labor for its involvement in a strike or for the purpose of discrimination on the basis of racial, social, nationality, or religion.

111. Law No. 21 of 2007 regulates anti-slavery provisions and the slave trade, which is categorized as a form of human exploitation in the crime of trafficking in persons. In particular, the criminal provisions in the Law are set out in Chapter II Article 2 to Article 18 with the minimum and maximum penalties.

112. To strengthen the legal foundation for transnational crime involving violence or exploitation of human beings, Indonesia has enacted Law No. 5 of 2009 on the Ratification of the United Nations Convention against Transnational Organized Crime. In addition, Indonesia has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by Law No. 14 of 2009, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime by Law No. 15 of 2009, as an embodiment of the commitment to prevent and combat transnational organized crime, including smuggling of migrants.

113. In order to strengthen the efforts for the prevention, treatment, and settlement of trafficking cases, Indonesia has completed relevant legislation on trafficking in persons by enacting Law No. 21 of 2007 on Combating Criminal Act of Trafficking in Persons. The Law, in addition to governing protection for trafficking victims, governs the fulfillment of the victim's right to justice. The Law regulates a number of sanctions, both administrative (for corporate perpetrators) and imprisonment and fines.

114. In addition, the Law also protects children from criminal acts of trafficking in persons as defined in Articles 5 and 6, which regulate the crime of trafficking in persons for the purpose of adoption and internal and external child trafficking. This provision strengthens Article 13 letter b Law No. 23 of 2002 on Child Protection, which provides for protection of children from exploitation, both economically and sexually.

115. In Law No. 21 of 2007, the definition of Trafficking in Persons is adopted from the definition as set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and is adapted to Indonesian legal and political principles. The definition of trafficking in persons is comprehensively formulated in order to be applicable to any activities related either directly or indirectly to trafficking in persons, involving not only individuals but also corporations as legal personalities. Penalties for individual perpetrators consist of imprisonment and fines. The Law applies such penalties for a minimum of 3 years and a maximum of 15 years, as well as the minimum fine of Rp 120,000,000 and maximum of Rp 600,000,000. For trafficking in persons committed by corporations, the investigation, prosecution, and punishment are enforced on the corporation and/or its board of directors. Any corporation proven guilty of involvement in trafficking in persons shall be given a criminal fine 3 times higher than the amount for individuals plus additional penalties, as well as the revocation of business licenses, confiscation of property, removal of legal status, termination of employment, or prohibition from establishing similar businesses.

116. An act of trafficking in persons that causes the victims to suffer from serious injuries, severe mental disorders, or other infectious diseases that endanger their lives, pregnancy, or impair or cause the loss of reproductive function shall be subject to a heavier sentence. If the crime causes death to the victims, the perpetrators can be sentenced with imprisonment for a minimum of 5 years and a maximum of a lifetime imprisonment and a fine of a minimum of Rp 200,000,000 and a maximum of Rp 5,000,000,000. If the crime is carried out by an organized group, the penalty will be enforced one third heavier on each perpetrator.

117. To increase its protection, the Indonesian Government established the Special Task Force to Combat Trafficking in Persons based on Presidential Regulation No. 69 of 2008. In addition, Government Regulation No. 9 of 2008 was enacted to provide integrated procedures and mechanisms for the treatment of witnesses and victims of trafficking in persons.

118. To date, there have been 20 Task Forces established at the provincial levels, and 72 at the district/municipal level. There are seven major concerns of the Task Force, namely: (i) Prevention and Child Participation, (ii) Rehabilitation of Health, (iii) Social Rehabilitation, Repatriation and Reintegration, (iv) Development of the Rule of Law; (v) Law Enforcement, (vi) Commercial Sexual Exploitation of Children, (vii) Coordination and Cooperation. Those tasks are carried out using prevention strategies with activities such as dissemination, advocacy; indictment and mediation service; and empowerment by rehabilitation, reintegration, and reunification.

119. The Government has established various institutions to support the Task Force, such as the Integrated Services Center for Women and Children Unit (P2TP2A). The agency provides integrated activities and services for victims of trafficking and violence.

120. Another institution which provides services to victims of trafficking in persons is the Ministry of Social Affairs. This Ministry focuses on the recovery of the victim's physical and psychological condition. To date, the Ministry of Social Affairs has established service centers for victims of trafficking in persons, consisting of Trauma Center and Safe Houses (RPTC), Shelters for Women (RPSW), and Shelters for Children (RPSAs). During the period of January - December 2010, there were 306 people (3 of them children) sheltered under RPTC, 50 people (all women) sheltered under RPSW, and 234 people under RPSAs (spread across 10 Shelters in Baturaden, Makassar, Bandung, Mataram, Tanjung Pinang, Lampung, Batu-Malang, Pontianak, and Ungaran-Semarang). Another agency that deals

with trafficking victims is the Police Hospital. One of the Police Hospitals, namely Sukamto Bhayangkara Hospital, has assisted 105 victims (85 women, 9 men, 9 girls and 2 boys)<sup>9</sup>

121. In addition to government agencies, there is also an independent national commission that handles victims of trafficking, namely the National Commission on Violence against Women (Komnas Perempuan). The Commission is in charge of creating the conditions for the elimination of all forms of violence against women and for the enforcement of women's rights. The Commission has developed a complaint mechanism for women victims of trafficking, called the Reference-Only Complaint Unit (UPR). Not only does this unit provide direct assistance to victims who make complaints, it also identifies their needs and refers them to agencies that can provide further assistance.

122. The Indonesian Government has also established a National Action Plan on the Elimination of Trafficking of Women and Children. The Plan comprises real steps which include medical rehabilitation, social rehabilitation, repatriation and reintegration, development of legal norms and law enforcement for the traffickers. The Plan has become the basis of various regional action plans that have been implemented at the regional level, in accordance with the specificities in that particular area. For example, the Regional Action Plan proclaimed by Sumbawa Regency Decree No. 12 of 2010; Regulation of Lampung Province No. 4 of 2010 on the Prevention of Trafficking; and Regulation of Bali Province No. 10 of 2009 on the Prevention and the Handling of Victims of Trafficking.

123. At the national level, records and reports on trafficking cases have been conducted in 15 provinces and 242 districts/municipals. From March 2005 to June 2010, the number of victims identified and assisted was 3,642 people, consisting of 3,298 female victims (nearly 90%).<sup>10</sup> The Government has also launched a dedicated website ([www.gugustugastrafficking.org](http://www.gugustugastrafficking.org)) which provides information on trafficking cases.

124. Most of the victims come from the following provinces: West Java (22.76%), West Kalimantan (19.33%), East Java (12.34%), Central Java (11.46%), North Sumatera (6.80%), West Nusa Tenggara (6.35%), Lampung (5.06%), East Nusa Tenggara (4.36%), South Sumatera (1.93%), Banten (2.17%), South Sulawesi (1.61%), and Jakarta (1.61%). Most of them are trafficked abroad (82.55%) to destination countries, especially Malaysia (92.84%), Saudi Arabia (2.13%), Singapore (0.95%), Japan (0.89%), and the rest are scattered in various countries. Most of the victims are only elementary school graduates (29.67%), some elementary school drop-outs (19.97%), while some other victims are junior high school graduates (19.65%). Most of the victims are willing to leave their homeland to seek jobs (88.06%), while the rest leave due to family and personal issues as well as other matters. Most of the parties involved in victims' recruitment are the agent (66.13%), family members (7.15%), friends (6.93%), and neighbors (7.15%). Other causal factors are kidnapping, and elopement. The victims are promised jobs such as domestic workers (56.47%), waitresses (13.47%), shopkeepers (5.78%), factory workers, (5.57%), and babysitters (3.05%). In reality, the victims work as domestic workers (56.36%), forced prostitutes (16.01%); plantation workers (4.55%), factory workers (2.36%), waitresses (2.44%), while others experience exploitation during transit (11.35%).<sup>11</sup>

125. Common forms of exploitations are: excessive working hours (78.71%); freedom of movement totally denied (76.42%); verbal and psychological abuse (73.65 %); total deprivation of wages (70.41%); partial deprivation of wages (15.63%); lack of health care service in the case of illness (56.73%); deprivation of adequate food and water (52.31%);

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<sup>9</sup> According to data provided by the Ministry of Social Affairs

<sup>10</sup> According to data provided by IOM Indonesia, downloaded from [www.gugustugastrafficking.org](http://www.gugustugastrafficking.org)

<sup>11</sup> According to data provided by IOM Indonesia, downloaded from [www.gugustugastrafficking.org](http://www.gugustugastrafficking.org)

poor sanitary state of living place (36.65%); imprisonment (30.41%); forced indoctrination (35.27%); forced mobility adhering to their employer (28.70%); sexual abuse (19.84%); rape (9.41%); freedom of movement partially denied (7.72%); forced use of drugs (5.16%); and forced consumption of alcohol (6.90%). Means of breaking away from trafficking are mostly by escaping themselves (50.87%); police (29.08%); NGOs assistance (2.97%); and other means.<sup>12</sup>

126. Among the reported female victims of trafficking, most suffered from sexually transmitted infections, such as chlamydia (69.50%), trichomoniasis (6.12%), gonorrhea (3.79%), hepatitis B (4.24%), and HIV (1.30%). In addition, they also suffer from psychological impact, in which 82% showed symptoms of depression, 29% of post traumatic stress, 64% of anxiety (including physical signs such as chest pain), and many other symptoms. Only 7% were identified as having no indication of any psychological disorder.<sup>13</sup>

127. The support from the central and regional governments to fight trafficking is implemented by the allocation of special funds to deal with female victims and policies that support special services. Government agencies, such as police and hospitals, independently or in cooperation with other parties, have conducted some capacity building programs, such as the preparation of guidelines for victim services, prevention and treatment guidelines, training, handling of victims of violence, the development of community health centers capable of managing cases of gender-based violence, and training of law enforcement in handling cases of violence. In addition, the Government also conducts capacity-building for the immigration officials at the embarkation and debarkation points, as well as analyzing human rights basis for legislation and memorandums of understanding on labor.

128. In order to complement efforts at the national level, the Indonesian Government, along with the Government of Australia, initiated the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in 2002. This process is the only process in the Asia-Pacific region handling the problem of human smuggling by involving the countries of origin, transit, and destination all together. Since its establishment, the Bali Process has conducted 3 (three) meetings of the Bali Process Regional Ministerial Conference. Since the third Conference, the Bali Process has begun to move towards practical and concrete action. This can be seen from a number of action items agreed, such as the establishment of networks of immigration officials at major airports in the Asia Pacific region (Regional Immigration Liaison Officer Network)/RILON; the improvement of the integrity of visa services; and increasing cooperation to address the problem of people smuggling by sea. In addition, the Bali Process Ad Hoc Group meeting has also established several principles that need to be put forward in an effort to strengthen cooperation among countries of origin, transit, and destination. The principles are shared responsibility and a consistent approach to protection, resettlement, and repatriation, including the need to criminalize people smuggling and trafficking in persons consistently among countries in the region.

## **Article 9**

### **Liberty and security of person**

129. Indonesia upholds the right to personal liberty and the rights to recognition as a person, and provides protection for every person from arbitrary arrest and detention. This

<sup>12</sup> According to data provided by IOM Indonesia, downloaded from [www.gugustugastrafficking.org](http://www.gugustugastrafficking.org)

<sup>13</sup> According to data provided by IOM Indonesia, downloaded from [www.gugustugastrafficking.org](http://www.gugustugastrafficking.org)

principle applies in every case, including cases of arrest and detention of persons with mental illness, homeless people, and people with drug dependence, as well as cases of detention for the purpose of education or immigration control.

130. The 1945 Constitution guarantees the rights to individual privacy and security as well as protection against threats, as stipulated in Article 28G Paragraph (1) of the Constitution, which states that every person has a right to the protection of their personal and household privacy, honor, dignity and private ownership, and is entitled to the security and protection from any threats that refrains them from doing or not doing any action considered as their human rights.

131. The right to personal liberty and the right to recognition as a person and equality before the law is stipulated in Article 4 of Law No. 39 of 1999 on Human Rights, which states, inter alia, that the right to recognition as a person and equality before the law, as well as the right to freedom from retroactive prosecution are non-derogable rights under any circumstances and by anyone. This guarantee is reaffirmed in Article 34 of Law no. 39 of 1999, which states that every person shall not be arrested, detained, tortured, ostracized, exiled, or displaced arbitrarily.

132. However, in criminal cases, criminal proceedings against a person (including arrest and detention) allow the reduction of a person's rights in accordance with the applicable legislation. In certain criminal cases or other conditions which involve people who experience mental illness, vagrancy or drug addiction, or for educational purposes, immigration control and mechanism of the judicial process, including arrest or detention, may be carried out or dismissed on the basis of applicable legislation. In cases involving people with mental disorder, if in the judicial process the defendant is found to be suffering from a mental disorder, the judicial process cannot continue and the defendant will be automatically admitted to an asylum. This is in accordance with Article 44 paragraph 2 of the Penal Code, which states that if the alleged acts are found unable to be held against the defendant because of his/her mental disorder or illness, the judge may order the admission of the defendant to an asylum for up to one year as a probationary measure.

133. In criminal cases involving people with drug addiction, in accordance with Law No. 35 of 2009 on Narcotics, arrest by the authority shall be carried out no later than 3 x 24 hours after investigators receive an arrest warrant. Detention of suspects following such arrest can be for a maximum of 3 x 24 hours. Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation, but are not regarded as crime suspects or offenders.

134. Law No. 6 of 2011 on Immigration allows detention practices against foreigners residing in the territory of Indonesia should they be under suspicion of engaging in activities considered to be harmful to Indonesian security and public order, or not respectful of, or obeying Indonesian laws and regulations. Possible immigration measures include restrictions, alteration, or cancellation of visa or resident/stay permit; prohibition of access to one or several areas in Indonesia; requirement to reside in a particular place in Indonesia; and the expulsion or deportation from the territory of Indonesia or banning from the territory of Indonesia. In the process of implementing these immigration measures, it is permitted to incarcerate foreigners in the immigration detention house (Rudenim) to wait for their expulsion or deportation from Indonesia.

135. With regard to the judicial process, including during arrest and detention, Indonesia has fully adhered to article 9 paragraph 3 of the Covenant, which stipulates that anyone arrested or detained on criminal charges shall be promptly brought before a judge or other official authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time, or be released without delay.

136. The mechanism of the justice process, including arrest and detention procedures, is stipulated in Law No. 8 of 1981 on Criminal Proceeding Code. Article 18, Paragraph (1) of the Criminal Proceeding Code states that an arrest by officers of the Indonesian National Police (Polri) is performed by showing a letter of assignment and an arrest warrant that lists the identity of the suspect, the reason for the arrest and a brief description of the crime allegedly committed by the suspect, as well as the crime's locus delicti. Furthermore, Article 21 Paragraph (1) allows the extension of detention of alleged suspects or defendants based on evidence that the suspects may escape from detention, destroy or omit evidence or commit another crime.

137. As stipulated in the Criminal Proceeding Code, the time limit for the detention of a person is clearly defined. Initial detention, if deemed necessary for the purpose of police investigation, can be conducted 24 hours after the arrest. During that period, investigators should issue an arrest warrant which is valid for 20 days, as stipulated in Article 24 paragraph 1 of the Code. If necessary, and after considering the case files, the detention can be extended for a period of 40 days with the approval, and under the supervision of an attorney, or based on the investigators' own initiative. After the first 60 days of the detention, if deemed necessary, subsequent extension can only be requested for a period not exceeding 20 days. This second extension must be authorized by a judge. After the first submission of the case documents to the court, the judge in charge of the case could provide a further detention extension of 30 days. Based on a court decision, an additional 60-day detention period can be proposed to prepare court documents and case investigation.

138. In the event of an appeal, the court may order an extension of the detention for a period of 30 days, followed by, if necessary, another extension for a period of 60 days following the decision of the court of appeal. Should the case goes to the Supreme Court for another appeal, the detention period can be extended for another 50 days by the Agency related to the court (the "Petty Bench"). Another 60 days extension can be given, should the Supreme Court Chief Justice so decide. If a suspect has not been brought before the court after 110 days, they shall be released. The maximum period of detention before trial and any form of judicial decision is 400 days. However, the official who performs the arrest shall notify the suspect of the extension of his/her detention.

139. In cases related to human rights violations, the arrest and detention of a person suspected of a human rights violation is stipulated in Law No. 26 of 2000 on Human Rights Courts. With regard to arrest, Article 11 of the Law states that the Supreme Court is the competent authority and has the right to authorize the arrest of anyone suspected of having committed human rights violations. The arrest should be followed by further investigation to obtain relevant data from previous investigations of this case. It should be noted that the arrest is only valid for 1 day. Article 13 of Law no. 26 of 2000 states that: "(1) detention for the purpose of further investigation can be conducted for a maximum of 90 days. (2) Detention period as specified in paragraph (1) can be extended for a maximum of 90 days by the Chief Justice of the Ad-Hoc Human Rights Court within its jurisdiction. (3) If the investigation as stated in paragraph (2) cannot be resolved, the detention can be extended for 60 days."

140. Through a number of mechanisms, Indonesia ensures that the judicial process is conducted in a timely manner without delay. However, Indonesia also has other measures to reduce the period of detention prior to court proceeding so that anyone who is arrested or detained on criminal charges can be promptly brought before a judge.

141. One of the measures is the implementation of habeas corpus procedures. This procedure is a form of pre-trial hearing stipulated in Articles 77 to 83 of Law no. 8 of 1981 on the Criminal Proceeding Code. The habeas corpus procedures enable a detainee (as well as their family and/or relatives) to file a motion that the arrest, detention, or allegation is against the law. Upon filing the motion, the judge shall, within three days, set up a date to

review the motion and provide his/her decision no later than seven days afterward. The Judge's decision on the motion cannot be appealed. Thus, if the judge declares that the detention is not lawful (or allegations not proven), the detainee shall be released immediately from detention.

142. Article 50 of Law no. 8 of 1981 on Criminal Proceeding Code regulates prompt process in the handling of criminal cases. Paragraph 1 of the article states that the suspects have the right to proper examination by the investigators, and their case subsequently handed over to the prosecutor. Meanwhile, Paragraph 3 of the article states that a suspect has the right to a prompt trial.

143. Another measure is the formation of a new response unit in the police force to react more swiftly to criminal cases. Indonesia National Police Chief Decree No. Pol: JUKNIS/01/11/1982, point 5 b, states that the investigation of any criminal case should be conducted in the shortest time possible.

144. In addition to measures taken to reduce the period of pre-trial detention in order to expedite the court proceedings, Indonesia has also taken measures to reduce the number of pre-trial detentions. This measure is mainly to reduce the number of detentions for public safety reasons. The measure is implemented by the enactment of Law No. 26 of 1999 on the revocation of Law No. 11/PNPS of 1963 on Combating Subversion Activities. Law no. 26 of 1999 confirms that the practice of arbitrary arrest under the pretext of public safety is no longer permitted.

145. In line with efforts of Indonesia to ensure justice in the process of arrest and detention, as stipulated in Law No. 8 of 1981 on Criminal Proceeding Code, a person who is unlawfully arrested, detained, charged or tried is entitled to compensation and rehabilitation from the authority which performs the investigation. In addition, each law enforcement official who willfully violates any law will be prosecuted and punished or subject to administrative sanctions.

146. With regard to compensation, the Criminal Proceeding Code contains articles that regulate the pre-trial processes, with procedures that must be carried out through the criminal proceedings. With regard to rehabilitation in Indonesian criminal proceedings, the defendant will be given a vindication only when he/she is declared free of all charges.

## **Article 10**

### **Treatment of persons deprived of their liberty**

147. Indonesia ensures that a person whose right of liberty is deprived, receives humane and respectable treatment. The assurance of this right is stipulated in a number of Indonesian national legislation and administrative regulations. In principle, Article 28G Paragraph 2 of the 1945 Constitution stipulates that every person has the right to freedom from torture or any degrading treatment.

148. Furthermore, guarantee of the protection of this right is regulated in Law No. 39 of 1999 on Human Rights, which states that all persons, without discrimination, have the right to attain justice and be tried in judicial proceedings that are free and impartial, in accordance with the procedural law that provides for objective investigation by a truthful and fair judge in order to obtain a just and right decision.

149. In Law No. 8 of 1981 on Criminal Proceeding Code, the rights of a person under inquiry and detention are regulated under Chapter IV on suspects and convicts. Specifically, Law No. 8 of 1981 regulates the right to receive compensation and rehabilitation when a person is found not guilty of the crime.

150. In the Criminal Proceeding Code, the legal status of the suspect and convict is regulated in Article 1, which stipulates that a suspect is anyone who, due to his own act or his circumstances, based on sufficient initial evidence, is suspected of a crime. A convict is anyone who has been found guilty of a criminal offense by the decision of a judge in a court of law which has permanent legal force. The treatment for suspects and convicts is further regulated in details in the Criminal Proceeding Code.

151. Articles 45, 46, and 47 of the Penal Code and Article 24 of Law no. 3 of 1997 on Juvenile Proceedings (specifically for convicted juveniles with prison sentences) stipulate that on the basis of concordance of the age limit for a child/juvenile, which is 8-18 years old, the judge is given the authority to decide the sentence by returning the convicted juvenile to his/her parents without any other sentence, or give order to return the convict to the Government without any other sentence until the child reaches 18 years old (with conditions stipulated in Articles 45 and 46), or to be sentenced to two-thirds of the maximum sentence.

152. Indonesia is committed to implementing the standard minimum regulation in juvenile justice as stipulated in the Beijing Rules (1987). The commitment of Indonesia is implemented through the enactment of Law No. 3 of 1997 on Juvenile Court. Furthermore, Indonesia has also released a Joint-Ministerial Decree of the Chief Justice of the Supreme Court, the Attorney General, the National Police Chief, the Minister of Social Affairs, the Minister of Law and Human Rights, and the Minister of Women Empowerment and Child Protection, on Promoting and Protecting the Rights of Children in Conflict With the Law, which in principle applies restorative justice for such children.

153. Article 1 of Law No. 12 of 1995 on Correctional System stipulates that a convict serving a sentence in a correctional facility is called an inmate. In correctional regulation, the separation of detainees and convicts is clearly defined. Detainees are detained in detention centers, whereas convicts are detained in correctional facilities. Detainees are separated from convicts and receive proper and different treatment in accordance with their status as persons who have not been proven guilty of the crime.

154. Juvenile convicts are stated as Juvenile Inmates who are divided into three categories: Juvenile Criminal (Anak Pidana), who are sentenced in Juvenile Correctional Facilities until they reach a maximum of 18 years old; Juvenile Criminal under State's Guardianship (Anak Negara), juveniles who are decided by the court to be returned to the State for education and placement in the Juvenile Correctional Facilities until they reach maximum of 18 years old; and Juvenile under Voluntary Guardianship, juveniles who have received, following the request of their parents or legal guardians, a court's decision to be educated in the Juvenile Correctional Facilities until they reach a maximum of 18 years old. In those correctional facilities, juvenile inmates are separated based on their sex.

155. Protection of the rights of convicts in Indonesia includes a correctional treatment system implemented based on the principles of aegis, equality of treatment and service, education, guidance, and respect for human dignity. Such principles are stipulated in Article 5 of Law No. 12 of 1995.

156. The status of inmates and their treatment is categorized based on age, sex, length of sentence, type of crime, and other criteria based on the needs or development of the correctional system as stipulated in Article 12 of the said Law. Based on such categorization, the treatment of women inmates is carried out in a separated special correctional facility for women.

157. In particular, the rights of inmates that are protected and guaranteed by the State are stipulated in Article 14 of Law No. 12 of 1995, which states that inmates have the rights to practice their religions and/or beliefs; to receive treatment (physically or mentally); to attain education; to receive proper health treatment and nutrition; to lodge a complaint; to receive

reading materials and follow non-forbidden media broadcasts; to receive remuneration for the work performed; to receive family visits, attorney, or other individuals; to obtain remission; to obtain the opportunity of assimilation, including leave for visiting family; to obtain parole; to obtain leave before being released from prison; and to obtain other rights in accordance with the legislation.

158. A number of technical regulations that also regulate the rights of inmates are, *inter alia*:

(a). Decree of the Minister of Justice No. M.03-PK.04.02 of 1991, dated 19 June 1991, on Leave to Visit Family;

(b). Letter of the Deputy Head of Prison Service No. J.H.2.1/10 of 1954, dated 26 February 1954, on the Granting of Dispensations for Families of Inmates from Out of Town;

(c). Letter of the Director General of Correctional No. E.UM.06.06-123 of 1990, dated 26 November 1990, on the Use of Television in Correctional Facilities/Detention Centers/Branch Detention Centers; and

(d). Circular Note of the Head of Prison Service no. J.H.8.5/1/27, 23 April 1954, on the Reading Materials for Inmates.

159. Indonesian Law on Correctional System has adopted the principles set forth by the Standard Minimum Rules for the Treatment of Prisoners (1957), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Code of Conduct for Law Enforcement Officials (1978), and Principles of Medical Ethics relating to the Role of Health Personnel, especially Physicians in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).

160. Furthermore, as the derivative of Law on Correctional System and to ensure the adjustment of correctional processes to the Standard Minimum Rules (SMR) for the Treatment of Prisoners (1957), Indonesia since 2010 has begun to make Standard Operating Procedures (SOP) on Supervision and Control on the Minimum Treatment for Inmates based on SMR 1957. This SOP is expected to become a technical supervision standard for the minimum treatment given by the correctional facilities authorities to inmates and detainees.

161. Legal guarantees are granted to inmates not only in terms of respecting and protecting their rights, but also in terms of providing legal status. Such legal guarantees are implemented by the issuance of technical regulations in the form of Government Regulation No. 31 of 1999 on the Treatment and Guidance for Correctional Inmates, and Government Regulation No. 32 of 1999 on the Terms and Procedure for the Exercise of Rights of Correctional Inmates. With such arrangements, the function of imprisonment, which was originally intended for retribution, is shifted to deterrence, rehabilitation, social rehabilitation, and reintegration as the final objective.

162. In conducting treatment of inmates, Indonesia uses legal and administrative measures. There are special provisions for teaching, education, re-education, vocational education and training assistance for inmates. The implementation of supervision, treatment and guidance in the correctional system is carried out by special functional officers, that is, correctional officers.

163. The correctional process is based on technical rules stipulated in the Circular Note of the Head of the Directorate of Correctional No. KP.10.13/3/1 of 1974 dated 8 February 1974, on Correctional as a Process, and the Decree of the Minister of Justice no. M.02-PK.04.10 of 1990 on Treatment Pattern for Inmates and Detainees. With regard to the

social rehabilitation (after-care program), the implementation of those regulations is further regulated by the Joint Decision of the Director General of Rehabilitation and Social Services of the Ministry of Social Affairs, and the Director General of Correctional of the Ministry of Justice No. 696/RPS/SK/XI/1976 and DDP.4.1.9/120, 7 December 1976, on Cooperation in the Implementation of Advanced Guidance for Former Inmates.

164. In dealing with children in conflict with the Law, Indonesia guarantees the right of children to obtain physical and psychological improvement, as well as social reintegration. The guarantee is primarily provided within the framework of the treatment of children in correctional facilities, which is implemented in an integrated manner with the cooperation of related parties such as social workers, clergies, psychiatrists, psychologists, and educators, with the objective of returning the children concerned to the community as good citizens.

165. Obstacles faced in the treatment of children in juvenile correctional facilities are, inter alia, inadequate correctional facilities as a platform for treatment of children aiming at improving their spiritual and physical recovery, and reintegration into the society; the unavailability of profiles of the young offenders; lack of understanding by community researchers and correctional officers on children's rights and children's issues that often lead to misperceptions of children.

166. To optimize the handling of children in conflict with the law in juvenile correctional facilities, for the next five years, Indonesia will undertake the following measures:

- (a) To develop monthly-updated profiles of all children in juvenile correctional institutions.
- (b) To minimize all forms of the use of security equipment or means which are not in accordance with the principle of the best interest of the child.
- (c) To renovate cells or blocks to be more child-friendly.
- (d) To provide an opportunity for all children in prisons to actualize their creativity to the public through exhibitions, various competitions, etc.
- (e) To enhance children's participation in the development of physical and psychological restoration and family reunification programs.
- (f) To strengthen the networks and partnerships with non-governmental organizations, professional organizations, officials' spouses organizations and business networks.
- (g) To enhance the competence and capacity of social workers and wardens who are guardians in juvenile correctional institutions.

167. In its development, the correctional process has yet to fully meet the expected targets. This is due to the fact that not all prisoners have the opportunity to get the appropriate treatment as a result of the over-crowding in prisons. In addition, the inadequate number of correctional officers is also perceived as one of the causal factors. In several occurrences, the treatment program fails to meet the target because there are no assessment tests of the inmates prior to the program. Therefore, a mapping of the needs of all prisoners is required in the correctional process.

168. Measures undertaken by the Directorate General of Correction in overcoming the obstacles in the correctional process are part of an effort to accelerate the bureaucratic reforms within the Ministry of Law and Human Rights, initiated since 2009, which are as follows:

- (a) Acceleration of attitude and paradigm change of the Community Service Officer (Quick Attitude Change);

(b) Acceleration of the Elimination of Illegal Levy (Quick Eradication of Corruption);

(c) Acceleration of coordination and communication pattern changes with other agencies (Quick Coordination);

(d) Acceleration of Response (Quick Response);

169. In addition, the Supreme Court has established the Supervisory Judge through the District Court assigned to conduct regular monitoring every six months of the treatment by the correctional officers of inmates and also to the behaviour of inmates during their sentence in the correctional facilities, the health of inmates, meals menu and the condition of their cells. The Supreme Court has also published a guideline for judges on the implementation of their technical judiciary related duties so that judges can do their duties in accordance with the rules and regulations.

170. The following statistical data shows the percentage of the available detention rooms from 2005 to 2009. There are approximately 95,908 detention rooms in 443 correctional facilities and detention centers throughout Indonesia. Among the 443 units, there are 223 units of correctional facilities and 200 units of State Detention Houses. There are 9,727 correctional officers in total.

*Statistics: On the Comparison between the Occupancy and Capacity of Detention Rooms During January 2006- August 2010*

Category	Year				
	2006	2007	2008	2009	Up to August 2010
Adult and Young Detainees	47,121	51,949	54,628	56,083	47,617
Juvenile Detainees	1,582	2,360	2,966	2,188	1,932
Inmates	62,189	71,507	75,447	79,023	79,953
Educated Children	1,852	2,179	2,944	3,540	3,750
Total	112,744	127,995	135,985	132,372	133,252
Margin of Detainees Entrance		15,251	7,990	(3,613)	880
Capacity	76,550	86,550	85,599	90,853	95,908
Margin of Detainees Entrance		10,000	2,049	2,254	5,055
Over-capacity		41,445	47,386	41,519	37,344

*Source: Directorate-General of Correctional, Ministry of Law and Human Rights*

## **Article 11**

### **Freedom from imprisonment for breach of contractual obligation**

171. Indonesia provides full protection to the citizens in making contractual agreements. Such protection is provided in Article 1320 of Indonesian Civil Code, Third Book on Contract, which specifically regulates the validity of an agreement.

172. Such protection is also provided to citizens who are unable to fulfil their contractual obligations as stipulated in Article 19 (1) and (2) of Law No. 39 of 1999 on Human Rights, which states that “No offender or criminal shall be threatened with punishment in the form of seizure of part or whole of assets he legally owns” and “No person found guilty by a tribunal shall be imprisoned or incarcerated for being unable to fulfill the obligations of a loan agreement.”

173. Law No. 37 of 2004 on Bankruptcy and Suspension of Obligations of Payment of Debts guarantees protection of any person from detention due to his failure to pay the debts. In the event a person fails to pay their debts, physical detention cannot be applied. However, confiscation of collaterals can be carried out.

174. In principle, dispute settlement to an agreement is carried out by dialogue and based on the principle of win-win solutions, and a peaceful resolution must be sought. If there is a breach of contract or lawsuit in regard to the implementation of an agreement, both non-litigation and litigation settlements can be undertaken. Such dispute settlement is carried out at commercial courts in Jakarta, Medan, Surabaya, Semarang, and Makassar.

175. There are two types of non-litigation dispute settlement processes as regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Alternative Dispute Resolution can be carried out by consultation, negotiation, mediation, conciliation and expert evaluation. On the other side, settlement by arbitration can be performed by an arbitration agreement between the parties. An arbitration decision shall be final and binding on all parties. An arbitration decision attached with the order of the Chief of Justice of the District Court is carried out in accordance with the provision on the implementation of a verdict in a civil case whose decision has a permanent legal force.

176. Nevertheless, Indonesia still applies the “Gijzeling” system (imprisonment for civil debts/civil imprisonment) which has been known since the Dutch colonial era. Gijzeling is a legitimate concept that allows the court to imprison any person who fails to pay debts owed.

177. In practice, this system is rarely applied and the application of this system was once discontinued as set forth in the Supreme Court Circular Letter No. 2 of 1964 and No. 4 of 1975, ordering the chief of justice of the regional court and the judges not to apply the system.

178. However, the Gijzeling system was reactivated by Law No. 19 of 1997 and amended by Law No. 19 of 2000. As the implementation of the said Law, the Supreme Court Regulation No. 1 of 2000 dated 30 June 2000 on Gijzeling Institution was issued to revoke the previous Supreme Court Circular Letter No. 2 of 1964 and No. 4 of 1975 which contradicted the Law. The consideration to reactivate the Gijzeling institution was linked to the needs of law in the framework of law enforcement and court administration, as well as economic development in Indonesia. During the economic crisis of Indonesia in 1998, many businessmen did not have the intention of paying their debts, although they were actually capable of making such payments. Thus, Gijzeling was not applied in the context

of imprisonment for the breach of contractual obligations as referred to in Article 11 of the Covenant.

179. Supreme Court Regulation No. 1 of 2000 restricts the implementation of Gijzeling by taking into consideration the principles of human rights, such as:

(a) The execution of imprisonment for civil debts shall only be carried out against debtors failing their payment obligations in bad faith. It can also be applied to heirs who receive an inheritance. (Article 3(1) and (2))

(b) Gijzeling shall not be carried out without court approval.

(c) Gijzeling shall not be applied to debtors of good faith or whose age is 75 years or more.

(d) Gijzeling shall only be examined if the debtors do not have good intentions and the amount of debt is at least Rp 1,000,000,000 (Article 4)

(e) Gijzeling is valid for six months and may be extended for a maximum of three years.

180. The Government notes that there has been a significant decrease in tax evasion and an increase in State revenue since the reinstatement of the Gijzeling system. The proponents of Gijzeling believe that implementation of these sanctions against individuals pretending to be poor persons in order to avoid the fulfillment of their obligations is not a violation of human rights but a law enforcement mechanism to assure that law and justice will benefit the 230 million people of this nation.

181. The handling of a lawsuit concerning an agreement is performed within the framework of civil law which is regulated in the Civil Code Articles 1230 and 1338. The main challenge in the implementation of the settlement of the lawsuit in civil law involves difficulties in implementing court decisions in the field, for example the incompatibility of the principal loan value with the total assets confiscated.

## **Article 12**

### **Freedom of movement**

182. Basic principle, as enshrined in the 1945 Constitution Article 28E Paragraph 1 and Law No. 9 of 1999 on Human Rights Article 27, provides for the promotion and protection of the right to the liberty of movement and freedom to choose residence.

183. Freedom of migration and movement to and from Indonesia is regulated through Law No. 6 of 2011 on Immigration. The Law replaces Law No. 9 of 1992. Articles 8 to 16 of Law No. 6 of 2011 regulate the inter-state movement of persons as follows:

(a) That, in accordance with the general principle of immigration, every person is required to have a travel document;

(b) That an exit permit granted by the Immigration Officials or other authorized officials is one of the requirements needed for every person when leaving the Indonesian territory. Entry permit is required for any foreign nationals before entering the Indonesian territory;

(c) That, when travelling to and from or through the Indonesian territory, every person has to notify him/herself to the immigration checkpoint for the purpose of permit inspection;

(d) A visa is granted to every foreign national who is eligible and intending to enter or pass through the Indonesian territory, except those whose countries are not required

to have a visa based on the Presidential Decree, who has a re-entry permit, who is captain or skipper and crew on duty in a ship that docks at ports or lands at airports in the Indonesian territory, who is a transit passenger at ports or airports in the Indonesian territory provided that he/she is not leaving the designated transit area, and whoever falls into other criteria set out by the Indonesian Government. A visa is granted provided that the intended journey is based on good intention and will not cause any disturbance to public order and national security;

(e) That normative requirements serve as a basis of the mechanism to grant or reject a person from entering the territory of a State. Those requirements include possession of valid travel documents, visas, health conditions or people with certain diseases, or with mental disorders.

184. Pertaining to residential movement issues, Law No. 23 of 2006 on Population Administration regulates the procedure of migration. The Law stipulates that everyone needs to obtain an official letter from the local population office before moving to another area. This letter will, in turn, be one of the requirements to obtain a new identity card or family card. This provision however does not apply for the purposes of tourism or visiting friends and relatives.

185. Such provisions apply equally to all people who are in the territory of Indonesia, including foreign citizens. Every foreign national must possess an immigration permit. There are four types of such permit, namely: (a) Transit Permit, (b) Visiting Permit, (c) Limited Stay Permit, and (d) Permanent Stay Permit.

186. Transit permit can be granted to foreign nationals who stop over in the Indonesian territory in order to continue their journey to another country. Foreign nationals who conduct short visits to Indonesia, for the purpose of government duties, tourism, socio-cultural or business activity, may be granted a Visit Permit.

187. A Limited Stay Permit is granted to foreign nationals to reside in Indonesia within a certain period of time. A Limited Stay Visa (VITAS), which will be converted into a Limited Stay Permit, may be obtained from Indonesian Embassies/Missions in foreign countries, as stipulated in the Amended Government Regulation 32 of 1994 on Visas, Entry Permits, and Immigration Permits. A foreign national who is granted a Limited Stay Visa (VITAS) can reside in Indonesia within the given period and purpose.

188. Indonesian legislation allows a foreign national who holds a visitor's visa to convert his/her Visit Permit into a permanent residence permit (temporary permit). To do so, he/she must submit an application to the Local Immigration Office where he/she resides in Indonesia. Besides that, under the terms of the extension of Limited Stay Permit, the Head of the Local Immigration Office has the authority to give an extension, up to a maximum of 5 (five) times consecutively.

189. A Permanent Residence Permit is only granted to a foreign passport holder who intends to stay permanently in Indonesia. The holder of the permit can be granted a Re-entry Permit if he/she intends to travel outside Indonesia and return, provided he/she fulfills the requirements. The requirements also apply to the holder of a Limited Stay Permit.

190. Foreign nationals who have been in Indonesia for at least 5 (five) consecutive years starting from the granting of a Limited Stay Permit may apply for a Permanent Resident Permit. This conversion of permit can be granted upon the request of the foreign nationals concerned.

191. The difference relating to the right of liberty of movement and freedom to choose residence between Indonesian citizens and foreign nationals is in the form of documents: whereas, for example, Indonesian citizens are required to have identity cards (KTP), foreign

nationals are required to show travel and immigration documents if necessary in the context of supervision.

192. Such a difference will not affect the protection of foreign nationals, including their right of liberty of movement and freedom to choose a residence. Foreign nationals without valid documentation, such as illegal asylum seekers from Afghanistan, Sri Lanka and some other South Asian countries, are restricted in their travel.

193. The 1945 Constitution affirms the right to leave any country, including his/her own country. The Constitution even guarantees the right of citizens to seek asylum in another State. However, the Government has the obligation to protect all citizens regardless of their residence. In this regard, the Government, in certain cases, issues travel warnings. It should be noted that the Government does not legally prohibit travel, instead it provides advice for the security of its own citizens.

194. Consistent with point 3 of this article, there are certain restrictions on freedom of movement in Indonesia. The restriction of movement takes place in vulnerable areas, protected areas, military installations and other vital installations (electricity, water, and rail). Restrictions may include temporary prohibition of entry, application of certain procedures, and requirements, including to foreign nationals, to enter certain areas due to security conditions. It should be noted that the restrictions do not refer to total prohibition, but to the application of certain procedures and requirements to be followed to ensure the health and security of the people.

195. In addition, there is also a mechanism of banning as a form of restriction of freedom of movement. The application of this mechanism is strictly regulated in Law No. 6 of 2011 on Immigration. Article 13 of the law provides that banning, which is temporary in nature, can only be enforced upon a person based on specific reasons.

196. There should be clear indications and solid evidence before deciding a person is prohibited from entering Indonesia. Those indications and evidence could be in the forms of:

- (a) Being listed in the banning record of the immigration;
- (b) Involvement in the activities of international crime syndicates including drugs or human trafficking;
- (c) Showing, either in his or her own country or other countries, a hostile attitude towards Indonesia;
- (d) Inability to meet administrative requirements related to immigration documents.

197. The mechanism of banning follows the principle of objectivity. In many cases, Indonesian missions abroad are requested to provide as much information as possible about a person who is the subject of banning. Data on the ban is considered confidential. However, it can be assured that Indonesia maintains the rights of Indonesian citizens to return to Indonesia, especially if there is no strong indication of a travel ban. One example is the repatriation of former Free Aceh Movement (GAM) leaders to Indonesia in 2005.

## **Article 13**

### **Expulsion of aliens**

198. Expulsion of foreign nationals shall be imposed only upon those who violate the provisions regulated in Law No. 6 of 2011 on Immigration. The Law replaced Law No. 9 of 1992, *inter alia*, in order to guarantee the rights of victims of trafficking. Expulsion of

foreign nationals is conducted through Immigration Administrative Measures. These measures are administrative fines, restriction or cancellation of stay permit, prohibition to settle in certain places, banning, and deportation.

199. The expulsion is conducted by authorized immigration officials through a formal letter. The letter must consist of information concerning the identity of the foreign national, the grounds of the decision, and the location of the immigration detention facility where he or she will be placed. The expulsion shall be communicated to the foreign nationals within 7 days after the decision is issued. Foreign nationals are given the right to raise an objection regarding the expulsion. The objection can be delivered through issuing a letter to the Minister of Justice and Human Rights, followed by evidence that can be used as reasons for the objection.

200. During the process of expulsion, foreign nationals can be placed in Immigration Detention Facilities. Immigration authorities may place foreign nationals who have health problems, who are in the last stage of pregnancy, or who are children, in other facilities designated by the immigration authorities. The maximum period of detention in the immigration detention facility for foreign nationals is ten years. When a foreign national has not been deported after ten years, he or she must be released and is only required to report regularly to the immigration office where he or she resides.

201. Immigration administrative measures shall not be imposed upon foreign nationals who are victims of human trafficking. To those foreign nationals, the immigration authorities shall provide special treatment based on their physical and mental condition, such as relocating them to a different facility from foreign nationals who have committed immigration violations.

202. In 2010, the number of foreign nationals who had residence permits in Indonesia reached 121,160, consisting of 84,493 males and 36,676 females. Examples of cases where foreign nationals were expelled from Indonesia by the mechanism of extradition are as follows:

<i>Name</i>	<i>Country of Extradition</i>	<i>Place and date of Submission</i>	<i>Criminal Case</i>	<i>Legal Basis</i>
Charles Alfred Barnett	Australia	Jakarta, 13 February 2009	Pedophilia	Presidential Decree No. 29 of 2008, dated 18 December 2008
Hadi Ahmadi	Australia	Jakarta, 26 May 2009	People Smuggling	Presidential Decree No. 10 of 2009, dated 20 April 2009
Christian Burger	France	Bali, 5 August 2009	Pedophilia	Presidential Decree No. 16 of 2009, dated 19 June 2009
Paul Francis Callahan	Australia	Bali, 5 August 2009	Pedophilia	Presidential Decree No. 18 of 2009, dated 19 July

<i>Name</i>	<i>Country of Extradition</i>	<i>Place and date of Submission</i>	<i>Criminal Case</i>	<i>Legal Basis</i>
				2009
Paik Bo Hyun	Korea	Jakarta, 12 October 2009	Special Economic Crime and Fraud	Presidential Decree No. 25 of 2009, dated 16 September 2009
Robert James Mc Nice	Australia	Jakarta, 23 April 2010	Fraud	Presidential Decree No. 1 of 2010, dated 23 April 2010
Timothy Geoffrey Lee	Australia	Bali, 8 July 2010	Drug trafficking and Money Laundering	Presidential Decree No. 11 of 2010, dated 7 June 2010.

Source: Directorate General of Immigration, Ministry of Law and Human Rights

## Article 14

### Right to fair trial

203. The 1945 Constitution regulates the national judicial system, which is made up of the Supreme Court that supervises the General Court, Religious Court, Military Court, and State Administrative Court. In addition, the Constitution also establishes a Constitutional Court whose mandate is to review laws against the 1945 Constitution.

204. The 1945 Constitution guarantees equality of all persons before the law, including in court proceedings. Article 28D (1) of the Constitution stipulates that every person is entitled to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law. The implementation of this guarantee is reflected, *inter alia*, in the right of a defendant to present a witness to defend him/herself. In private cases, both parties, the plaintiff and the defendant, are given the right to submit evidence which supports their respective arguments

205. That principle is reaffirmed in the Criminal Procedure Code, which asserts that every person residing in Indonesia is equal before the law. Furthermore, Law No. 39 of 1999 on Human Rights also states that everyone is entitled to recognition, guarantee, protection and fair legal treatment and shall get legal certainty and equal treatment before the law, and that every person is entitled to the protection of human rights and basic human freedoms without discrimination.

206. Moreover, Article 17 of Law No. 39 of 1999 stipulates that everyone, without discrimination, has the right to obtain justice by submitting applications, complaints and lawsuits in criminal, private, and administrative cases, as well as by being put on trial through a free and impartial court process, in accordance with the procedural law that guarantees objective examination by fair and honest judges in order to pass a fair and correct decision. Article 18 of this Law also governs the principles of presumption of innocence (paragraph 1), legal representation (paragraph 4) and *ne bis in idem* (paragraph 5).

207. Indonesia also enacted Law No. 3 of 1997 on Juvenile Justice. The Law stipulates that the minimum age for a child to be brought before the court is 8 years old and the maximum age 18 years old and not married. The judge presiding over juvenile cases should have the interest, attention, dedication, and understanding of the problems of children. The forms of conviction for a child who is found guilty can include imprisonment, confinement, fines, or supervision. The Law also stipulates rehabilitation for children who commit a crime, which includes returning the child to its parents/guardians, or sending the child to the supervision of the State or Ministry of Social Affairs or other civil society organizations to be given education, treatment, and job training to increase their personal capacities.

208. For the members of the military, their judicial system is regulated by Law No. 31 of 1997 on Military Courts. However, if there are cases involving civilians and military personnel, the trial can proceed through the connection court (*sidang koneksitas*) as provided in the Criminal Proceeding Code and Law No. 48 of 2009 on Judicial Power.

209. Indonesia applies the presumption of innocence principle to every person before decided otherwise by the court which has permanent legal force, as regulated in Law No. 4 of 2004 on Judicial Authority. Meanwhile, the authority to prosecute is in the hands of the public prosecutor who will present the case to the relevant court.

210. The Criminal Proceeding Court guarantees the rights of the defendants in court proceedings as stipulated in Articles 50 to 68, and include:

- (a) The right to obtain prompt investigation;
- (b) The right to have his/her case promptly presented to the court by the prosecutor and to be tried promptly;
- (c) The right to be informed clearly in a language understood by him/her about what is alleged to him/her at the time the examination begins and what he is being charged with;
- (d) The right to give information freely to the investigator or judge;
- (e) The right to obtain interpreter assistance at any time;
- (f) The right to obtain legal assistance from one or more legal counselors during the period and at each level of investigation;
- (g) The right to choose his/her own legal counselor;
- (h) The right to contact and communicate with representatives of his/her country where the defendant is a foreign national;
- (i) The right to contact and receive visits from his personal doctor for the purpose of health regardless of whether the visit is related to his/her case or not;
- (j) The right that his/her detention be communicated to his/her relatives or persons who share the same house with the defendant or other persons whose assistance is needed by the defendant to obtain legal assistance or guarantees for suspension of detention. The information should be given by the relevant authority at any level of judicial process.
- (k) The right to contact and receive visits from relatives or other parties;
- (l) The right to contact and receive visits from clergy;
- (m) The right to have an open-to-public trial;
- (n) The right to call an expert witness to provide testimony favourable to him without the obligation to provide evidence;

(o) The right to appeal against the decision of a first level court, except to a not-guilty decision;

(p) The right to pursue compensation and rehabilitation if found not guilty or there is a miscarriage of justice.

211. In line with Article 14 paragraph (5) of the Covenant, the court also guarantees the right to have his/her case reviewed by upper-level courts. To ensure justice and equality before the court, the Criminal Proceeding Code provides certain procedures to restore justice including appeals, up to the Supreme Court level, clemency and pretrial, as well as compensation and rehabilitation.

212. An appeal against a court decision can be conducted through the High Court, Supreme Court, and Case Review. Currently, there are 33 High Courts, located in every province in Indonesia.

213. As stated earlier, the appeal can be made to the High Court under the decision of the District Court. If the plaintiff is still unsatisfied with the decision in the High Court, then he/she can propose a second appeal (*kasasi*) to the Supreme Court. The second appeal can be made against the decision of the Supreme Court. A request for an appeal to the Supreme Court can be conducted against a decision of the District Court without having to appeal first. Should the plaintiff be unsatisfied with the decision of the Supreme Court, he/she can file a Case Review to the Supreme Court as the last resort. Procedures for a Case Review are regulated under Article 67 of Law No. 5 of 2004 on the Supreme Court.

214. If the appeal is granted by the court, and the defendant is found not guilty, he/she is entitled to compensation and rehabilitation as stipulated in Article 68 of the Criminal Proceeding Code. The Code also stipulates financial substitution for foreign nationals while rehabilitation refers to recovery of the dignity of the individual (Articles 95 and 97 of the Criminal Proceeding Code).

215. The Case Review power as an extraordinary remedy legal effort, can only be done once and provided there is new evidence (*novum*), as stipulated in Law No. 5 of 2005 on the Amendment of the Law No. 14 of 1985 on Supreme Court. In the case of the *novum* having been used in the current presiding, a not-guilty verdict or lower sentence can be decided. The Case Review can also be done to the decision of a lower court based on contradicting reasons or error judgement. Case Review is regulated in Article 268 (3) of the Criminal Proceeding Code.

216. The legal framework also regulates that a person cannot be tried twice for the same case. Article 1917 of the Civil Code states that the authority of the legal judgement entered shall not extend any further than the subject of the judgment. In order to invoke such authority, it shall be required that the case which has been heard shall be the same; that the claim is based upon the same grounds, and is made by and against the same parties having of the same relationship.

217. As stated earlier, every person's right to have access to a fair and open trial, which is reflected in the creation of information services at the court (the Decision of the Chief of the Supreme Court No. RI. 1-144/KMA/SK/I/2011 on Guidelines for Information Services at the Court). In addition, every person has the right to obtain information about the Court, including the proceedings, based on certain conditions. The decision of the Supreme Court classifies three categories of information namely: (a) periodically announced, (b) accessible to the public at any time, and (c) excluded information.

218. The recruitment process of judges in Indonesia is conducted in a clean, professional, accountable, and transparent process. The mechanism to appoint judges is regulated under Law No. 2 of 1986 in conjunction with Law No. 8 of 2004 on Public Court. The values that a Judge should have are, *inter alia*, to believe in the Supreme Court, be loyal to the 1945

Constitution and the Five Basic Principles (Pancasila), to be physically and mentally healthy, honest, fair and of good character.

219. Meanwhile, the recruitment procedures of judges are conducted through:

- (a) Academic test;
- (b) Fit and proper test;
- (c) Basic training;
- (d) Placement test.

220. The terms of office for judges are in line with the Law of Civil Servants. Judges are appointed and dismissed by the decision of the President upon the recommendation of the Supreme Court's Chief Justice. This issue is further regulated in Law No. 2 of 1986 in conjunction with Law No. 8 of 2004 on the Public Court.

221. To strengthen the supervision mechanism for law enforcement institutions, Indonesia has established several independent commissions, including the National Police Commission, the Attorney Commission, and the Judicial Commission. Those commissions are mandated to supervise, monitor, and evaluate law enforcement officials in their respective areas.

## **Article 15**

### **Prohibition of ex post facto laws**

222. Indonesia applies the principle of non-retroactivity. The Constitution stipulates that no law can be enforced retroactively. Furthermore, Article 28I of the Constitution guarantees the principle of non-retroactivity, which states that a person has the right not to be judged under a law which has a retroactive effect. This right is considered as a non-derogable right.

223. However the Constitutional Court through its judgment No. 065/PUU-II/2004 was of the view that to ensure the balance of legal certainty and justice, including the application of the non-retroactivity principle, three considerations must be applied, which are the legal principles of legal certainty, legal justice, and the efficacy of law. Therefore, the Court argues that the retroactive principle can be applied in strict circumstances, especially in certain extraordinary crimes.

224. Law on Human Rights Court No. 26 of 2000 basically applies the non-retroactivity principle; however in certain extraordinary circumstances this principle can be waived. An Ad-Hoc Human Rights Court which is established upon the recommendation of the Parliament is the mechanism that can apply the retroactivity principle.

225. The Ad-Hoc Human Rights Court can be established by the recommendation of the Parliament after reaching the conclusion that there was a gross violation of human rights at a particular time and place prior to enactment of the Human Rights Court Law.

226. In practice, the Parliament, in resolution No. 44/DPR-RI/III/2000-2001 dated 21 March 2001, gave its agreement to the establishment of the Human Rights Court in 2004 in view of the possibility of gross human rights violations having occurred in Timor Timur in 1999 and Tanjung Priok in Jakarta in 1984. Based on the agreement, the President, through his decision No. 53 of 2001, established the Ad-Hoc Human Rights Court, located in Central Jakarta District Court, whose mandate was to examine and adjudicate on cases related to the said gross human rights violation.

227. Indonesia also applies the principle that no one shall ever be found guilty of having committed a crime if such action is not a crime under the applicable law (*nullum delictum nulla poena sine praevia lege poenali*), as stipulated in Article 1 Paragraph 1 of the Penal Code.

228. In line with the Covenant, Indonesia has guaranteed the right of persons to receive the most favourable sentence if there are revisions of the relevant laws or regulations, as stipulated in Article 1 (2) of the Criminal Code and Article 18 Paragraph (2) of Law No. 39 of 1999 on Human Rights.

## **Article 16**

### **Recognition as a person under the law**

229. The 1945 Constitution recognizes every person as a subject of law and guarantees equal treatment as subjects of the law, as stated in Article 28D paragraph (1).

230. Furthermore, Article 3 of Law No. 39 of 1999 on Human Rights stipulates that every person is entitled to recognition, guarantees, protection and fair legal treatment and shall get legal certainty and equal treatment before the law. Article 5 stipulates the right of every person to demand equal treatment and protection before the law, and Article 29 states the right to be acknowledged as an individual before the law wherever he/she resides. According to Article 1330 of the Civil Code, every person may perform any lawful act which creates a legal effect, except those who are considered incompetent, such as minors and persons under guardianship.

231. Law No. 39 of 1999 on Human Rights stipulates the rights of a child to have a name and nationality (Article 56 Paragraph 1). Moreover, Law No. 23 of 2002 on Child Protection also stipulates that a child should be entitled to possess a name, identity, and nationality (Article 5). Identity refers to the name, sex, date of birth, relationship with his/her parents and his/her citizenship, which are reflected in the birth certificate. The Government is responsible for providing a free birth certificate within 30 days. Up till now, there have been 42 (of 422) districts/municipalities in Indonesia that provide free birth certificates. In this regard, it is significant for stakeholders to conduct a campaign on this matter, especially to the grass root groups. The Director General of Civil Registration, Ministry of Home Affairs, has the authority to record births through the civil registration office. This is in line with the 2000 Regional Autonomy Law.

## **Article 17**

### **Freedom from arbitrary interference with privacy, family, home**

232. Article 28G Paragraph (1) of the 1945 Constitution stipulates that every person shall have the right to the protection of himself/herself, family, honor, dignity and property, and shall have the right to feel secure and receive protection from the threat of fear from doing or not doing something. In this sense, privacy is recognized as a comprehensive concept, including family, honor, dignity and property.

233. Furthermore, these rights are elaborated in Article 31 paragraph (1), (2), and Article 32 of Law No. 39 of 1999 on Human Rights. Article 31 (1) states that no one shall be subject to arbitrary interference with his/her home. Furthermore, Article 31 (2) states that no one shall set foot in or enter the enclosure of a house or enter a house without the permission of the person who lives there, except for reasons provided under prevailing legislations. Meanwhile, Article 32 states that no one shall be a subject of arbitrary interference with his/her correspondence, including electronic communications, except

upon the order of a court or other legitimate authorities according to the prevailing legislation.

234. The Criminal Proceeding Code in Articles 32, 33, 34, 35, 36, and 37 provides strict searching procedures for law enforcement investigators for the house, clothing, or body of a suspect. Search can only be carried out after written approval from the Head of the District Court or a written order from the investigating officer. The searching process should be attended by two witnesses. If the suspect refuses a search, it can still be done in the presence of the village chief or head of the local community besides the two other witnesses. Search of the body or clothes can only be done if a person is caught red-handed.

235. In terms of interception of communication, it is regulated through Law No. 5 of 1997 on Psychotropic Substances, Law No. 35 of 2009 on Narcotics, Law No. 36 of 1999 on Telecommunications, Law No. 15 of 2003 on Combating Criminal Acts of Terrorism, Law No. 11 of 2008 on the Information and Electronic Transactions and Minister of Communication and Information Regulation No. 01/P/M.KOMINFO/03/2008 on the Recording of Information for the Purpose of Defense and State Security.

236. Law No. 11 of 2008 on Information and Electronic Transactions also guarantees the protection of private and personal information, as stipulated in Article 26. In addition, Articles 30 and 31 of this law also prohibit the practice of hacking and interception/wiretapping of a person's electronic information.

237. In terms of investigations of the criminal act of terrorism, an investigator may intercept conversations by phone or other devices of a person who is suspected of preparing, planning, and committing an act of terrorism. This interception can only be done after written approval from the Head of the District Court (Article 26 Paragraph 2 and 4 and Article 31 Paragraph 1 letter b of Regulation in Lieu of Law No. 1 of 2002 on the Criminal Act of Terrorism).

238. In the case of corruption investigations, Article 12 of Law No. 30 of 2002 on Corruption Eradication Commission (KPK) authorizes the Commission to intercept and record suspicious conversations.

239. Interception of communications cannot be conducted arbitrarily. It can only be conducted by the State Apparatus provided that they have obtained written approval from the relevant authorities according to the Law. For example, the Law on Psychotropics gives the authorization to the Chief of Police; the Law on Narcotics to the National Anti-Narcotic Body after the approval of the Head of District Court; the Law on Combating Terrorism to the investigator with the consent of the Head of District Court; the Law on Anti Corruption Commission to the Commission; and the Law on Electronic Information and Transaction to the law enforcement officials.

240. The State also guarantees the protection of family units. In Indonesia, a family consists of three generations, as stipulated in Law No. 23 of 2002 on Child Protection. However, the Law also allows intervention in the family provided that there are strong certain reasons, such as child neglect and domestic violence. Law No. 23 of 2004 on the Elimination of Domestic Violence serves as the legal framework to realize a safe, comfortable and prosperous family/household. The Law also contains measures of prevention and treatment of any acts of domestic violence.

241. Based on the Penal Code and Criminal Proceeding Code, a person may file a report to the police concerning violation towards a family or household. In investigating the report, the police may take measures including asking personal information. In this regard, the term "unlawful" as stipulated in the Covenant refers to investigations that are not based on prevailing laws and regulations

242. While prohibiting the spread of the content of an investigation report, the Criminal Proceeding Code (Article 47) allows the police to access personal correspondence via post or electronic devices after obtaining special approval from the Head of the District Court. However, Article 49 of the Law also states that the investigators shall treat this information as confidential. This provision is in line with Article 14 of Law on Human Rights, which stipulates the right of an individual to communicate and obtain information to develop him/herself.

243. In terms of searching for evidence in a house, the Criminal Proceeding Code states that the relevant authority can only conduct a search to obtain relevant evidence and is not allowed to conduct abuse of authority.

244. In relation to the access of public officials to public information owned by individuals or certain bodies, Indonesia has a specific regulation on the freedom to search for such information. This is regulated in Law No. 14 of 2008 on Transparency of Public Information, guaranteeing the right to obtain information, including to attend public meetings, to know, to obtain copies of information, to be notified, and to disseminate information.

245. In general, Indonesia has enacted sufficient legal frameworks to protect and guarantee the rights to privacy. In addition, Indonesia has also enacted Law No. 13 of 2006 on the Protection of Victims and Witnesses, which protects a whistleblower from pressure that may arise.

## **Article 18**

### **Freedom of thought, conscience and religion**

246. Indonesia considers that freedom of thought, conscience, and religion are the most basic human rights and fundamental to every human being. As agreed by the international community, Indonesia views the three rights as individual rights which are directly inherent and must be respected, upheld and protected by the State, the Government, and everyone for the honor and protection of human dignity.

247. Indonesia continues to guarantee the implementation of the right of everyone to freedom of thought, conscience, and religion. The most fundamental guarantee derives from the State philosophy, Pancasila. The first principle, belief in one God Almighty, can be interpreted to the effect that Indonesia upholds religious freedom as the main thrust of Pancasila.

248. Furthermore, Articles 28E paragraph (1) and (2) and 29 paragraph (1) and (2) of the 1945 Constitution reaffirm the principle of freedom of religion and the obligation of the State to ensure the freedom of the people to choose and practice their religion and belief. To regulate that, Article 4 UU on Human Rights states that the right to hold a religion is one of the non-derogable rights. Article 22 of the Law provides for the protection to choose and practice the religion and belief.

249. Furthermore, the State also ensures the promotion and protection of the rights of the child to have freedom of thought, conscience, and religion, as stipulated in Article 55 of Human Rights Law and Article 6 of Law No. 23 of 2002 on Child Protection. The right to freedom of thought, conscience, and religion of the child are promoted in line with the development of their intellectual capacity. In the process of promoting those rights, parents have the obligation to provide moral and religious education for their children.

250. However, there has been misinterpretation by certain parties of Law No. 1/PNPS of 1965 on Defamation of Religion to the effect that the Government only gives formal recognition exclusively to six religions namely Islam, Christianity, Catholicism, Hinduism,

Buddhism, and Confucianism (Kong Hu Chu). The mention of these six religions is merely a reflection of the factual and sociological existence of those religions in Indonesia at the time this Law was enacted. The elucidation of this law further states that other religions such as Judaism, Zoroastrianism, Shinto, and Taoism are also recognised.

251. Legal frameworks provide guarantees that the right to freedom of religion is non-derogable. However, Indonesia is also of the view that the freedom should be exercised responsibly and with respect for others' rights, so that friction, horizontal conflict, unrest, disunity and enmity can be avoided or prevented. Based on this rationale, Indonesia has enacted several laws and regulations that restrict the expression of freedom of religion. Those laws and regulations include Law No. 1 PNPS of 1965 on the Defamation on Religion; the Joint Decree (SKB) of the Minister of Religious Affairs, the Attorney General, and Minister of the Home Affairs, No. 3 of 2008, No. KEP-033/AJA/6/2008, No. 199 of 2008 on the issue of Jamaah Ahmadiyah Indonesia (JAI).

252. Some Civil Society Organizations (CSOs) put Law No. 1 PNPS of 1965 on the Defamation of Religion into judicial review by the Constitutional Court in 2010 as the law was perceived to be in contradiction with freedom of religion as guaranteed by the 1945 Constitution. The Court however maintained that the Defamation of Religion Law treats all religions in an equal manner and the term "allow" in the Defamation of Religion Law should be interpreted as not obstructing or ignoring certain religions, but giving them the rights to develop instead. The Court states further that Law No. 1 PNPS of 1965 does not prohibit a person from having an opinion on the interpretation of a religion or religious activities. What is restricted under the law is when a person, intentionally and publicly, tells, encourages or seeks public support for an interpretation of a religion that deviates from the core teachings and principles of religions. This constitutes the basis for the content of the Joint Decree of the Three Ministers which sets restrictions on JAI with regard to spreading religious interpretations which deviate from the core teachings and principles of Islam. The Joint Decree further prohibits people from acting unlawfully against members of JAI.

253. The restrictions applied by the Government of Indonesia are consistent with and allowed under the existing international and national frameworks, which include:

(a) Article 18 of the Covenant, which stipulates that freedom to practice and determine one's religion or belief shall only be limited by the provisions of law necessary to protect public safety, order, health, or morals, or the rights and fundamental freedoms of others.

(b) Article 19 of the Covenant, which stipulates that freedom of expression should be carried out responsibly and therefore it is possible to exercise restrictions through legislation to respect the rights of others, and protect national security, public order, and public health or morals.

(c) Article 28J paragraph (2) of the 1945 Constitution, which states that in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purpose of guaranteeing the recognition and respect of rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.

254. One of the manifestations of government's commitments to ensure the protection of religious freedom is the revocation of Presidential Instruction No. 14 of 1967 on the Prohibition of Religion, Beliefs and Customs of Kong Hu Chu by Presidential Decree No. 6 of 2000. The Decree guarantees followers of Confucianism the freedom to practice their religion and to obtain equal treatment in civil law, as stipulated in the letter of the Minister

of Religious Affairs No. MA/12/2006 dated 24 January 2006 and the letter of the Minister of Home Affairs No. 470.336.SJ dated 24 February 2006.

255. In addition, Indonesia guarantees freedom in practicing beliefs, through Presidential Regulation No. 25 of 2008 on the Requirements and Procedures for Population Registration and Civil Registration and Joint Regulation of the Minister of Home Affairs and Minister of Culture and Tourism No. 43 / 41 of 2009 on the Guidelines of Services for Beliefs.

256. The State also guarantees the protection of places of worship and the use of religious symbols, as well as the respect of religious holidays. In this regard, the Government has enacted the Joint Decree of The Minister of Religious Affairs (No. 9 of 2006) and The Minister of Home Affairs (No. 8 of 2006) on the Guidelines for the Implementation of Tasks of the Head of the Region/Deputy Head of the Region In Preserving Religious Harmony, Empowering the Forum for Religious Harmony, and the Construction of Houses of Worship. The Joint Decree, which replaces the 1969 Regulation, has been consulted with various religious elements, such as the Indonesian Ulama Council (Islam), the Communion of Churches in Indonesia (Protestant), the Indonesian Bishops Conference (Catholic), the Indonesian Parisadha Hindu Dharma (Hindu) and the Representative of Indonesian Buddhists (Buddhist). Indonesia also has national public holidays to observe religious events, such as Eid al-Fitr and Islamic New Year for Islam, Christmas, Good Friday and Ascension Day for Christianity, Day of Silence (Nyepi) and Galungan for Hinduism, Vesak for Buddhism, and Lunar New Year for Confucianism.

257. The implementation of freedom of religion and belief in Indonesia has reached a level of 90.67% (good), as stated in the 2009 Indonesian Democracy Index. The indicators to measure the implementation of freedom of religion and belief comprise written rules which restrict the freedom of people, or require people, to practice the teachings of their religions, actions taken by or statements made by government officers or officials which restrict the freedom of people, or required people, to practice the teachings of their religions, and threats of violence or use of violence by a group of people against another group of people pertaining to religious teachings.<sup>14</sup>

## **Article 19**

### **Freedom of opinion and expression**

258. Articles 28 and 28E Paragraph (2) and (3) of the 1945 Constitution guarantee the right to hold thoughts, beliefs, and opinions without any interference, and freedom to express those thoughts, beliefs and opinions. Furthermore, Article 28F states that every person has the right to communicate and to obtain information to develop his/her personal and social environment, and reserves the right to seek, obtain, possess, store, process and convey information by using all available types of channels.

259. Moreover, Article 23 Paragraph (2) of the Human Rights Law states that every person has the freedom to hold, impart, and widely disseminate his/her belief orally or in writing in the printed and electronic media. Article 25 of the Law also states that every citizen has the right to express his/her opinion in public, including the right to strike, according to the prevailing laws.

260. In addition, freedom of expression is also regulated by Law No. 9 of 1998 on the Freedom of Expression in Public. Article 1 of the Law defines freedom of expression as the

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<sup>14</sup> "Measuring Democracy in Indonesia: 2009 Indonesia Democracy." Jakarta: UNDP, 2009 (p. 44 & 52-53)

right of every citizen to communicate ideas in oral, written, and so forth, freely and responsibly in accordance with the prevailing laws.

261. In terms of freedom to seek and receive information, Law No. 14 of 2008 on Transparency of Public Information regulates the right of every person to obtain public information as stated in Article 4.

262. Articles 9, 10, and 11 of the Law on Freedom of Expression in Public stipulate the scope and limitations in the expression of opinion in public. The scope refers to forms of expression such as demonstrations or protests, marches, rallies, and/or free speech. The limitations refers to places that cannot be used to conduct freedom of expression such as the presidential palace, places of worship, military installations, hospitals, air or sea ports, railway stations, land transportation terminals, and national vital objects. In addition, expression of opinion cannot be conducted on national holidays. There is also provision that expression of opinion in public as defined in the scope above shall be notified in writing to the Police prior to the event.

263. In addition, to guarantee the rights to freedom and expression, the State also provides protection to persons while exercising those rights. The provision is stipulated in Article 5 of Law on Freedom of Expression in Public, which states that citizens who express their opinion in public have the right to express their thoughts freely and obtain legal protection. The protection is further stipulated in Article 18 Paragraph (1) of the Law, which states that: "Whoever by force or threat of violence to obstruct the right of citizens to express opinions in public that in compliance with the provisions of this Law shall be punished with imprisonment of 1 (one) year."

264. In addition, the right to freedom of opinion and expression are also facilitated by the mass media. According to Law No. 40 of 1999 on Press, the press has a role to fulfill the public's right to know and develop public opinion based on precise, accurate and true information.

265. The Press Law also guarantees the independence of the press as a part of human rights. The press cannot be censored, banned, or prohibited from broadcasting. The Law also states that in order to guarantee the freedom of the press, the national press has the right to seek, obtain, and disseminate ideas and information. In addition, journalists have the right to refuse to publish certain information in order to be accountable for the news published.

266. Unlawful acts of censorship, banning or prohibition of broadcasting, and obstructing the right of the press to seek, obtain, and disseminate ideas and information, can be punished by imprisonment of maximum 2 (two) years or fine up to Rp. 500,000,000.00 (five hundred million rupiahs) according to Article 18 of Law No. 40 of 1999.

267. However, the press should also be held accountable when exercising its rights. The press should uphold the principles of democracy, justice and the rule of law. In Article 5 of Law No. 40 of 1999, the press is obliged to cover events and present opinions in accordance with religious norms and a sense of public decency and the principle of presumption of innocence.

268. In the event of any violation to freedom of the press, the press company could be sentenced by a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs) as stipulated in Article 18 of Law No. 40 of 1999.

269. Indonesia has also established the Press Council in order to guarantee press independence of publication. Furthermore, Article 15 of Law No. 40 of 1999, states that the Council has seven functions: to protect freedom of the press from any interference; to review the development of the mass media; to determine and control the implementation of the journalistic ethics code, to provide considerations and advice in resolving public

complaints on cases related to the press; to improve communications between mass media, society and Government; to facilitate the organization of mass media in creating regulations and improving the quality of the profession of journalism, and collecting data on media companies.

270. A landmark decision was made by the Constitutional Court in its decision No. 6/PUU-V/2007 which declared that Articles 154 and 155 in the Indonesian Penal Code are contradictory to the 1945 Constitution and therefore those articles have no binding legal effect. Those two articles are related to the criminalization of the expression of hostility, hatred, and contempt in public against the Government of Indonesia. The reasons for the decision are, on the one hand, that those articles do not guarantee legal certainty as they are prone to be misused to silence critics against government and hence are contrary to Article 28D Paragraph (1) of the 1945 Constitution, and on the other hand, those articles disproportionately hinder the people's freedom to express their thoughts and opinions and hence are contrary to Articles 28 and 28E Paragraph (2) and (3) of the 1945 Constitution.

271. The 2009 Indonesia Democracy Index indicated that the index of freedom of expression in Indonesia had reached 83.97% (good). Two major indicators were used to measure these rights, threats of violence or use of violence by government officers which curb freedom of expression, and threats of violence or use of violence by people which curb freedom of expression.<sup>15</sup>

272. Freedom of expression through the independence of the press has played a strategic role in empowering women to participate in all aspects of development, including economy, politic, social, and culture. The policy of gender mainstreaming in the whole Government system has benefited from the freedom of the press. The active and consistent participation of women journalists has strengthened the efforts to promote a wider freedom of press. The convening of the Gender Equality Conference in Jakarta in 2005, which was organized by the Association of Indonesian Journalists (AJI) and the International Federation of Journalists (IFJ), was a prominent example of the increased role of woman journalist. The Conference agreed to urge the media companies, trade unions and journalists' organisations to apply the policy of equal opportunity between men and women.

273. Since the 1998 reform, there have been an increased number of media/journalist associations, with at least 27 organisations: Indonesia Solidarity Reform Press Society, BAKORPERS, the Consumer Media Institute, LMUPP, Institute for Studies on the Flow of Information, Independent Watch, Police Media Control, Family Friendly Media, Press Media Education and Study Information Agency (LSPS/JOINT), Mass Media and Information Study Agency (ELSIM), Prophetic Media Network, the Indonesian Press Control Committee (KPPI), Indonesian Media Watch (IMW), Media Watch Consumer Center (MWCC), Media Impact Research and Advocate Institute (LAPDM), the Indonesian Press Control Agency, Yogyakarta Press Education and Research Institute (LP3Y), and the Institute for Press and Information Studies (LESPI).

## **Article 20**

### **Prohibition of propaganda relating to war or racial, national or religious hatred**

274. Indonesia upholds peace and human dignity and does not tolerate or provide room for propaganda for the purpose of war and incitement of hatred on the basis of nationality,

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<sup>15</sup> "Measuring Democracy in Indonesia: 2009 Indonesia Democracy." Jakarta: UNDP, 2009 (p. 44 & 51-52)

race or religion. This is as set forth in the Preamble to the 1945 Constitution, which states that one of Indonesia's national objectives is to promote world peace.

275. Article 111 of the Penal Code prohibits anyone to cooperate with a foreign country for the purpose of mobilizing certain countries to be involved in an act of war with his/her own country. The punishment for such crime is imprisonment for at least 5 years with a maximum punishment of death penalty when it comes to causing the war. Furthermore, Article 124 Paragraph 1 of the Code states that: "Whoever in time of war deliberately giving assistance to the enemy or harming the country against enemies, is threatened with a penalty of 15 years."

276. Furthermore, in terms of prohibition of any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence, Article 28J of the 1945 Constitution stipulates the obligation of every person to respect the human rights of others in an orderly society, nation and State. In conducting their rights and freedoms, everyone shall be subjected to limitations stipulated by law solely for the purpose of ensuring the recognition and respect for rights and freedoms of others and to meet the demands of justice according to considerations of morality, religious values, security, and public order in a democratic society.

277. Based on the above-mentioned provision, Article 23 Paragraph (2) of the Human Rights Law regulates the limitations for each person in expressing and disseminating opinion, verbally or in the written, printed or electronic media. This limitation shall consider religious values, morality, public order, public interest, and the integrity of the nation.

278. Moreover, those who intentionally and without the right to disseminate information with the intention to incite hatred and hostility of individuals and/or specific community groups based on ethnicity, religion, race, and inter-group, could be sentenced to imprisonment for a maximum of six years and/or a maximum fine of 1 billion rupiah, as stipulated in Article 28 Paragraph (2) and Article 45 of the Information and Electronic Transactions Law.

279. Broadcast content should not contain messages that could incite discrimination, hostility, or violence. In particular, Paragraph 5 Article 36 of the Law on Broadcasting prohibits contents that: a) consist of defamatory, deceitful, misleading, and/or lies; b) highlight the element of violence, obscenity, gambling, drug abuse; and c) generate ethnic, religious, racial, and class conflict. The punishments for violating those prohibitions are imprisonment for a minimum of five years and/or a maximum fine of 1 billion Rupiah for radio broadcaster and a maximum of five years and/or a maximum fine of 10 billion Rupiah for individuals.

280. In addition, the press is also prohibited from publishing advertisements which cause defamation of religion and/or disturb religious harmony and contradict the principle of public decency as stipulated in Article 13 Paragraph 1 on the Law of the Press.

281. Other provisions that also prohibit incitement to discrimination, hostility, or violence, include the Defamation of Religion Law which prevents the spread of hatred toward religion. In regard to this Law, Article 156 of the Penal Code, which states that any person who expresses hostility, hatred or anger to one person or other groups of the population of Indonesia, will be punished with imprisonment for a maximum of four years. For the acts that are hostile, abusive and defaming any religion in Indonesia shall be imprisoned for a maximum of five years.

282. Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination elaborates the actions that constitute hatred or hate to people based on racial and ethnic discrimination, which include: (1) creating a text or image to be placed, affixed, or

distributed in public places, or any other place that could be seen or read by others; (2) conducting speech expressing or projecting particular words in a public place or in another place that could be heard by others; and (3) wearing something on him/her with objects, words or pictures in a public place or in any other place that could be read by others. The violation of this provision shall be punished by a maximum of five years imprisonment and/or a maximum fine of 500 million rupiah.

## **Article 21**

### **Freedom of assembly**

283. Indonesia guarantees the right to peaceful assembly, as stipulated in Article 28 and Article 28 E Paragraph (3) of the 1945 Constitution. This Article also recognizes that the exercise of freedom of association and assembly is regulated by Law.

284. This provision is reaffirmed by Law no. 39 of 1999 on Human Rights. Article 24 Paragraph 1 states: "Everyone has the right to peaceful assembly and association". Paragraph 2 of the Article further states: "Every citizen or group has the right to establish political parties, non-governmental organizations or other organizations in order to take part in the government or administration of the State and nation for the purpose of protecting and promoting human rights according to prevailing laws."

285. Indonesia has also enacted Law No. 9 of 1998, Freedom of Expression in Public Places, which regulates the activities of peaceful assembly and demonstration. This Law guarantees the rights of every citizen to peaceful assembly as long as they meet the specified requirements.

286. Indonesia also regulates the right to associate in Community-Based Organizations (CBOs), as stated in Law No. 8 of 1985 on CBOs. This Law regulates the functions, rights and obligations of CBOs as a mean to channel the opinions and thoughts of members of society and citizens of the Republic of Indonesia. The Law reiterates the importance of CBO's role as an active member of the society within the process of development and democracy.

287. Under the Law on Child Protection (Article 56 (1)), the State also provides for the freedom of children to associate and assemble. The Law on Child Protection obliges the Government to promote and protect this right to children.

288. In practice, the right to peaceful assembly is facilitated by the Regulation of Chief of National Police No. 9 of 2008 on the Security and Treatment Procedures in handling cases related to freedom of expression in public. In addition, Regulation of Chief of National Police No. 1 of 2010 on Standard and Operation aims to prevent anarchical acts, and the Regulation of Chief of National Police No. 16 of 2006 on Mass Control Guidelines (Dalmas) also facilitates the exercise of the right to peaceful assembly.

289. As a result, according to the 2009 Indonesia Democracy Index published by UNDP and the Government of Indonesia, the index for freedom of assembly and association reached 91.44% (good). The indicators for the index include threats of violence or use of violence by government officials which curb freedom of assembly and association, and threats of violence or use of violence by people which curbs freedom of assembly and association.<sup>16</sup>

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<sup>16</sup> "Measuring Democracy in Indonesia: 2009 Indonesia Democracy." Jakarta: UNDP, 2009 (p. 44 & 50-51)

290. Since its reform, Indonesia has enjoyed better implementation of the right to peaceful assembly compared to previous periods. This condition is reflected by a more active participation in the deliberation of the rights in the United Nations Human Rights Council. At the 15th Session of the Human Rights Council Meeting in 2010, Indonesia played an active role in the formulation and adoption of the resolution entitled, "The rights to freedom of peaceful assembly and of association." This resolution gives assurance and protection of every person to exercise the right to assemble and associate. In the 16th Session of the Human Rights Council Meeting in 2011, a resolution to appoint Special Rapporteur was adopted in order to monitor the implementation of the right to peaceful assembly and association.

## **Article 22**

### **Freedom of association**

291. As mentioned earlier in the implementation of Article 21 of the Covenant, Indonesia assures the right of the people to peaceful association and assembly. These rights are guaranteed by the 1945 Constitution and State laws. Law No. 2 of 2008 on Political Parties also regulates the same right and further states that political parties are one of the important elements in the implementation of the right to peaceful association.

292. On the issue of the rights to freedom of association for labor, Law No. 13 of 2003 on Employment guarantees the right of every person to become a member of a trade union. Article 104 of the Law states that every worker has the right to establish and to become a member of a trade union. Likewise, business owners also have the right to establish their organization as found in Article 105.

293. The right to form a labour union is further elaborated in Law No. 21 of 2000 on Trade Unions. Article 3 of the Law states that a union, a federation, and a trade union confederation are free, open, independent, democratic, and responsible in nature. Furthermore, Article 9 stipulates that a union, Federation, and trade union confederation are established by the free will of the workers with no coercion or interference from owners, government, political parties, and other external parties.

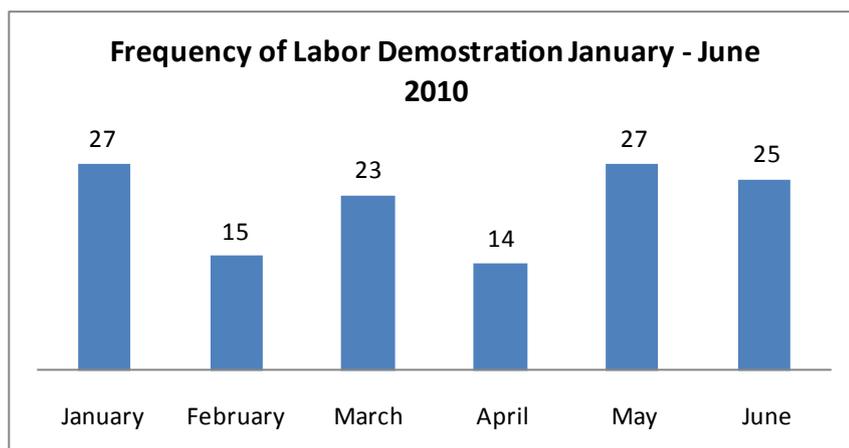
294. Indonesia is among 35 countries which have ratified the eight ILO Core Conventions on Human Rights. One of the results of ratifying ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise, the number of Indonesian workers' organizations has increased significantly. Up to now, the number of National Federation of Trade Unions (Serikat Pekerja - SP) and the Trade Unions (Serikat Buruh - SB) is recorded at a total of 50 with a total of 3,414,455 members. There are three labor confederations, namely the Confederation of All Indonesian Workers' Union, the Confederation of Indonesian Worker Union, and the Association of Indonesian Labor Union Confederation.

295. In addition, Indonesia has also integrated ILO Convention No. 87 through Presidential Decree No. 83 of 1998. Article 2 of the Convention reaffirms the right of labor to establish and, according to the rules of each organization, to join other organizations of their preference without the influence of other parties. In addition, Article 5 states that worker and employer organizations have the rights to establish and join federations and confederations and similar organizations, and each of the federations or confederations shall have the right to affiliate with international organizations of workers and employers.

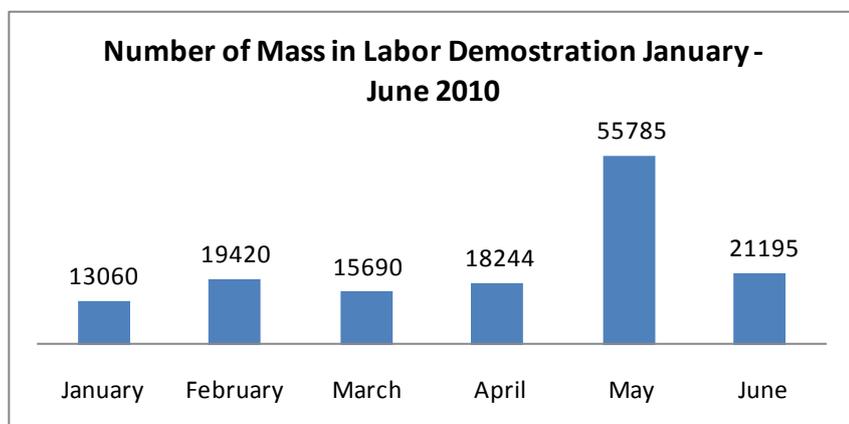
296. In many cases, these unions organize demonstrations to convey their demands. In this regard, the Government respects these activities as an exercise of the right to freedom of association. The Government ensures that these exercises of freedom are conducted within the prevailing laws and regulations.

297. In facilitating labor demonstrations, the Police bases its response on the Regulation of Chief of National Police No. 1 of 2009 on the use of force in the act of the police and Regulation of Chief of National Police No. 8 of 2009 on the implementation of human rights principles and standards in the implementation of police duties. Those regulations serve as guidelines for the police force to ensure peaceful demonstrations.

298. Based on the research conducted between January and June 2010 by Kelompok Pelita Sejahtera (KPS), a labor-focused civil society organization, there were 111 demonstrations and 18 strikes involving approximately 143,700 people. Labor actions which occurred in May 2010 involved the most participants with approximately 56,000 people attending the gatherings.

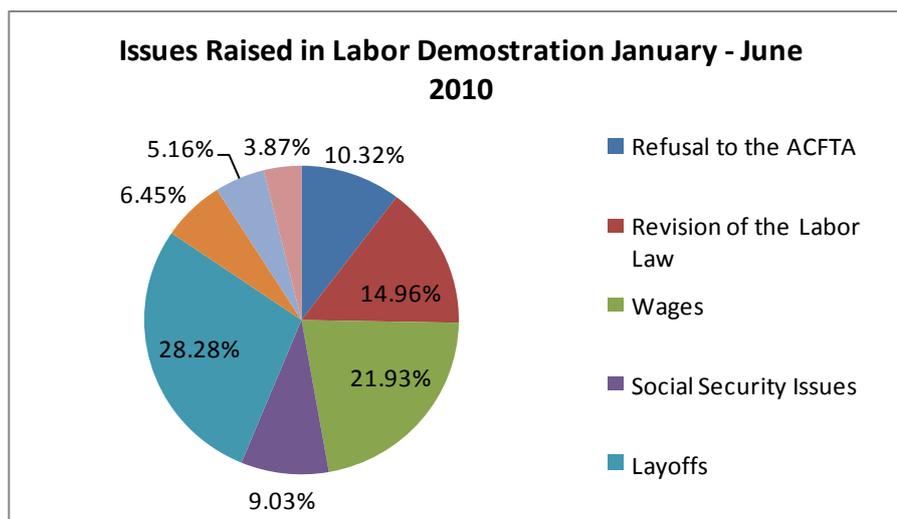


*Source: Kelompok Pelita Sejahtera (KPS), 2010*



*Source: Kelompok Pelita Sejahtera (KPS), 2010*

299. Issues raised in labor demonstrations in 2010 were mainly related to the fulfillment of their rights. Those issues are: (1) layoffs 28.28%, (2) wages 21.93%, (3) revision of the Labor Law 14.96%; (4) refusal to the ACFTA (ASEAN-China Free Trade Area) 10.32%; (5) Social Security Issues 9.03%, (6) status of employment 6.45; and (7) freedom of association 5.16, and (8) other issues 3.87%.



Source: *Kelompok Pelita Sejahtera (KPS), 2010*

## Article 23

### Protection of the family

300. Indonesia recognizes that family is the most fundamental unit of society and is entitled to protection by the society and State as required by the Covenant. The right of a person to form his/her own family is set in the 1945 Constitution Article 28B Paragraph 1, which states that every person has the right to form a family through a legal marriage. Indonesia also considers that marriage is a relationship between a man and a woman based on the faith in God Almighty as stipulated in Article 1 of Law No. 1 of 1974 on Marriage.

301. The definition of family in Indonesia is stipulated in Article 1 paragraph 6 of Law No. 52 of 2009 on Population Growth and Family Development, which states that family is the smallest unit in society, consisting of husband and wife, or husband, wife and children, or father and children, or mother and children (nuclear family).

However, the practice and tradition used in Indonesian society is the broad concept of family (extended family), which consists of husband and wife, children, grandparents, uncles and aunts, nephews, who live under one roof. For example, in Central Kalimantan, a family occupies a house called “Betang” and “Gadang” in West Sumatra. The concept of extended family is the expansion of the concept of nuclear families.

302. The State has the obligation to develop family by ensuring the rights to every member of the population to obtain protection for maintaining the integrity, security, and welfare of his/her family, including special assistance at the expense of the State for vulnerable members of the population and the empowerment of the family as the smallest unit in society, as stipulated in Article 3 Paragraph d and Article 5 Paragraph h and t of Law No. 52 of 2009.

303. The right to form a family is also regulated in Law No. 39 of 1999 on Human Rights Article 10 Paragraph 1 and 2, which states that every person has the right to form a family and have a descendant through a legitimate marriage which shall only take place upon the free will of the prospective husband and wife in accordance with the provision of relevant laws and regulations without discrimination. Article 5 Paragraph a of Law No. 52 of 2009 states that in order to enter the institution of marriage, a man shall be at least 19 years old, and a woman 16 years old. Article 2 Paragraph 1 of the Marriage Law states that “A

marriage is lawful, if done according to the laws of each religion or belief.” The rules also require the marriage to be recorded by the Office of Religious Affairs and the Office of Civil Registration.

304. Under the Marriage Law, in principle, within a marriage, a man may only have one wife and a woman may only have one husband. In the event that a husband wishes to marry more than one wife, he must submit a request to the court in his area of residence. The court only gives permission to the man who wishes to marry more than one women if he has fulfilled the required terms, which include an approval from the first wife, an assurance that the husband is able to fulfill the living needs of the wives and their children, as well as a guarantee that the husband would act fairly to his wives and children.

305. The State does not give recognition to couples living together without marriage. However, the State provides legal guarantees to children born of a woman outside wedlock by providing a birth certificate using the name of the mother. The child only has a civil relationship to the mother and her family. This is as stipulated in Law No. 1 of 1974 on Marriage in conjunction with Law No.12 of 2006 on Citizenship in conjunction with Law No. 23 of 2006 on Population Administration.

306. In addition to granting full rights for a person to marriage, Indonesia limits the implementation of the right to marriage. As stipulated in Article 8 of Law No. 1 of 1974, the implementation of the right of a person to marriage is limited between two blood-related persons in a straight downward or upward lineage-; blood-related persons in lateral lineages that are between brother and sister, between a person and a brother or sister of the parent and between a person and a brother or a sister of the grandmother; in a marriage relationship, namely the parent-in-law, stepchild, daughter-/son-in-law and step-mother/father; wet-nursed related, which consists of wet-nursed children, wet-nursed brother/sister and wet-nursed aunt/uncle; family-related with wife or an aunt or a niece of the wife; in the case of a husband married to more than one wife; and a couple who are in a relationship prohibited by their religion or other applicable laws to marry.

307. Related to interfaith marriage, Indonesia allows the recording of interfaith marriage that has been conducted according to Article 35 of Law No. 23 of 2006 on Population Administration, which states that marriage records referred to in Article 34 shall also apply to marriage set by the court (for marriage between people of different religions).

308. With regard to marriage life, Indonesia fully ensures and protects the implementation of equal rights and obligations as well as responsibilities of every couple in his/her marriage. Such guarantee of equality is stipulated in Article 51 of Law No. 39 of 1999 which states that a wife within a marriage bond has rights and responsibilities equal to her husband, of all things related to marital life, on the relationship with her children and the rights to ownership and management of joint property; after the termination of marriage, a woman has equal rights and responsibilities with their children by taking into account the best interests of the children; after the termination of marriage, a woman has equal rights with her former husband on all matters related to joint property without reducing the rights of the children according to the legislation.

309. In addition, the guarantee of equality within a marriage is also regulated in Law No. 1 of 1974, particularly in Articles 30-34, which regulate the rights and obligations between husband and wife, Articles 35-37, which regulate property within the family, and Articles 38-41, which regulate the termination of marriage and its causes and consequences. In the event that a spouse denies his/her responsibility, both have the same rights to file a legal act.

310. With regard to marital property, Marriage Law includes specific provisions related to (i) what is considered as a co-ownership in marriage and (ii) any legal act related to co-ownership. Article 35 Paragraph 1 of the Marriage Law states that property acquired during

marriage will become joint property in marriage between husband and wife, and any action taken related to it must be done on the basis of a joint decision. According to Paragraph 2 of this Article, the ownership of property which is brought into a marriage by the husband or wife and acquired separately by either one of them as a gift or inheritance, will remain the property of the parties concerned, unless specified otherwise. The general rule of joint marital property as stipulated in the first paragraph of Article 35 can be excluded if the husband and wife have already had a prenuptial agreement, the agreement which specifically provides for the separation of property ownership in a marriage that was agreed before entering into their marriage.

311. Divorce can only be conducted before the Court after the relevant Court has tried and unsuccessfully reconciled both parties. The Judge to decide divorce shall have enough reasons that the husband and wife would not be able to live in harmony as married couples. By 2011, the number of marriages in Indonesia was 75,605,823 and the number of divorces reached 7,137,506 cases.<sup>17</sup>

312. In the case involving under age children, the court shall give custody to the mother, unless the mother is the offending party or there is evidence of her inability to take care of the children. Based on Law No. 7 of 1989 on Religious Court, Article 78 states that during the course of the divorce lawsuit at the request of the applicant, the court may determine the alimony assumed by the husband; determine matters necessary to ensure the caring and education of children, and determine matters necessary to ensure the preservation of marital assets or assets belonging to the husband or vice versa.

313. According to the law and tradition in Indonesia, child care is the responsibility of the parents even though his/her parents have divorced. Traditionally, the father or husband is responsible for childcare, but if the father cannot meet his obligations, the mother or wife will take over the responsibilities. In extended families, grandparents or the family of parents often contribute to childcare. Article 45 of the Marriage Law (1974) states that parents are obliged to provide care and education until the highest level possible, up to 18 years old. Article 77 states that husband and wife or guardian are responsible for childcare, in relation to the development of the mental, spiritual, educational, and skills for the future of the children.

314. In cases involving under age children, the court shall give custody to the mother, unless the mother is the offending party or there is evidence of her inability to take care of the children. After the divorce, the husband and wife have equal rights and responsibilities relating to their children, based on the best interests of the child and marital assets. The guarantee for the protection of children in divorce situations is also regulated in Law No. 23 of 2002 on Child Protection, Law No. 12 of 2006 on Citizenship, Law No. 7 of 1989 on Religious Courts, and Law No. 4 of 1979 on Child Welfare.

315. The guarantee by the State for the implementation of the right of the person to marry is also provided by ensuring non-discrimination, including the release from nationality due to marriage with a foreign national and the use of maiden name or husband's surname upon marriage. In Indonesian legislation, marriage to a foreign national is defined in Law No.1 of 1974 on Marriage, Article 57: "the mixed marriage referred to in this Law is a marriage between two people which in Indonesia are subject to different legal systems, because of differences in nationality and one of the parties is of Indonesian nationality."

316. In regulating a mixed marriage, Indonesia guarantees, as stipulated in Law No. 12 of 2006 on Citizenship, that the citizenship of a woman married to a foreign national does not

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<sup>17</sup> According to data provided by the Ministry of Home Affairs

automatically change in accordance with her husband's nationality. Instead, the woman has the right to retain, modify, or regain her citizenship.

317. Regarding the use of surnames, there is no provision that requires a woman to use the surname of the husband and release her family name before marriage. A woman is free to choose to use any surname according to her will.

318. Law No. 52 of 2009 on Population Growth and Family Development regulates Indonesia's family planning policy. Article 25 of the Law affirms that husband and/or wife have equal status, rights and obligations in implementing family planning. Implementation of contraceptive services is conducted in ways that are accountable with religion, cultural norms, ethics, and health aspects.

319. In ensuring the implementation of a number of regulations and provisions related to family matters, Indonesia has a number of mechanisms that are conducted by various institutions, both domestic and abroad. At the central level, the Ministry of Home Affairs regulates a marriage registration mechanism at the civil registration. At the regional level, marriage registration is held by the civil Registration Office located in the district/municipality. In addition, the Ministry of Religious Affairs regulates registration of marriage governing Muslim devotees. At the regional level, marriage registration for Muslims is held by the District Office of Religious Affairs (KUA). Regarding marriages performed abroad, whether with Indonesian citizens or with foreign nationals, the Ministry of Law and Human Rights through the Directorate General of Public Law Administration registers and issues marriage certificates. Marriage between Indonesian citizens performed abroad shall be reported to the Indonesian Representatives and registered with the local authorized agencies. The Indonesian Representative registers and issues marriage certificate citations, as regulated in Article 37 of Law No. 23 of 2006 on Population Administration. In addition, marriage registration conducted overseas is also applied to the marriage registry issued by other States as provided for in Minister of the Home Affairs' Regulation No.12 of 2010 on the Guidelines for Marriage Registration and Birth Certificate issued by Other Countries.

320. The Government provides protection for family members who are separated due to political reasons and performs family reunification efforts, for example, families separated due to conflict in Aceh, Ambon, Poso and Timor-Leste. In Aceh, the Government repatriated former Aceh Independence Movement (GAM) prisoners outside Aceh to their respective families in Aceh. In Ambon and Poso, the Government facilitated the repatriation of refugees from outside Ambon. With Timor-Leste, the Government through the Ministry of Social Affairs facilitated reunification of children separated from their families after the 1999 popular consultation. In addition, the State will take care of neglected children who in reality cannot be reunited with their families because their families could not be found, as stipulated in the 1945 Constitution Article 34 Paragraph 1. In 2009, the number of neglected children in Indonesia reached 5.4 million.

## **Article 24**

### **Protection of children**

321. Indonesia ensures that every child is entitled to the rights of protection in accordance with his/her status as a minor, part of a family, a community, and a country, without discrimination against race, color, sex, language, religion, nationality, social status, wealth and birth. Article 28B Paragraph 2 of the 1945 Constitution states: "Every child shall have the right to live, grow and develop, and shall have the right to protection from violence and discrimination." Law No. 39 of 1999 on Human Rights also regulates children's rights, for

example, Article 52 Paragraph 1 states: “All children have the right to be protected by their parents, family and community”.

322. Other children's rights recognized by Law No. 39 Year 1999 on Human Rights include:

- (a) The right to life, to maintain life and to improve the standard of living (Article 53, Paragraph 1)
- (b) The right to name and nationality (Article 53, Paragraph 2)
- (c) The right to special care, education, training and assistance at the expense of the State for children with physical and mental disabilities (Article 54),
- (d) The right to practice religion, and to think and express himself as befits his intellectual capacity and age (Article 55),
- (e) The right to know who his/her parents are and to be brought up and cared for by his own parents (Article 56, Paragraph 1),
- (f) The right to be raised, cared for, educated and guided through life by his/her parents or guardian until he/she is of full age (Article 57, Paragraph 1),
- (g) The right to protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his/her parents, guardian, or any other party responsible for his/her care. (Article 58, Paragraph 1),
- (h) The right not to be separated from his/her parents against his/her wishes, except for valid legal reasons and procedures indicating that this separation is in the best interests of the child (Article 59, Paragraph 1),
- (i) The right to access education and schooling as befits his/her interests, talents, and intellectual capacity (Article 60, Paragraph 1),
- (j) The right to seek, receive, and impart information as befits his/her intellectual capacity and age in the interests of his/her own development, insofar as this meets moral requirements (Article 60, Paragraph 2),
- (k) The right to rest and mix with children of his own age, and to play and create as befits his intellectual capacity in the interests of his own development (Article 61),
- (l) The right to access to adequate health services and social security as befits his/her physical, emotional and spiritual needs (Article 62),
- (m) The right not to be involved in war, armed conflict, social unrest, and other incidents involving violence (Article 63),
- (n) The right to protection from financial exploitation, and from doing any work which is dangerous and/or which could interfere with his/her education or his/her physical, mental, or spiritual health (Article 64),
- (o) The right to protection from sexual exploitation and abuse, abduction and child trading, and from the misuse of narcotics, psychotropics, and other addictive substances (Article 65),
- (p) The right not to be the object of oppression, torture, or inhuman legal punishment (Article 66, Paragraph 1), and
- (q) The right not to have his/her freedom unlawfully taken from him/her (Article 66, Paragraph 3).

323. Indonesia ratified the Convention on the Rights of the Child in 1990 under Presidential Decree No. 36 of 1990 and it was reinforced by Law no. 23 of 2002 on Child

Protection, in which Article 4 of the Law states that every child has the right to live, grow, and develop, and normally participate in accordance with his/her dignity and respect as a human being, and to be protected against violence and discrimination.

324. In accordance with the mandate contained in the 1945 Constitution, neglected children are taken care of by the State (Article 34). The Child Welfare Law (Article 4 Paragraph 1) describes in detail that orphans have the right to be taken care of by the State or an individual or entity/group. The Government also enacted Government Regulation No. 2 of 1988 on the Welfare of Children in Conflict with the Law. Aside from allowing and supporting private sector initiatives to support orphans and neglected children, the Government also builds orphanages which are run by the Ministry of Social Affairs and the Regional Governments.

325. The failure to protect these rights or intentionally perform an activity/act of discrimination, or neglect the children shall be subject to a term of imprisonment of not more than 5 (five) years or a fine of not more than Rp. 100,000,000, - (one hundred million rupiah). This is in accordance with Article 77 of Law No. 23 of 2002 on Child Protection.

326. Law No. 23 of 2002 Article 5 states that every child shall be entitled to possess a name to show his/her individual identity and status as a citizen. Article 27 of the Child Protection Law clearly states that the identity of children in terms of the name, sex, date of birth, relationship with his/her parents and citizenship shall be provided and included in the birth certificate. It is the responsibility of the Government to provide this document, and it should be processed within 30 days after birth and free of charge. However, the implementation of the article has not been fully implemented. Many Indonesian children still do not have birth certificates. Among 422 districts in Indonesia, there are only 42 districts and municipalities which have provided residents with birth certificate free of charge, although with certain conditions. In line with the spirit of regional autonomy, regions in Indonesia have enacted the birth certificate issuance as a source of local revenue. In this regard, it is important for stakeholders to campaign on this matter, especially to the grass root groups.

327. In accordance with Law No. 62 of 1958 on Indonesian Citizenship, a child born from a mixed marriage shall carry his/her father's nationality. However, on 11 July 2006, the Indonesian Parliament issued a new Law on Citizenship No. 12 of 2006 to replace Law No. 62 of 1958. This new provision allows a child born from a mixed marriage to have dual nationality, whether the nationality of his/her father or mother, but he/she must choose one of the nationalities when he/she reaches 18 years of age or has got married. Such status may be extended not more than three years. Several main points of this Law state that children considered as Indonesian nationals are as follows:

- (a) Children or citizens who possess Indonesian national status;
- (b) Children born through legal/out of legal wedlock of an Indonesian father and mother;
- (c) Children born in Indonesia despite the undetermined citizenship of their parents;
- (d) Children born in Indonesia of foreign nationals who have been granted citizenship and had died before their parents had sworn allegiance;
- (e) Foreign nationals seeking naturalization;
- (f) Foreign nationals deserving merit for services to Indonesia and granted Indonesian citizenship;
- (g) Children of foreign nationals under the age of five who are adopted through legal proceedings as children of Indonesian citizens.

328. This new Law is certainly an improvement when compared to Law No. 62 of 1958 on Indonesian Citizenship. The previous Law is considered to be discriminatory against women, particularly concerning their right to pass their nationality on to the children in the context of mixed marriages. In the past, even if the children had resided in Indonesia, they could not enjoy the services provided by the Government. They experienced difficulties attending public school since the Government prioritized Indonesian children. Parents were forced to send their children to expensive international schools and many of the wives abandoned by their husbands suffer from grave economic problems.

329. In addition, in accordance with the applicable Civil Code, the court may revoke their rights to the child when parents do not fulfill or properly perform their duties, which may be harmful to the child. In this regard, the court will appoint a new guardian. The guardian appointed, where possible, shall have a kinship with the child, or at least is an adult who has a healthy mind, just, and good behavior. Guardianship is also required to respect the religion and belief of the child, and defend their property rights. Parents who have had their parental custody revoked remain responsible for financing the daily and educational expenses until the child reaches adulthood or gets married.

330. In accordance with Law No. 1 of 1974 on Marriage, the position of the child is provided for in Articles 42, 43, and 44. In Marriage Law, a child who was born out of wedlock is not considered as a natural child. The child only has a civil relationship with his/her mother and his/her mother's family (Article 43 Paragraph 1 of Marriage Law in conjunction with Presidential Instruction No. 1 of 1991 on the Islamic Law/KHI Article 100).

331. The inheritance of natural children, according to the Civil Code, is stipulated under Article 862 until Article 866:

(a) If the deceased has left any legal descendant or spouse, the natural child shall inherit one third of the share, which they would be entitled to if they were legitimate (Article 863);

(b) If the deceased does not have any descendants or spouse, but has blood relatives in the ascending line (mother, father, grandmother, etc.), or brothers and sisters or their descendants, they shall inherit one half of the estate. However, if there were only remaining family related in a more distant degree, they shall only inherit three quarters of the inheritance (Article 863);

(c) In all the circumstances mentioned in the previous article, the remainder of the inheritance shall be divided among the legal heirs according to the Law (Article 864);

(d) If the deceased has not left any legal heir, then the natural children shall be entitled to the entire inheritance (Article 865);

(e) In the event that a natural child predeceases the testator, his legal children and descendants shall be authorized to claim the privilege granted to them (Article 866).

332. In accordance with the regulations of Civil Code, inheritance shall be granted to the natural children only if they are recognized by the father and/or mother. Without such recognition, the natural child does not have the right of inheritance.

333. Unlike the inheritance regulations of the Civil Code, inheritance based on Islamic Law (Indonesian Compilation of Islamic Law) regulates that a natural child only has a civil relationship with his/her mother and mother's family but not with his/her biological father and biological father's family. In both Islamic Law and Marriage Law, the civil relationship between the natural children and the mother and the mother's family does not require the recognition as stated in the Civil Code. These provisions repeal the stipulation contained in the Civil Code, which requires recognition of the natural child. Therefore, the national

marriage law has provided legal protection and assurance for a natural child. This is reinforced by the provision of Article 7 paragraph 1 of Law No. 23 of 2002 on Child Protection, which states that every child shall be entitled to know his/her parents, and to be brought up and cared for by his/her own parents.

334. The Civil Code, the Marriage Law, the Child Protection Law, and the Presidential Instruction of Islamic Law regulate that the management of the inheritance to which the child is entitled is carried out by both the guardian and the Public Trustee or other institutions given the authority if the child does not have a guardian or a court-appointed guardian. The management of the inheritance is carried out until the child reaches adulthood under the law or the child is engaged in a marriage.

335. Indonesia has made its best efforts to protect Indonesian children from child labor issues. Indonesia has ratified the major ILO Convention concerning the minimum age for work, which states that the minimum age of a worker is 15 years old (Law No. 20 of 1999 on Ratification of ILO Convention No. 138 of 1973 on the Minimum Age allowed to work), thus prohibiting employers from hiring workers under this. The acceptance of the latest major ILO Convention No. 182 on the Worst Forms of Child Labor in 1999, which was ratified by Law No. 1 of 2000, attests to the strong commitment of the people of Indonesia to the need to prohibit children from the worst forms of child labor and their pledge to eliminate it, as a priority.

336. Law No. 13 of 2003 on Manpower regulates child employment in Articles 68-75. In general, these Articles strictly regulate that is prohibited for an entrepreneur to hire children as employees. However, exemption may be made for the employment of children aged between 13-15 years old for light work to the extent that the job does not stunt/disrupt their physical, mental, and social development as stated in Article 69. Thus, children shall only be employed under conditions as follows: written permission from parents/guardians and the work agreements between entrepreneur and parents/guardians are obtained; working hours shall not exceed three hours a day; the work is conducted during the day without disturbing school hours; occupational safety and health are guaranteed; a clear employment relation is established; and the children receive wages in accordance with the prevailing provision. The forms of work that a child is allowed to have are those which are relevant to their schools' education curriculum or training legalized by the authorities or those to develop their talents and interests. In the case where children are employed together with adult workers/laborers, the children's workplace must be separated from the workplace of adult workers/laborers.

337. One of the main reasons the Government prohibits child labor is to prevent a child from poverty in his/her adult life. In this context, Indonesia incorporates its strategies on child labor into its national development programs. In addition to the rules mentioned above, at the policy level, Presidential Instruction No. 3 of 1997 on Enhancing the Quality of Child Welfare has been issued. The Government has also taken legal and administrative measures to implement the existing rules and regulations.

338. In the efforts to provide protection to children, the Government has established the National Action Committee on the Elimination of the Worst Forms of Child Labor by Presidential Decree No. 12 of 2001. Moreover, the Government has also formulated a National Action Plan on the Elimination of the Worst Forms of Child Labor (RAN PBPTA) by Presidential Decree No. 59 of 2002. National Action Committee and RAN PBPTA have also been established at the provincial, district and municipality levels. Currently, 30 PBPTA Action Committees have been established at the provincial level, and 150 PBPTA Action Committees at the district/municipality level. The Elimination of Child Labor Program has been included in the Mid-Term National Development Planning program for the period of 2010 – 2014. In accelerating the implementation of the RAN PBPTA, the Government has carried out the child labor reduction programs in order to support the Ideal

Family Program (PPA-PKH) in 2008, 2010, and 2011. PPA-PKH's aim was to attract child labor to return to schools. The figure for child laborers who returned to school was 4,945 children in 2008, 3,000 children in 2010, and 3,360 children in 2011.<sup>18</sup>

339. Legal settlement efforts for Children in Conflict with the Law are regulated in Law No. 3 of 1997 on the Juvenile Court. The Law regulates that investigation on children should be conducted in a friendly manner; every child has the right to be accompanied by legal counsel; the prison shall be separated from adult inmates; apprehension shall be made after taking serious consideration of the interest of the child and of society; punishment given shall not be constricted in the form of imprisonment or detention, but also through the action of returning the child to his/her parents or guardian. In relation to that, the Criminal Code also provides legal protection for children committing crimes.

340. Law No. 3 of 1997 on Juvenile Court is currently being revised with the Draft Law on Criminal Court System of Children, in which the diversion and restorative justice are firmly regulated at every level (investigation, prosecution and trial). The position of the child is no longer as an object, but as a subject. To minimize imprisonment of children in conflict with the law, they will be placed in temporary child placement agencies and juvenile correctional facilities. Imprisonment will be the last resort in the case of children in conflict with the law. The minimum punishable age will also be increased to 12 years old. If the convicted child is to be punished with a minimum penalty of seven years, the child should have reached the age of 14. The maximum age to be considered as a child will not be more than 18 years old. Law No. 12 of 1995 on Correctional System, regulates separation of children from adult prisoners.

341. In terms of punishment on children, particularly in the prohibition to impose death penalty and life sentence, the Criminal Code states that children cannot be sentenced to death or to life imprisonment. This provision is reaffirmed by the Juvenile Court Law (1997), and Law No. 39 of 1999 on Human Rights. In the latter Law, the prohibition on imposing the death sentence or life imprisonment for children mentioned in Article 66 Paragraph (2), which states that the death penalty or life sentences cannot be imposed against child offenders.

342. Meanwhile, Article 26 of the Juvenile Court Law states that (1) Prison sentences imposed on children committing crimes shall not exceed the maximum prison sentence for adults; (2) With regard to children committing crimes and prosecuted with the death penalty or a life sentence, the imprisonment of the children shall not be more than ten years; (3) If any child under the age of 12 years old has committed a crime prosecutable with the death penalty or life sentence, the child shall be sentenced in accordance with the provisions under Article 24 paragraph 1 such as returning them to their parents or guardian or foster parents; and (4) If any children under 12 years old has committed a crime not prosecutable with death penalty or life sentence, the children may be sentenced in accordance with the provisions set forth in Article 24 mentioned above.

343. Data on cases of children committing crimes in 2009 are as follow: Jakarta (66 cases), North Sumatra (85 cases), Bali (70 cases), West Kalimantan (56 cases), West Nusa Tenggara (95 cases), Eastern Kalimantan (69 cases), Special Region of Yogyakarta (86 cases), Gorontalo (56 cases), West Sumatra (71 cases), East Java (63 cases), Central Java (20 cases), South Kalimantan (17 cases), Nanggore Aceh Darussalam (23 cases), Lampung (164 cases), Jambi (6 cases), Riau (8 cases), Bengkulu (51 cases), and Bangka Belitung (5 cases). The total case numbers of children committing crime are 1,011 cases.<sup>19</sup>

<sup>18</sup> According to data provided by the State Ministry of Women Empowerment and Child Protection

<sup>19</sup> According to data provided by the State Ministry of Women Empowerment and Child Protection

344. Article 15 (e) of the Child Protection Law No. 23 of 2002 states that every child is entitled to protection from the involvement in armed conflict, social unrest, any events containing elements of violence, and warfare. The right of child protection is reinforced by Article 63, which states that it is prohibited for anyone to recruit or manipulate children for military and/or other purposes and leave children without life protection. In the military recruitment system, the general requirements for becoming a soldier are set out in Article 28 of Law No. 34 of 2004 on the Indonesian National Military (TNI) in conjunction with Article 7 Paragraph 1 (d) Presidential Regulation No. 39 of 2010 on the Administration of the Indonesian National Military. To become a TNI soldier, a citizen shall be at least 18 years old at the time of participating in the military force.

345. To improve the effectiveness of child protection, the Indonesian Child Protection Commission (KPAI) was established under Article 74 of Law No. 23 of 2002 on Child Protection. The Commission is an independent monitoring agency on child protection. The responsibilities and tasks of this Commission are in accordance with Articles 75 and 76 of the said law, and are to disseminate all legislation related to child protection; to collect information and data; to receive complaints; to monitor, evaluate and observe child protection measures; and to submit report, suggestions, feedback and consideration to the President of Indonesia concerning child protection.

346. In combating human trafficking, the President has issued Presidential Decree No. 88 of 2002 on the National Action Plan for Elimination of Trafficking of Women and Children and Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons (PTPPO). It is stated that trafficking of women and children is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability (for example drug addict children, children in debt, etc.) or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, legal migrant workers, child adoption, early age of marriage, forced labour or services, domestic workers, beggars, the pornographic industry, drug dealers, or the removal of human organs and other forms of exploitation.

## **Article 25**

### **Access to the political system**

347. The 1945 Constitution Article 28 D (3) states that, “Every citizen has the right to equal opportunities in the government”. This provision is very important considering that the 1945 Constitution guarantees that all citizens, regardless of race, ethnicity, and religion, are equal before the law and they have equal political opportunity. This provision provides no exception, regardless of the position in the government.

348. The rights associated with the Indonesian political system are also provided by Article 22 E of the 1945 Constitution Amendment, which states:

(a) General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years.

(b) General elections shall be conducted to elect the members of the House of Representatives (DPR), Regional Representatives Council (DPRD), the President, and Vice-President.

(c) The participants in the general election for the election of the members of the DPR and the members of the DPRDs are political parties.

(d) The participants in the general election for the election of the members of the DPD are individuals.

(e) The general elections shall be organized by a general election commission of a national, permanent, and independent character.

349. With regard to general elections at the provincial and district/municipality levels, Article 18 paragraph (3) and paragraph (4) of the 1945 Constitution indicates that the provincial, district and municipal governments have a Regional People's House of Representatives (DPRD) whose members are chosen by elections, and the Governor, Regents, Mayors respectively are the heads of the provincial, district and municipal governments democratically elected. Law No. 39 of 1999 on Human Rights in Articles 43 and 44 also guarantees the right of citizens to participate in the general elections, which is part of the right to participate in the government.

350. Related to general elections, the Government formulates various laws and regulations, inter alia:

(a) Law on General Elections, as last amended by Law No. 10 of 2008 on General Elections for the House of Representatives, Regional Representatives Council, and Regional People's House of Representatives, and Law No. 42 of 2008 on General Election of President and Vice President.

(b) In addition, a number of other laws related to the election are Law No. 22 of 2007 on the General Election Organizer and Law No. 2 of 2008 on Political Parties, and the establishment of the Election Monitoring Board (BAWASLU).

(c) General elections at the regional levels (provincial and district/municipality) are regulated by the Law on Regional Government, as last amended by Law No. 12 of 2008 on Second Amendment of Law No. 32 of 2004 on Regional Government.

351. In addition to the right to political participation, Indonesia also ensures the right of a person to access to public services. There are a number of laws and regulations which provide this right, such as employment-related Laws which have been amended by Law No. 43 of 1999 on Amendment of Law No. 8 of 1974 on the Principles of Civil Service and Law No. 2 of 2002 on the Police that provide the broadest opportunity for every Indonesian citizen to join the Indonesian Police. There are also Law No. 34 of 2004 on the Indonesian National Military (TNI) in conjunction with Government Regulation No. 39 of 2010 on the Indonesian National Military Soldiers Administration, and Law No. 28 Year 1999 on Public Participation.

352. Regarding the right to obtain public service, the Government has enacted Law No. 25 of 2009 on Public Service. This Law essentially provides that citizens have access, standards and other mechanisms related to public service. Citizens are also entitled to fair and transparent services, without discrimination. In addition, there are various complaint mechanisms, including through the Ombudsman and other relevant agencies that provide services on obtaining decisions on complaints within a definite time frame (60 days). Furthermore, Law No. 14 of 2008 on Public Information Disclosure also requires the State to provide information as long as it is not in contravention of the Law.

353. There are no provisions that restrict the rights of certain groups to participate in general elections and public service. Articles 19 and 20 of Law No. 10 of 2008 provide that every citizen has the right to vote. Article 50 provides for the right to be elected as members of the House of Representatives (DPR) and Regional People's House of Representatives (DPRD, provincial and district/municipality). Article 12 provides for citizens to be elected as a member of the Regional Representatives Council (DPD). Article 5 of Law No. 42 of 2008 provides for the right of every citizen to run for president or vice president.

354. The minimum age to participate in the elections is 17 years old or he/she has been married as is stated in Article 13 of Law No. 12 of 2003 on General Election.

355. The explanation concerning certain groups which do not enjoy the right to vote, such as residents in an area who can only vote in their own local area or participate in public service in their own area, is stated in Articles 72 and Article 73 of Law No. 32 of 2004 as amended by Law No. 12 of 2008 in conjunction with Article 149, Article 157, Article 158 and Article 159 of Law No. 10 of 2008 on General Elections for the House of Representatives, the Regional Representatives Council, and the Regional People's House of Representatives, and in conjunction with Article 111 and Article 122 of Law No. 42 of 2008 on the Election of the President and Vice President. For instance:

(a) In the General Election of Head and Deputy Head of a Region (Governors, Regents, and Mayors), residents of the area only have the right to vote for the Regional Head and Deputy Head in one area and one particular province;

(b) In Legislative Elections and Election of President and Vice President, voters who are not registered in the Register of Voters cannot use their voting rights;

(c) In Legislative Elections, a voter cannot vote in an area other than where he/she is listed as a voter in the respective vote areas.

356. Legislation that provides for citizens to get equal opportunities without discrimination in enjoying the rights to participate in government affairs, the right to vote and to be elected, as well as to gain access to public services, are referred to in Article 27 and Article 28D of the 1945 Constitution in conjunction with Article 68 of Law No. 32 of 2004 as amended by Law No. 12 of 2008, in conjunction with Article 2 and Article 29 of Law No. 2 of 2008, in conjunction with Article 19 and Article 67 of Law No. 10 of 2008, in conjunction with Article 27 and Article 28 of Law No. 42 of 2008. This provision proved to be applicable when Megawati Sukarnoputri was sworn in on 23 July 2001 as the 5th President and the first female president in Indonesia. It should also be noted that Megawati was appointed as Vice President from 1999 to 2001. This is strong evidence that there is no gender-based discrimination in the Government.

357. In accordance with Indonesian National Military Law No. 34 of 2004 Article 39 Paragraph 4, soldiers are prohibited from being elected as legislators in elections and other political positions. Article 28 of Law No.2 of 2002 on the Indonesian Police states that the police remain apolitical and shall not involve themselves in practical politics, and shall not use the right to vote and to be elected.

358. Aside from the restrictions on military and police officers, Indonesia does not recognize other restrictions in the implementation of the right to vote, except for the age limit to vote (17 years old) or is currently/ formerly been married (Article 19 of Law No. 10 of 2008 on General Elections). The objective criteria of limitations on certain conditions specified in the regulations is referred to in Article 25 E and Article 27 Paragraph (1) and Article 29 of the 1945 Constitution in conjunction with Article 20 of Law No. 10 of 2008.

359. Political life in Indonesia may be misunderstood if one does not possess a good understanding of its historical background. In fact, the six Presidents of Indonesia came from five different political parties. Elections in Indonesia have been carried out 10 times; in 1955, 1971, 1977, 1982, 1987, 1992, 1997, 1999, 2004 and 2009. Based on these historical facts, it is understood that the Indonesian political system is open to all citizens regardless of gender, religion, race, color, ethnicity, and wealth.

360. In general, since 1999, Indonesia has held direct, democratic, fair, transparent and accountable elections. Moreover, the election process in Indonesia can be considered as one of the most complex elections in the world, considering that apart from two national elections (presidential and legislative), Indonesia also holds elections for regional heads of

provincial and district/municipalities and their respective legislative bodies. With regard to the voting process, the voting committee is completely done by the society, the overseas election committees. The 2009 Indonesia Democracy Index indicated that the index for the right to vote and to be elected in a general election reached 50.05., which showed that, despite successful results, there are still challenges and opportunities to improve the quality of election including a better mechanism to form the database of voters (DPT). However, the survey also concluded that the index of 87.67 was reached when measuring free and fair elections.<sup>20</sup>

361. Recent data between the years 1999 – 2004 show that there were 399 Regional Heads elected by Parliament (33 Governors, 366 Regents and Mayors). Between the years 2005 – 2008, there were 467 Regional General Elections (33 Governors, 352 Regents and Vice Regents, 82 Mayors and Deputy Mayors). In 2010, there were 224 Regional General Elections (7 Governors, 184 Regents and Vice Regents, 33 Mayors and Deputy Mayors). In the last national general election of 2009, 38 political parties participated and 9 of them won seats in the Parliament. Voters' turnout reached 70.99 percent (121 558 336 of 171 265 442 eligible voters) in the legislative elections and 72.56 percent in the presidential election.<sup>21</sup>

362. The Government's efforts in providing accessibility for groups with disabilities is, inter alia, the provision of specific methods such as photographs and symbols for illiterate voters as referred in Article 28 H Paragraph (2) of the 1945 Constitution in conjunction with Article 89 Paragraph (1) of Law No. 32 of 2004 as amended by Law No. 12 of 2008, in conjunction with Article 156 Paragraph (1) and Article 164 Paragraph (1) of Law No. 10 of 2008, and in conjunction with Article 119 Paragraph (1) and Article 28 of Law No. 42 of 2008. Regarding groups with disabilities, Law No. 4 of 1997 on Persons with Disabilities provides legal guarantees for equal rights and opportunities in all aspects of life and livelihood as stipulated by Article 5 in conjunction with Article 7. Guarantees are provided to groups with disabilities to continue to participate in general elections according to Article 164 of Law No. 10 of 2008 on the Election of Members of House of Representatives, Regional Representative Council, and Regional People's House of Representatives.

### **Kamus**

363. Related to public access to public service, the recruitments of State officials are more accountable, transparent and objective than in the past, such as the recruitment process for Diplomatic Officers at the Foreign Ministry, as well as the selection process of members/leaders of the State commissions (e.g. the Commission for Corruption Eradication, the Judicial Commission and the National Commission for Human Rights).

364. Moreover, the role of the Ombudsman as part of the complaint mechanism is also increasing in importance. Throughout 2010, the public accessed the Ombudsman through various mechanisms, such as by mail, walk-in visits, website, email, phone, fax, etc. The total number of public complaints to the Ombudsman in 2010 was 5,942, mostly by mail and walk-in visits.

365. Out of all these complaints, 4,888 inquiries were resolved directly by the Ombudsman and 1,154 complaints were followed up as they were deemed to fulfill the formal requirements to the Ombudsman. By the end of December 2010, the Ombudsman had followed up on more than 98% of public complaints. Among the 1,154 complaints reports submitted to the Ombudsman, regional government agencies received a total of 360

<sup>20</sup> "Measuring Democracy in Indonesia: 2009 Indonesia Democracy." Jakarta: UNDP, 2009 (p. 44 & 61-62)

<sup>21</sup> According to data provided by the Ministry of Home Affairs

complaints (31.21%). This trend is similar to the complaints lodged by the public to the Ombudsman in previous years. Other agencies widely complained to by the public are the Police with 242 complaints (20.97%), the Courts with 161 complaints (13.95%), the National Land Agency with 97 complaints (8.44%), and Government Ministries/Agencies with 89 complaints (7.69%).

## **Article 26**

### **Equality before the law**

366. Indonesia as a state of law upholds the principle of equality before the law and elimination of all forms of discrimination. Such principles are stipulated in Article 27 (1) of the 1945 Constitution, which states that “All citizens shall be equal before the law and the government, and shall be required to respect the law and the government, with no exception.” Furthermore, Article 28 D (1) of the 1945 Constitution states that “Every person shall have the right of recognition, guarantees, protection, and certainty before a just law, and of equal treatment before the law”.

367. This provision is further elaborated by Article 28I (2) of the 1945 Constitution, which states, “Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment.” Furthermore, Article 28G Paragraph (1) of the Constitution states that “Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. “Article 28H Paragraph (2) of the Constitution states that “Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.” Provisions in this Constitution further emphasize that no citizen shall be subjected to any form of discrimination on any grounds, including based on race or ethnicity. In this connection, it should be noted that although Indonesia has more than 1,000 ethnic groups, they all have equal rights.

368. Indonesia’s commitment to implement the Universal Declaration of Human Rights is embodied in the ratification of Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination. The protections provided for by Article 5 of Law No. 40 of 2008 aiming at the elimination of racial and ethnic discrimination are:

- (a) Protection, certainty, and equality before the law for all citizens to live free from racial and ethnic discrimination;
- (b) Guarantee to the absence of barriers to the initiative of individuals, groups, or institutions which need protection and guarantee to the equal enjoyment of rights as citizens; and,
- (c) Public understanding of the importance of pluralism and respect for human rights through national education.

369. Article 6 of the Law on the Elimination of Racial and Ethnic Discrimination requires central and regional government as well as the community to get involved in implementing the protection of citizens from all forms of racial and ethnic discrimination. In the implementation, the Law obliges central and regional governments:

- (a) To provide effective protection to every citizen who experiences racial and ethnic discrimination and to ensure the effective implementation of law enforcement against any act of discrimination that occurs, through a judicial process conducted in accordance with the provisions of legislation;

(b) To provide guarantee to every citizen to obtain assistance, settlement, and fair reimbursement for the losses and sufferings caused by racial and ethnic discrimination;

(c) To support and encourage the efforts to eliminate racial and ethnic discrimination, and to ensure that State apparatus and government agencies act in accordance with the provisions of legislation; and

(d) To take effective action in order to renew, amend, revoke, or cancel any legislation containing racial and ethnic discrimination.

370. The supervision of any efforts to eliminate racial and ethnic discrimination is conducted by the National Commission for Human Rights (Komisi Nasional HAM or Komnas HAM). The Commission was established by Presidential Decree No. 50 of 1993 on the National Commission on Human Rights. Since 1999, the existence of the Commission has been strengthened by Law No. 39 of 1999, which regulates the existence, purpose, function, membership, principles, as well as the duties and authority of Komnas HAM.

371. The Law on the Elimination of Racial and Ethnic Discrimination provides criminal penalties for any person or corporation proved guilty of discriminative acts provided for by Articles 15-21. Article 15 states that any person who intentionally makes any distinction, exclusion, restriction, or selection based on race and ethnicity that results in the revoking or reduction of the recognition, acquisition or implementation of human rights and fundamental freedoms on equality in the fields of civil, political, economic, social, and cultural rights shall be sentenced to imprisonment for not more than one year and/or Rp 100,000,000 fine at the most. Furthermore, Article 16 of the Law also regulates that any person who intentionally shows hatred or hostility to others based on racial and ethnic discrimination shall be sentenced to imprisonment for the maximum of five years and/or maximum fine of Rp 500,000,000. Article 17 states that any person who intentionally conducts deprivation of one's life, assault, rape, lewd, theft with violence or deprivation of liberty based on racial and ethnic discrimination shall be sentenced in accordance with the provisions of legislation with the addition of one third of the respective maximum sentence.

372. The above-mentioned criminal acts shall be considered as being conducted by a corporation if the crime is committed by persons acting for and/or on behalf of a corporation or in a corporation's interest, whether on the basis of an employment relationship or other relationships, performed in the corporate environment concerned, individually or as a group. In addition to imprisonment and fines for the executive board, sanctions which are given to the corporation may be in the form of a criminal penalty three times more severe than criminal penalties provided for by Article 16 and Article 17 added with the revocation of business licenses and the legal status of the corporation.

373. Indonesia is of the view that all forms of violence, especially domestic violence, are a violation of human rights and crimes against human dignity and a form of discrimination. This view is materialized through the enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence. The Law states that women and men shall enjoy equal status and have the same condition to fully enjoy human rights and the potential thereof for the unity and continuity of households. In addition to the Law on the Elimination of Domestic Violence, the protection from discriminatory acts against children is specifically regulated by Law No. 23 of 2002 on Child Protection which provides that every child is entitled to the right to live, to grow, to develop, and to participate fairly in accordance with human dignity, and to get protection from violence and discrimination.

374. In order to provide protection to witnesses and victims of a lawsuit, Indonesia has adopted Law No. 13 of 2006. Protection to witnesses and victims are given at all stages of the criminal justice process in the courts. Protection granted to witnesses and victims is

based on respect for human dignity, security, justice, non-discrimination, and legal certainty.

375. In the process of arrest, prosecution and trial in the courts of citizens who have committed violations of law, the Criminal Procedure Code guarantees rights for citizens as stipulated in Article 50-68 as already elaborated in the report under Article 14. The rights provided for by the Criminal Procedure Code to the suspect/defendant are:

376. In general, the Criminal Proceeding Code guarantees the right to every person to obtain rehabilitation if the person is acquitted by the court or is released from all lawsuits and the decision has had a permanent legal force.

377. As an effort to provide assurance regarding recovery for victims of domestic violence, the Government has issued Government Regulation No. 4 of 2006 on the Implementation and Cooperation of Recovery for Victims of Domestic Violence. For the purpose of recovery, victims are entitled to receive services from health personnel, social workers, volunteers, and/or clergy. Health services are performed by health personnel at health facilities owned by the Government, regional government, and society, including the private sector, by providing health care treatment and recovery for victims. Assistance for the victims is performed by health personnel, social workers, volunteers, and/or clergy by providing counseling, therapy, spiritual guidance and advocacy for the strengthening and recovery of the victims. Counseling is conducted by social workers and volunteers by empathically listening to and understanding the problems of the victims in order to give psychological support. Spiritual guidance is conducted by clergy by giving an explanation of the rights and obligations, and the strengthening of faith and observance according to his/her religion and belief. Social rehabilitation and reintegration of victims is performed by social institutions and agencies to ensure that victims can return to perform their social function in the society.

378. The Government has also taken several measures to ensure and guarantee the promotion and protection of human rights in Indonesia, particularly in eliminating discrimination in all forms. For example, the Government ratified the International Convention on the Elimination of Racial Discrimination of 1965 through Law No. 29 of 1999.

379. To ensure that there is no discrimination between men and women before the law, Indonesia has also made concrete efforts. For example, Indonesia ratified the Convention on the Political Rights of Women in 1957 through Law No. 68 of 1958 and the Convention on the Elimination of All Forms of Discrimination against Women through the enactment of Law No. 7 of 1984. The Agrarian Law of 1960 guaranteed the right of women to land ownership. Furthermore, equality between men and women has been consistently emphasized in the State Policy Guidelines of 1978, 1983, 1988, 1993, and 1999. The Guideline of 1999-2004 emphasized the improvement of the role and condition of women in family and society, in order to achieve gender equality. The Guideline was created by the People's Consultative Assembly (MPR), the highest legislative body in the country, in order to establish the basic formulation of national development policy and planning.

380. Equality of rights between men and women is also implemented in the economic sector. Indonesian women play a very important role in economic development. Women's economic activities, especially those from the lower economic class are closely related to their role and responsibilities within the family. In 2010, the participation rate of women in employment amounted to 38.66%, with 61.34% for men.

381. For such reasons, the Committee on the Elimination of Discrimination against Women in its concluding observations in 1998 noted that the Convention has become part of domestic law in Indonesia and has been enforced in the courts in discrimination cases. The Committee was satisfied that the Indonesian Government had undertaken the

implementation of the “Beijing Platform” significantly by the establishment of the National Action Plan for Human Rights of Indonesia. Furthermore, the Committee expressed its appreciation for the fact that Indonesia established the Ministry of Women in the 1970s, even before Indonesia ratified the Convention.

382. The establishment of the Center for Women Studies is also considered as a significant achievement made by the Government. The Committee was also satisfied and noted the role of Indonesian women in NGOs, which is known to have a strong and effective influence. The Committee appreciated the success of family planning programs and considered it as the good case practice of the Government's ability to take effective measures to improve women's conditions. However, some concerns are raised regarding the inequality in the share of responsibility between men and women in family planning. It is noted that men need to be more engaged regarding this issue.

## **Article 27**

### **The rights of minorities to culture, religion and language**

383. Indonesia attaches great importance to the fulfillment of the rights of any groups to culture, religion and language. The diversity of ethnic groups, religions and/or beliefs, and ethnic languages which are also compounded in inter-ethnic marriages has made the concept of a minority rather difficult to implement in Indonesia. However, Indonesia recognizes that there are certain groups in the communities whose development is not on par with other sections of communities.

384. In this regard, Article 28 (1) of the 1945 Constitution guarantees full respect for the rights of traditional communities. Furthermore, Article 28 I (3) of the Constitution states that “the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilizations.” Article 32 Paragraphs 1 and 2 of the 1945 Constitution provide assurance to the promotion of Indonesian communities by guaranteeing their freedom in maintaining and developing their cultural values.

385. To implement the said 1945 Constitution provisions, the State has enacted several policies, which include Presidential Decree No. 111 of 1999 on Social Welfare Development of Remote Traditional Communities. In Article 1 Paragraph (1) of the Decree, Remote Traditional Communities are socio-cultural groups that are local and less or not involved in the social, economic, and political network and service. Indonesia is also working on the Bill on the Recognition and Protection of Traditional Communities, which is currently in the process of discussion by the House of Representative.

386. The protection and affirmative actions towards Remote Traditional Communities are also based on regulations that target disadvantaged sections of the community. Those regulations include, inter alia, and Law No. 6 of 1974 on Principles of Social Welfare, Law No. 12 of 2006 on Citizenship which holds the principle of non-discrimination towards citizens based on ethnicity, race, religion, sex, and gender, Law No. 52 of 2009 on Population Growth and Family Development which provides a guarantee to every citizen to live in a society that is safe and secure, which fully respects, protects and implements human rights and maintains and develops traditional values in the society.

387. Other laws and regulations include Law No. 5 of 1960 on Basic Rules of Agrarian Subjects; Law No. 24 of 1992 on Spatial Planning, Law No. 23 of 1997 on Environmental Management; Law No. 39 of 1999 on Human Rights; Law No. 41 of 1999 on Forestry; Law No. 10 of 2004 on the Establishment of Legislation; Law No. 32 of 2004 on Regional Government; Government Regulation No. 76 of 2001 on Guidelines for Regional Government; and State Minister of Land/ Head of the National Land Agency Decree No. 5 of 1999 on Guidelines for the Settlement of Communal Land Rights Settlement. Those laws

provide guarantee for the communities to be consulted in each development program and for them to manage themselves as well as to maintain their culture, religion and language.

388. As mentioned in paragraph 22 and 254 of this report, it should be admitted that there was a time when the State enacted regulations based on ethnic considerations, especially concerning Chinese descent. It happened during the new order administration (1967-1998). However, since then the regulations have been revoked or annulled. Those regulations that were revoked are, inter alia, Presidential Instruction No. 14 of 1967 on the Prohibition of Religion, Beliefs and Customs of Confucianism. Besides revoking, the Government has also enacted several regulations that guarantee that the rights of those of Chinese descent are respected, which include, inter alia, Presidential Instruction No. 26 of 1998 on the Elimination of the Use of Terms Natives and Non Natives, Presidential Decree No. 19 of 2002 on determining Lunar New Year as a national holiday and Presidential Decree No. 56 of 1996 on Indonesian Nationality Documentation and Instruction of the Minister of Home Affairs No. 25 of 1996 on Implementation Guideline of the Presidential Decree No. 56 of 1996, one of which regulates the revocation of bylaws that oblige the submission of Nationality Documentation for Chinese and their descendants for civil administration purposes.

389. Other debates that are occurring related to the issue of “religious minority” are on the protection towards the Ahmadiyah followers and certain Christian communities. In this regard, Indonesia has undergone many efforts to promote human rights and a culture of tolerance, as well as to ensure the protection of religious groups, including Ahmadiyah and Christians, through all necessary legal instruments, frameworks, and national policies. Especially for Ahmadiyah, it has been elaborated in paragraph 251-252 in this report that there has been a Joint Decree from Three Ministers that prohibits people to act unlawfully against members of Ahmadiyah. As in the case involving violence against Christians, the authorities have taken the necessary transparent legal process to ensure that those involved are brought to justice.

390. With regard to linguistic minorities, there are more than 700 hundred languages spoken by different communities in Indonesia but none are treated as a linguistic minority. There has been no known issue in this regard.

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