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Submission for the UN 3rd Cycle of Universal Periodic Review Indonesia

FUNDAMENTAL FREEDOMS

Contributors:



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Indonesia

Submission to Universal Periodic Review of United Nations (Third Cycle) Fundamental Freedoms

The Commission for the Disappeared and Victims of Violence (KontraS)
The Indonesian Center for Law and Policy Studies (PSHK)
P2D

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I. Profiles

1. The Commission for the Disappeared and Victims of Violence (KontraS) and Indonesian Center for Law and Policy Studies submit this report for the Universal Periodic Review (UPR) of Indonesia that will take place in May 2017.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. Indonesian Center for Law and Policy Studies (PSHK) established in 1998 which has conducted various research and advocacy activities that have contributed significantly towards the improvement of law in Indonesia. PSHK also actively conducts several legal advocacy activities in cooperation with several non-governmental organizations, especially in the issues of legal enforcement, anti-corruption, human rights, environmental sustainability, alignments towards marginalized communities.

II. Overview

4. After four years of the 2nd Cycle of Universal Periodic Review, Indonesia received numerous of recommendations by other countries to continue its efforts to mainstreaming fundamental freedoms, such as freedom of opinion and expression, freedom of peaceful association and assembly, and freedom of religion and belief in Indonesia. In the implementation, it is actually contradict with all the recommendations received by government of Indonesia. The fundamental freedoms tend to have regressions in the quality of the freedoms enjoyment. There are several policy that actually more limiting the fundamental freedoms, the remaining fundamental freedoms limitations and also the human rights violations committed by the government in limiting the fundamental freedoms itself.

5. In term of security issue that become one of the agenda in limiting the freedom, such as the Law No. 15/2003 on Anti Terrorism Draft Bill in 2016 that potentially limiting the freedom of Indonesian people with the non-existence of “extreme and strong” indicator in the definition of extremisms that could be misinterpreted because of the subjectivity of the law enforcement apparatus in field. This Draft Bill appeared after the bombing incident in the capital area in Jakarta allegedly committed by ISIS networks made the government of Indonesia act repressively and threatening to be violating the fundamental freedoms of the Indonesian people.
6. The fact above is actually only one of the reality that already occurred in Indonesia since 2012-2016. After the new presidency of Joko Widodo, there are actually a lot of fundamental freedom limitation in the name of religion, morality and also Asian values that do not have any clear measures to conduct such policy making without taking any human rights mainstreaming consideration.

III. Implementation of the 2nd Cycle of Universal Periodic Review

Policy making: freedom of opinion and expression and freedom of peaceful association and assembly

7. The Law No. 15/2003 of Anti Terrorism Bill that already prepared by several ministries and under the assessment by the House of Representatives (DPR) that do not have a clear indicators of and measures of several phrases in the articles that made this regulation actually ambiguous and potentially contrary with human rights. This Draft Bill actually also contradict with the Constitutional Court verdict No. 5/PPU-VIII/2010 that proposed law establishment to regulated the tapping matter in Indonesia.
8. In October 2015, Acehnese Sharia Criminal Law (Qanun Jinayat) No. 6/2014 implemented. This Qanun widening the use of cruel, inhuman punishment against the homosexual and persons who committed sex outside marriage with flogging 100 times for homosexual maximum and 30 times for sex outside marriage.
9. In 2013, the Mass Organization Bill established to be Law No. 17/2013 regarding Mass Organization. The law that (why complicate?¹) already pass the material assessment on the Constitutional Court by Muhammadiyah organization that eventually make the mass organization more independent without the intervention of the government. The efforts of limitation also occurred against the journalists towards the Contempt of Court (COC) Bill in the National

¹ Under the new law, the government can dissolve organizations that do not espouse the principles of Pancasila. Organizations cannot commit blasphemy or advocate non-Pancasila ideologies, including Marxism-Leninism, atheism, and communism. The law also narrows the types of activities associations can undertake, increases bureaucratic controls by requiring all organizations to register with the government and submit to regular reviews of their activities, allows the government to dissolve noncompliant organizations, and includes other vague requirements that leave considerable discretion to local governments and courts. In addition, foreign groups are forbidden from activities that disrupt the stability and integrity of the country or its diplomatic relations.

Legislation Program (Prolegnas) of 2015-2019 that potentially limiting the expression of anyone including the journalists that publishing the court processes.²

10. Until 2015, there was formed 11 local regulations related to Mass Organization Law, one of them is Qanun in Aceh Utara about Peoples' Kindness and Order that require every "mass organization" to enroll and have permission while performing activities. On the other side, Constitutional Court stated that permit is voluntary and an organization does not has permit will be recognized. Coalition for Peaceful Association and Assembly noted this condition rises impact to rights and position of civil society organization, such as rights to obtain information from the government. In several areas, if an organization not listed, the government shut the door to give information services.
11. The inclusion of the article of insulting government in the Penal Code Bill in 2015. The article that did not give clear limitation regarding the element of "causing chaos among the community" that potentially become a rubber article that could affected to the discretion abuse of the investigators, prosecutors or the public officials in responding the rights of the citizen in delivering their opinion and expression as the enjoyment of citizen political rights.³
12. At the local level the Jakarta Governor Regulation No. 228/2015 that limiting the demonstration acts that only allowed in 3 points in Jakarta, limiting the using of voice speaker not more than 60 decible and the time to conduct the act from 08.00-18.00. From the security apparatus the Chief of National Police Circulated Letter regarding the Hatespeech No. SE/06/X/2015 which at the beginning was to tackle the tolerance incidence and as the internal legal guidance, it is potentially established to limiting the freedom of opinion. The Chief of National Police already confusing the definition of hatespeech with the defamation. This Circulated Letter also did not become the basis of countermeasures by the National Police while the hatespeech received by the LGBT groups in 2016 and against the other minority groups that became the victims of hatespeech.
13. According to Komnas Perempuan on March 2016, there are 389 discriminative local regulations against women. One of the example is Qanun in Aceh province that prohibited women to not wearing hijab, and the ethics to sit on the motorcycle.

Policy making: freedom of religion and belief

14. According to the 2nd Cycle of UPR, the recommendations to improve the situation of freedom of religion and belief have had taking the international attention. There are various recommendations, which one of the is to review the existing laws and policed and repeal or amend where necessary to ensure their compatibility with the right of freedom of religion and

² See more: Koran Sindo. 2015. Baleg DPR Tolak Contempt of Court. The source can be accessed at:
<http://www.koran-sindo.com/news.php?r=0&n=7&date=2015-12-14>

³ See more: KontraS. 2015. Rancangan Kitab Undang-Undang Hukum Pidana: Keluarkan Pengaturan Pidana Pelanggaran HAM Berat dan Lindungi Hak Asasi Warga Negara. The source can be accessed at:
<http://kontras.org/home/index.php?module=pers&id=2181>

belief⁴ that already accepted by the government of Indonesia to be improved. Although, in the reality the existence of Ministers Joint Decree in 2008 that prohibited the Ahmadiyya still not been revoked, instead the Ministers Joint Decree was revised with adding more about the prohibition on Gafatar (Fajar Nusantara Movement) the Minister of Religion, Minister of Internal Affairs and Attorney General agreed to implement the prohibition through the law that belief Ahmadiyya is a blasphemy.

15. In term of the freedom of worship and build a worship house, the Ministers Joint Decree of Minister of Religion and Minister of Internal Affairs No. 9/2006 remain to be implemented, the Joint Decree No. 8/2006 regarding the Guidelines of Chief of District Mandate in the Religious Community Maintenance Harmony, the Empowerment of Religious Community Harmony Forum and the Building of Worship House in this term to establish FKUB (Forum Kerukunan Umat Beragama – Religious Community Harmony Forum) that instead limiting the freedom to build a worship house with the article 14 (2) point (b) where every matters related with the requirements of the building of worship house should have 60 persons supports around the society to build the worship house. The support that difficult to have with various reasons, such as minor assumption to the purpose of worship house builds, intimidation until blackmailing.⁵ The case of building permission of Santa Clara Church in Bekasi, West Java on March 7, 2016 that already qualified by the FKUB still demand to be revoked by around 1000 intolerant mass.⁶

Human rights violation cases in the freedom of opinion and expression and freedom of peaceful association and assembly

16. In 2015, KontraS found 238 incidents of fundamental freedoms limitation. It were acknowledge that majority of the perpetrators did not receive a correct punishment according to law. Police still become the highest numbers of perpetrators of 85 actions, along with the public officials, fundamentalist mass organizations, National Military Forces and the scholars in some universities. The pattern of freedom limitation such as dismissal of public discussions, arbitrary acts, prosecution, banning of worship houses, websites blockade until the prohibition of wearing hijab.
17. According to the KontraS monitoring data, several areas in Indonesia still not human rights-friendly yet and tend to anti-human rights. West Java has the highest rank of freedom of religion and belief limitation as 41 incidents in this area, followed by East Java of 35 incidents with journalist practices limitation. The increasing of freedom limitation with the trend of natural resources in Jakarta of 24 incidents (forced evictions were dominated and followed by dismissal of labour and students mass acts). In Papua, 23 incidents dominated by arbitrary arrests and

⁴ See more: United Nations. 2012. Universal Periodic Review: Report of the Working Group. Recommendation by New Zealand. Para. A-108.98.

⁵ See more: KontraS. 2010. Pernyataan Bersama Forum Solidaritas Kebebasan Beragama “Biarkan Keberagaman Tetap ada dan Tolak Kekerasan Atas Nama Agama”. The source can be accessed at:

<http://www.kontras.org/home/index.php?module=pers&id=1116>

⁶ See more: Berita Satu. 2016. FKUB Kota Bekasi Tegaskan Izin Gereja Santa Clara Sesuai Ketentuan. The source can be accessed at: <http://www.beritasatu.com/megapolitan/353606-fkub-kota-bekasi-tegaskan-izin-gereja-santa-clara-sesuai-ketentuan.html>

detention against the peaceful expression acts not only in Papua itself but also in other areas in Indonesia.

18. **Attacks against journalists still occurs.** The Alliance of Independent Journalists (AJI) recorded slightly fewer cases of violence against journalists in 2013, a total of 40 reduced from 56, in addition to 20 separate incidents against journalists in Papua, the latter an increase from the prior year. An AJI report accused the military of responsibility.
19. **LGBT issue in the beginning of 2016 in Indonesia developed to become a hatespeech and received massive rejection amongst the community.** The group of Democracy Defense Solidarity (SPD) that will conducted a mass act in Tugu Jogja on February 2016 to raise their voices defending the LGBT rights and defense the hatespeech against the LGBT groups blocked by the police. The reason was the intolerant mass that identified came from the Ukhuwah Islamiyah Forum (FUI) already occupied the mass act location. The mass of FUI spread a release related with the violent threat against the LGBT groups that stated “burn, stoning, give the highest punishment against the LGBT groups”. This kind of situation actually did not developed by itself, because since a long time the community never tried to commit such hateful act, except for the extremist/radicalist Muslim that reject the LGBT. The situation of horizontal conflict between the community targeted to the LGBT groups actually occurred triggered by the widespread of anti-LGBT discourse that lead to hatespeech sponsored by the legitimization of the public officials statements. KontraS recorded at least there are 17 public officials, whether executive or legislative officials stated discriminative statements against the LGBT groups. Several of them even proposed to preparing the anti-LGBT discourse to adopt as the state policy. Indonesian Broadcasting Commission (KPI), Indonesian Child Protection Commission (KPAI) openly and aggressively conducted discrimination expression that allegedly close to the LGBT behavior in the name of the constitutions.
20. The attack incidents also occurred on 2012, 2014 until 2016 in Yogyakarta province. On 2012 there was attack to the book launching of Canadian that promoted LGBT rights in Yogyakarta. On December 2014, there were transgender activists attack in Tugu Yogyakarta in the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT). On 2016, the Islamic Boarding School Al-Fatah Yogyakarta received a threat from the Islamic Jihad Front because the Islamic Boarding School students were mostly transgenders. At this time, some scholars request to Constitutional Court to criminalize coexistence and homosexuality.
21. **The limitation of the freedom of expression to the truth-telling process of the 1965 Massacre.** In 2012, the screening of “The Act of Killing (Jagal)” movie that telling the murders of communism groups by the government in 1965 was prohibited. On December 2014, similar situation also occurred in the screening of “The Look of Silence (Senyap)” by the Film Censorship Agency (LSF) that telling about the massacre in 1965. Post the International Peoples’ Tribunal of 1965 Massacre (IPT’65) in Den Haag, Netherlands, the limitation of freedom of expression and opinion occurred, such as the blockade of the IPT’65 website. Moreover, similar prohibition occurred aftermath, it were also increasing while the National Symposium of 1965 Massacre held in Jakarta. Mostly, the prohibition were occurred in the formal education sector

such as in universities in Indonesia by the universities officials and by the security apparatus as well. The other events that not only a movie screening but also book discussions, Recollection of 1965 Memories and remembering a figures of communism such as Tan Malaka.

22. While the National Symposium of 1965 held in Jakarta prepared by the government, it was quite ironic because at the same time a lot of closed operations by the state security apparatus against the alleged Communism Party resurrection occurred. The National Symposium of 1965 and the Mass Cemetery of 1965 Massacre dismantle used as a trigger to raise panic amongst the community, then triggered the fear among them that tend to make another horizontal social conflicts and intolerance acts eventually because of the stigma of communism. KontraS noted after the IPT'65, on September-November 2015 at least 7 arrests and seizing of communism symbols, hammer and sickle. In 2016 there were at least 7 dismissals of public discussions and events with the theme of 1965 massacre. There are also prohibition of communism, marxism/leninism studies or books publishing. Moreover, the National Library have had a plan to demolish the books that have that kind of nuance and theme, and it will be castrating the right to information of the community.
23. The basic using of Provisional House Representative Assembly Decree (TAP MPRS) XXV/1966 regarding Communism Prohibition and Dissolution of Communism Party in Indonesia, National Military Forces (TNI) authority to support National Police (POLRI) to maintain security – according into Law No. 34/2004 regarding National Military Forces (TNI) article 7(2)b regarding Military Operation Beside War, Law No. 27/1999 regarding Criminal Code (KUHP) amendment related with crimes against state security and the last is the old basis of law from the Anti-Subversion Presidential Decree of PNPS No 4/1963 that already revoked by the Constitutional Court because it could violate the human rights and state principals.
24. **Attacks and forced eviction against the former Fajar Nusantara Movement (Gafatar) in January 2016 affected to numerous internally-displaced persons and destructed properties.** Thousands of citizen in Mempawah, West Kalimantan province forcibly evacuated to several points of refugee camps in Military Command District, Tanjung Pura and other refugee camps in Java island. Fajar Nusantara Movement was allegedly as an assault movement initiated by a suspect of deviant teaching, therefore Fjar Nusantara Movement was prohibited with excuse of threatening the state integrity. However, actually the movement was already disbanded from 2015. The incident was began when the local citizen burned nine homes of former Gafatar members. 1.119 people of former Gafatar members was evacuated to Tanjung Pura Military Area Command (Kodam). On January 22, 2016 early morning 387 people including 183 children arrived at Juanda International Airport, Surabaya, East Java from Pontianak, West Kalimantan. And another groups of 568 people was arrived in Jakarta on midnight. They are stay in Social Department buildings for several days before they were returned to their prior homes in Java.
25. By KontraS investigation on January 23, 2016 to the Social Department refugees' shelter in Bambu Apus and Cipayung, East Jakarta, we acknowledged that there were an arbitrary act by the police members in the evacuation center of Social Department by asking several refugees of sharia Islam values and tend to discriminate them. They also received some violent acts by the

police and military members that forced them to move from their homes in West Kalimantan including to the pregnant women and women with children. According to several refugee explanations in Social Department shelters in Jakarta, they did not receive food on time from the Social Department members and adequate place to rest, particularly for pregnant women and children.

Human rights violation cases in the freedom of religion and belief

26. **The attack against Shia citizen in Sampang, East Java and affected to internally-displaced persons (2012).** Aftermath the forced eviction perpetrated by the vigilante groups supported by the security apparatus in 2012, in 2013 Rois Al-Hukama, the only vigilante person that perpetrated the destruction and burning against the Islamic boarding school with Shia teaching in Sampang entered the court process and being acquitted.⁷ On June 20, 2013, the local government of Sampang, Madura has moved the Shia Muslim to the flats in Puspo Agro, Sidoarjo, and guarded by security apparatus both police and military.
27. Previously, the Shia Sampang community has been placed in Sampang Sports Hall for more than 10 (ten) months. There were 224 Shia people on the refugee camp; 20 toddlers, 103 school-age children, 90 adult, and 9 elderly (more than 60 years). In July 2013, The office of Ministry of Religious Affairs visited the Shia Sampang IDPs in order to request them to follow the thought of Islam majority. In September 2013, the local government of East Java established “Reconciliation Team” lead by Prof. Abd A’la, the rector of Sunan Ambel Islamic State University.
28. The Reconciliation Team initiated reconciliation forum for three times, however, until now there is no follow up and significant progress made by the Reconciliation Team. The Jakarta Natural Disaster Mitigation Agency banned the Shia community to return home in Eid-Al Fitr Day. The Minister of Religious Affair, Lukman Hakim Saifudin visited Shia IDPs in August 2014 in order to gain information on the existing problem faced by the IDPs. However, afterwards there is no follow up after the visit of the Minister. The existing problems of Shia IDPs consist of several things, *inter alia*; first, the central government has not able to bridging the Sunni and Syiah community in Sampang. Second, the slow response from the local government and the inability to stop the intolerance in form of hate speech by the other religious group. Third, the discriminative law and regulation in central and local government as the trigger to the act of discrimination and violence by other groups.⁸
29. **Discriminative actions against Ahmadiyya Muslim committed not only by the vigils, but also by the government.** The Ahmadiyya Muslim community still become the target of disrimination by several vigilante groups also by the government. Several of the Ahmadiyya community still suffer the prohibition to worship and being evicted from several neighborhood in Indonesia.

⁷ <https://m.tempo.co/read/news/2016/01/01/078732295/tahun-baru-2016-nasib-pengungsi-syiah-masih-jadi-pr>

⁸ KontraS monitoring data of freedom of religion and belief in Indonesia. KontraS also made the General Allegation to the Special Rapporteur on freedom of religion and belief in 2014 regarding the situation of minority religious groups as internally-displaced persons.

30. Islamic Defenders Front (FPI) against the Ahmadiyya in Bukit Duri, Jakarta. On Sunday, June 14, 2015, FPI invited the community around the Bukit Duri to hold a protest to reject and evict the Ahmadiyya community in Bukit Duri if they continue to worship. They put a banner in front of the Mosque where the Ahmadiyya usually take the Friday's Praying that forbid the Ahmadiyya from worshiping anymore in the Bukit Duri area. In this case the Mayor of South Jakarta did not conduct any concrete measures to protect the Ahmadiyya community as one of the parts of citizen that should be protected according to the mandate of the Mayor.
31. In the other part of Indonesia in Bangka Belitung Province, the Ahmadiyya community were forced by the local government to follow the Sharia Islam values or leave Bangka province immediately, The mandate was delivered by the regional secretary of Bangka Regency office toward the Chairman of Ahmadiyya Indonesia (JAI) by a letter on January, 2016.
32. The content of the letter that forwarded to the Bangka-Belitung Regent, Chief of Ministry of Religion in Bangka Regency and Bangka Police District stated that JAI forced to move the Srimenanti Sungailiat neighborhood. Before the letter was issued, on December 14, 2016 there was a meeting between Ahmadiyya and the community also with the Religious Community Harmony Forum (FKUB). On that meeting, the Ahmadiyya community was urged to leave Bangka, and on January 5, 2016 issued the Regent Circular Letter which signed by Regional Secretary of Bangka Regency, Feri Insani.
33. The letter was the result of the meeting with Nahdatul Ulema (NU), Indonesian Ulema Council (MUI), National Police and government. Ahmadiyya urged the Bangka Regent, Bangka Belitung Province to revoke the forced letter which had forced Ahmadiyya to follow the values of Sunni Islam or would be forcibly evicted from the regency. The spokesperson of JAI already issued a rejection letter to the local government in Bangka Belitung. JAI urged the local government to be fair and conducting an action according to law. JAI in Bangka Belitung already lived in that regency since 1980s. However, they still collecting the capacity to filed the case to Admininstration Court (PTUN).

IV. Recommendations

The government of Indonesia should:

- President Mr. Joko Widodo should create several policy and statement related with the fabricated operations that violated the freedom of expression, assembly and information against the civilians that already unnecessary conducted by the security apparatus with commanding the Chief of National Police in Indonesia that potentially ended into other violence act and other human rights violations.
- President Mr. Joko Widodo should immediately announce the President Decree related with the follow up of the 1965 Incident National Symposium that will emphasized the status of the 1965 Incident victims and state position on the gross past human rights violations.

- President Mr. Joko Widodo should immediately conducted truth-telling process regarding the past human rights violations and statement by the state officials according into the fact sheet of past human rights violations by National Commission on Human Rights (Komnas HAM)
- National Commission on Human Rights (Komnas HAM) and Ministry of Politics, Law and Security should investigate and monitor the security apparatus whose perpetrated the fabricated operations that violated human rights amongst the community.
- Ministry of Religion of Republic Indonesia to make statement regarding the Gafatar movement that they also the part of Indonesian citizen that shoul be protected and to prevent several horizontal conflict in their prior homes.
- National Commission on Human Rights (Komnas HAM) to evaluate and monitor the work of the Social Department, police members and military members whose guarding the refugee shelters to work according with the human rights law, particularly for the internally-displaced persons.
- Minister of Religion to take decisive action and regulation to minimize the discrimination in Indonesia, especially that which occurs to minority religion issues. The Minister of Religion should become a mediator between the religious figures in Indonesia to bring a harmonization in Indonesia's religious life.
- The policy makers such as Ministers of Religion, President of Indonesia, Constitutional Court to revoke the discriminative regulations such as Joint Decree of 3 Ministers, several articles in Electronic Information and Transaction Law and other local regulations that could limiting and violating the fundamental freedoms of Indonesian citizen.
- National Police should implement the mandate to protect the citizens and to build a sense of security with no exception to the religious minority group and to address such vigilante acts, as mandated in the 2009 Police Regulation on Human Rights No. 8 in article 6 regarding freedom of religion and belief. This action is consistent with the policing agenda regarding the freedom of religion case that has been supported by the National Police.
- National Commission on Human Rights (Komnas HAM) should monitor and urge the related institutions in the government to fulfill freedom of religion to the Ahmadiyya in Indonesia as the religion minority group as is mandated to the Komnas HAM. Komnas HAM also has an obligation to give a human rights perspective to the government regarding the freedom of religion and belief.
- The government should build comprehensive communication between the community and the government as a whole, especially on the new presidency of Joko Widodo to guarantee the freedom of religion and belief in according to the commitment of the government in the Joko Widodo presidency.