

A Joint Shadow Report

“Repressive Developmentalism and Sectarian Populism in Indonesia”

RELATED TO THE INDONESIAN GOVERNMENT'S REPORT TO THE UN HUMAN RIGHTS
COMMITTEE ON CIVIL AND POLITICAL RIGHTS

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Executive Summary

This report is a joint civil society's shadow report for civil and political rights entitled "*Repressive Developmentalism and Sectarian Populism in Indonesia*", prepared by Indonesia's NGO Coalition for Civil and Political Rights Advocacy and facilitated by Indonesia's NGO Coalition for International Human Rights Advocacy (HRWG). This alternative report responds to the government's report to the UN Human Rights Committee on Civil and Political Rights (CCPR/C/IDN/2).

The repression referred to in the title of this report is a mode that has threatened and resulted in many violations both in civil and political rights, especially the rights to freedom of expression, assembly, and association, freedom of the press, and mainly targeted human rights defenders, anti-corruption activists, and environmental fighters.

First, *repressive sectarian populism* is a political mode based on sectarian issues: religion, race and ethnicity, and class. This type of repression has been marginalizing several vulnerable groups—religious minorities, races, and genders—whose existence is not accepted by the majority of society for reasons of different religion interpretation, racial and ethnic differences, etc. The government often takes sides with the interests of the majority groups by continuing stigma and discrimination and sometimes being the perpetrator of human rights violations against many vulnerable groups (*majoritarianism rules*) instead of protecting everyone regardless of their backgrounds. Cases such as the prohibition on the establishment of places of worship, persecution and violence against the Ahmadiyya group, local religious or belief groups, LGBTIQ+, and the death penalty, etc are just a few examples. Moreover, there has been the rise of populism against Rohingya amidst the lack of rights guarantee for refugee protection in Indonesia.

The second mode of repression, like the Soeharto's New Order's era model, is a way to silence anyone who opposes national interests for economic development (*repressive developmentalism*). Democratic rights are being abused and violated in the name of the national interests that manifested in some national strategic projects (PSN), such as the repression and violence occurred in Rempang, Wadas, Papua, and various other regions in Indonesia. Considering that both modes of repression are politically motivated, impunity continues to occur. Not a single case of past gross human rights violations has been resolved. Existing resolution efforts are non-judicial; in practice, they are not even participatory and not in compliance with the principles of transitional justice, which require disclosure of the truth. Security Sector Reform (SSR) agenda is being backlash toward stronger militarization and democratic regression.

Two modes of repression applied during the securitization of the pandemic COVID-19. The COVID-19 response measures have been widely misused to protect and sustain the interests of a few political elites, including President Joko Widodo, and initiate the birth of dynastic politics. Repression is also the spearhead of populist sectarian political tactics and economic development regimes, especially when their interests, including electoral interests, are threatened. Apart from that, amid the COVID-19 pandemic, Joko Widodo's administration also passed a number of market-oriented policies that are exploitative and repressive in order to foster investment. These policies include (1) enacting the Job Creation Law, which makes it easier to grant investment permits while ignoring the carrying capacity of the environment and the protection of community rights; (2) revision of the Mining and Coal Law, which provides many incentives for mining companies while ignoring the environmental damage they cause; (3) national strategic projects that encourage accelerated environmental destruction by massive physical development projects by the government and the private sector; (4) weakening of the Corruption Eradication Commission (KPK), which has played an essential role in preventing and eradicating corruption in the natural resource management sector; (5) revision of the Criminal Code and ITE Laws which still retain repressive articles.

Freedom of expression and the press freedom, as the heart of democracy, must face a number of

draconian laws and regulations, such as the ITE Law and the newly Criminal Code. Reflecting on the Reporters Without Borders (RSF) report in the last ten years shows that the Indonesian Press Freedom Index is stagnant in the difficult or not yet free category. Aliansi Jurnalis Independen (AJI) Indonesia's 2023 Press Freedom report notes how the ITE Law, Criminal Code, and Law 1/1946 are still easily misused to target journalists and sources on charges of defaming and spreading false news. Journalists and independent media got intimidation, physical, psychological and digital attacks, and sexual harassment continue to increase without serious law enforcement efforts to find and prosecute all the perpetrators. In 2023, AJI documented 89 attacks and obstructions, with 83 individual journalists, five journalist groups, and 15 media outlets becoming victims. This number has increased compared to 61 cases in 2022 and 41 cases in 2021.

Repression, in the context of Jokowi's infrastructure development regime, is used as a weapon or a quick way to suppress or get rid of anyone who is not in line with the development agenda. The creation of several PSN encourages the economic growth rate. According to LBH, by 2023, out of 35 PSN projects, at least 85 people were criminalized. Several patterns of repression were found. Investigating and prosecutorial authorities use various criminalization approaches, with articles often used to criminalize issues of freedom of expression. The police and prosecutors are also seen as part of the government or companies who intend to silence and stop the struggle of citizens to defend their living space (part of Strategic *Lawsuit Against Public Participation, SLAPP*). In this case, there is an attempt at engineering or manipulation in law enforcement. Criminalization is another way for authorities to intimidate and pressure residents to hand over their land and houses and join relocation projects such as in Rempang. The 2022 Final Report of the Agrarian Reform Consortium (KPA) recorded 212 eruptions of agrarian conflicts, which resulted in 497 cases of criminalization of land rights fighters (*land rights defenders*).

The military and police dominate repression in Papua. Repressive actions that grip and threaten the lives of indigenous people in conflict areas. As a result, people took the worst choice, namely fleeing as *internally displaced persons* (IDPs) as far away from the location of the conflict as possible. Adult women and school-aged children, including teenagers, also fled because they had no other choice. According to Persekutuan Gereja-gereja Indonesia (PGI) data, the refugees are still scattered in many places, including Jayawijaya, Mimika, Yahukimo, Puncak, Puncak Papua, Lani Jaya, Intan Jaya, Paniai, Nabire, Jayapura and Sorong, South Sorong, and Maybrat districts, with a huge number of refugees. Meanwhile, the condition of the refugees, who are predominantly women and school-age children, is very worrying. Some people are sick, injured, disabled, and even die because there is no health service while in refugee camps. School-age children also lose the opportunity to enjoy the world of education they deserve. The lack of government support for the Aceh TRC and the unavailability of nomenclature related to reparations in both the national and Aceh budgets have resulted in problems in implementing reparations for victims of human rights violations during the armed conflict in Aceh.

2023 is considered a side back year for the protection of civil liberties and the protection of human rights defenders (HRD). There were at least 268 victims of attacks, including criminalization, physical attacks, and intimidation. On the other hand, women human rights defenders also experience different kinds of violence. They often experience sexual violence and attacks on their female reputation. Likewise, human rights defenders come from vulnerable and minority groups, such as people with disabilities, indigenous peoples, ethnic, religious, and belief minorities, sexual orientation and gender identity minorities, children, migrant workers, and refugees.

In the last two years, violence against human rights defenders and the environment has become increasingly intense. The end of 2023 was marked by various abuses of power to win the political dynasty in the 2024 elections, President Jokowi's support for one of the candidates, and efforts to inhibit political opponents, all of which could breach the integrity of the upcoming elections.

Introduction

- 1) This shadow report responds to the Indonesian government's report to the UN Human Rights Committee on Civil and Political Rights (CCPR/C/IDN/2).
- 2) This report was prepared based on a number of processes at the national level:
 - a. The first meeting to prepare the report on civil and political alternatives was held on December 7, 2023
 - b. Follow-up meeting at the HRWG Secretariat on January 9, 2024
 - c. Workshop on finalizing alternative report writing on January 31, 2024
- 3) This report is a joint effort by Indonesian civil society to evaluate the government through communication utilizing the mechanisms of the UN Covenant on Civil and Political Rights. Apart from that, the Indonesian civil society coalition also hopes that the Civil and Political Rights Committee will provide recommendations that can pressure the Indonesian government to be more serious, considering that the current Indonesian government is haphazard, reckless, without public participation, in pursuing economic growth, without paying attention to international human rights obligations based on Civil and Political Covenants.

Non-Discrimination (Response to paragraphs 51-65)

- 4) Civil society appreciates the intervention that the Indonesian government has carried out regarding 421 discriminatory regional regulations or discriminatory policies because they are not only in the form of regional regulations but also statutory regulations under regional regulations, even laws. Of these 421 discriminatory policies, 29 have been clarified by the Ministry of Home Affairs, 81 have been revoked/canceled with new policies, the court has canceled one policy, and 25 are no longer valid. Thus, 305 discriminatory policies are still in effect.¹
- 5) Included in the 305 discriminatory policies are Aceh Regional Regulations (*Qanun*) No. 8 of 2015 concerning the Development and Protection of Aqidah, which limits the constitutional right to religion and belief², as well as Aceh Regional Regulations (*Qanun*) No. 6 of 2014 concerning the Jinayat Law which provides impunity for perpetrators of rape by allowing someone suspected of committing rape to swear to deny the accusation in front of a court³.
- 6) This Qanun Jinayat Law also limits the rights of victims of rape and sexual harassment to receive comprehensive protection by denying victims of rape and sexual harassment access to more comprehensive legal protection, in this case, the Child Protection Law and the Sexual Violence Crime Law.
- 7) In the Annual Notes of the National Commission on Violence Against Women (Komnas Perempuan), it is known that in 2021, there were 20 discriminatory policies (in the form of regional regulations and legislation under regional regulations) that still use the same regulatory pattern, namely criminalization, control against women's bodies through restrictions on the right to expression and belief, restrictions on religious freedoms, and restrictions on rights through the regulation of religious life⁴, and the Indonesian government has not identified these 20 new discriminatory regulations.
- 8) The authority to review and revoke regional regulations in the hands of the Supreme Court (MA) is a challenge in eliminating discriminatory regional regulations because the judicial

¹ Annual Notes on Violence against Women in 2021, National Commission on Violence Against Women, 2022, p. 107

² See Article 7 Paragraph (1) Aceh Qanun No. 8 of 2015 About the Construction and Protection of Beliefs

³ See Article 55 Aceh Qanun No. 6 of 2014 concerning Jinayat Law

⁴ Annual Notes on Violence against Women in 2021, National Commission on Violence Against Women, 2022, p. 107

review procedures in the Supreme Court do not provide space for the public to participate as Relevant Parties as in the Constitutional Court. The mechanism that allows the public to witness the trial process at the Supreme Court is also not available, making it difficult for the public to follow the proceedings.

- 9) There is a Joint Ministerial Regulation (PBM) No. 9 and 8 of 2006 concerning the Establishment of Houses of Worship in the right to freedom of religion and belief sector. There are conditions for the establishment of a place of worship in the PBM, namely the existence of a list of names and Identity Cards of users of a place of worship of at least 90 (ninety) people whom local officials authorize in accordance with the level of regional boundaries and support from the local community of at least 60 (sixty) people who are legalized by the village headman/village head is burdensome and is often the reason for refusing to build a place of worship, especially for members of minority religions in a particular area.⁵
- 10) The existence of a Joint Decree of the Minister of Religion, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia No. 3 of 2008 (SKB 3 Ministers) concerning Warnings and Orders to Adherents, Members, and/or Management Members of the Indonesian Ahmadiyah Congregation (JAI) and Community Members that limit the rights -JAI religious rights.
- 11) Discriminatory regulations and labels of social ills target the trans woman and queer community. The existence of discriminatory regional regulations in Depok and regional regulations preventing sexual deviant behavior in Makassar stimulated the birth of discriminatory regional regulations in other areas and family resilience regulations. These regional regulations created a stigma in society towards LGBTQIA+. They gave rise to persecution against LGBTQIA+ groups, ranging from restrictions on freedom of expression, freedom of assembly, and physical violence to murder.
- 12) Recommendation:
 - a. Strengthen the facilitation function of the Ministry of Home Affairs and increase the knowledge of Regional Heads regarding the principles of non-discrimination and substantive equality to prevent the increase in discriminatory regional regulations.
 - b. Request the Aceh Government to revise the Qanun Jinayat by revoking the regulations regarding rape and sexual harassment so that acts of rape and sexual harassment in Aceh can be handled comprehensively by referring to national law, in this case, the Sexual Violence Crime Law and the Child Protection Law, or: at least improve the formulation of Article 72 Qanun Jinayat so as not to deny victims of rape and sexual harassment access to more comprehensive protection of their rights;
 - c. Make changes to the procedural law for reviewing statutory regulations at the Supreme Court to make it more open and allow relevant parties to participate fully in the testing process.
 - d. The State must revoke the SKB 3 Ministers and PBM 2 Ministers, as well as regional regulations discriminatory against LGBTQIA+ groups.
 - e. Create non-discriminatory regulations that guarantee legal protection for all, including religious and belief minority groups and gender and sexuality diversity.
- 13) The Indonesian government has ratified revising the controversial Terrorism Law into Law No. 5 of 2018. The process of revising the terrorism law was not carried out with meaningful participation by civil society. Even though there are many points of progress, such as regulations regarding the rights of victims of terrorism, the regulations in the revision of the Terrorism Law, in many cases, ignore the principles of human rights and democratic state governance.

⁵ <https://www.bbc.com/indonesia/articles/cl79dv4x8lvo> (accessed January 24, 2024)

- 14) This new terrorism law increases the length of detention period for terrorism suspects to a total of 290 days (article 25), which is certainly contrary to the anti-torture principle.
- 15) Apart from that, the revision of the terrorism law also blurs the role of the National Armed Forces (TNI) in handling terrorism, from military operations other than war to being involved in law enforcement. The role of the TNI in handling terrorism is actually regulated in Article 7 paragraph (3) of Law no. 34 of 2004 concerning the TNI, namely as a form of military operation other than war, which can only be carried out through state political decisions, namely decisions taken by the President after consulting with the House of Representative (DPR). By including regulations on the role of the TNI in the new terrorism law, it is feared that the TNI will be involved in every level of handling terrorism.
- 16) The involvement of the TNI in the draft Presidential Decree regarding the TNI's duties in dealing with acts of terrorism is no longer regulated through state political decisions as regulated in the TNI Law. The TNI's deterrence function, as regulated in this draft Presidential Decree, is also very broad, namely by carrying out intelligence operations, territorial operations, information operations, and other operations (Article 3). On the other hand, this Presidential Regulation does not provide a more detailed explanation of what "other operations" means.
- 17) Another problem in the draft of the Presidential Decree is using regional budgets and other sources outside the APBN that the TNI can use to handle terrorism. This provision contradicts Article 66 of the TNI Law, which states that the TNI budget only comes from the APBN.
- 18) Recommendation:
 - a. The government revokes Article 43 I concerning the involvement of the TNI in handling terrorism because it is regulated in Article 7 paragraph (3) of Law no. 34 of 2004 concerning the TNI, so the involvement of the TNI in handling terrorism remains based on democratic state governance and respecting the principles of human rights.
 - b. The President cancels the discussion of the draft presidential regulation regarding the involvement of the TNI in handling terrorism because, apart from being contrary to the TNI Law, it would also damage democratic state governance, which respects the principles of human rights.

The fight against impunity and past human rights violations (Response to paragraphs 86-96)

- 19) The trend of human rights court decisions established during the reform era, such as the Human Rights Court for the Abepura case, which was held in 2005, and the Human Rights Court for the Paniai case, which was only decided in December 2022, did not fulfill the sense of justice because it acquitted the defendants.
- 20) President Joko Widodo, in early 2023, officially announced his recognition and regret for the 12 cases of serious human rights violations that Komnas HAM had investigated. This statement is a follow-up to the report recommendations submitted by the Non-Judicial Resolution Team for Past Serious Human Rights Violations (PPHAM Team).
- 21) The non-judicial mechanism for reparations is not participatory, and its implementation is considered not to have fully considered the victim's perspective. Reparations for victims should be given after a court process or disclosure of the truth through the Truth and Reconciliation Commission (TRC).
- 22) Since its founding in 2016, government support for the Aceh TRC has been minimal. Aceh Qanun (Regional Regulation) Number 17 of 2013, which was the basis for the formation of the Aceh TRC, needed to be stronger to support the Aceh TRC institution in carrying out its mandate. The Qanun's closing provisions place further regulation on implementing the Qanun with the Aceh TRC, not the Regional Head. This impacts the secretarial and funding aspects of

the Aceh TRC.

- 23) The secretariat, whose position is functional and responsible for the leadership of the Aceh TRC, needs to run more effectively because it is still attached ex officio to an institution appointed by the government. This resulted in the Aceh TRC being unable to manage its budget independently because the budget was attached to the sub-activities of the institution where the Aceh TRC budget was allocated. The appointment of this institution was only based on a review by the Aceh Government Budget Management Team without looking at the characteristics of the Aceh TRC institution.
- 24) From its inception until now, the Aceh TRC has experienced a significant reduction in budget allocation. This lack of budget support means that efforts to take statements from victims of human rights violations during the armed conflict in Aceh cannot be carried out optimally. Of the 5195 statements taken, the majority used budgets from civil society organizations.
- 25) Apart from the issue of minimal government support for the Aceh TRC, the unavailability of nomenclature related to reparations in both the national and Aceh budgets has had an impact on problems in implementing reparations for victims of human rights violations during the armed conflict in Aceh. The Aceh TRC has recommended urgent reparations for 245 victims of past human rights violations in 2019. These reparations will only be implemented in 2022 by the Aceh Reintegration Agency (the institution mandated to carry out reparations) through the Cash Social Assistance (Bansos) mechanism. This social assistance mechanism is a serious problem because it requires victims/heirs (most of whom have educational backgrounds and limited access to information) to make proposals, sign a number of statement letters, and account for proof of use of funds received, as is the mechanism for distributing social assistance funds in general.
- 26) At the end of the 2016-2021 term of office, the Aceh TRC has published a Final Report of the Term of Office, which is accompanied by comprehensive Reparation Recommendations for victims whose statements have been taken and their needs have been reviewed by the Aceh TRC. However, the government still needs to follow up on this recommendation because there is no nomenclature related to reparations in the central government or Aceh government budgets.
- 27) President Jokowi's decision to establish a non-judicial mechanism for 12 Serious Human Rights Violations Incidents in Indonesia, including 3 Serious Human Rights Violations Incidents in Aceh, did not involve the Aceh TRC.
- 28) Recommendation:
 - a. The government and DPR must immediately pass the TRC Law to reveal the truth about various incidents of serious human rights violations in the past and produce comprehensive recommendations for restoring victims' rights. This law will also set a precedent for forming the TRC in Papua.
 - b. Acknowledge the Findings Report and implement the Aceh TRC's recommendations, especially for restoring the rights of victims of human rights violations in Aceh. Restore victims' rights in two categories: constitutional rights as victims and citizens.
 - c. Create state policies to ensure that serious human rights violations do not occur again.
 - d. The Aceh Government revised the Aceh TRC Qanun by emphasizing the government's responsibility to strengthen the Aceh TRC institutions.
 - e. The government provides nomenclature related to reparations in the central government and Aceh Government budgets.

Right to Life (Response to paragraphs 137-156)

- 29) The government discloses information on the number of death row inmates throughout Indonesia openly and sequentially from 2019 to 2024, with the number as of January 26, 2024, with 528 death row inmates.
- 30) Information on the number of death row inmates throughout 2022 is not shown. The absence of data for 2022 closes information regarding the annual rate of the number of death row inmates. Apart from that, information regarding how long death row inmates serve prison terms is not shown in the information presented by the government. Refraining from giving information regarding the above matters conflicts with the right to information guaranteed through Article 28 F of the 1945 Constitution. Jo. Article 19 ICCPR.
- 31) The increase in the death penalty trend, especially from 2021 to 2023, reminds us of the pandemic situation and social restrictions that have resulted in trials being conducted virtually. Field findings show that virtual trials that rely on technological capabilities experience technical interference, which results in low trial quality and undermines the principle of fair trial as regulated in Article 14 of the ICCPR.
- 32) The newly passed New Criminal Code still maintains the death penalty. This scheme is believed to be a middle ground between receptionists and abolitionists. Even though adopting a middle way, the death penalty and execution after the New Criminal Code is fully implemented can still be applied with certain conditions. More fundamentally, the application of the death penalty in the New Criminal Code scheme is still doubtful for criminal acts other than those mentioned in the Elucidation of Article 67 of the New Criminal Code⁶ which is aimed at special criminal acts, namely criminal acts of terrorism, criminal acts of serious human rights violations, criminal acts of corruption, and criminal acts of narcotics. Meanwhile, the death penalty is applied not only for specific crimes, such as murder, treason, sharp weapons crimes, and others. The problem with the formulation of the death penalty in the New Criminal Code is exacerbated by the fact that the commutation mechanism for the 528 death row inmates who were sentenced before the New Criminal Code is still clouded by uncertainty about the rules used. The failure of the New Criminal Code to resolve the death penalty issue adds to the problem of the waiting list phenomenon.
- 33) Recommendation:
 - a. The government is transparent regarding data on the annual rate of death sentences.
 - b. The government ensures the principle of fair trial in every court.
 - c. The government revises the new Criminal Code and abolishes the death penalty.

Treatment of aliens, including migrants, refugees, and asylum seekers (Response to paragraphs 179-195)

- 34) Until May 2023, at least 12,704 refugees from abroad were recorded by UNHCR as being in Indonesia. As many as 73 percent are adults, and 27 percent are children. Looking deeper into adult refugees, 27 percent of them are women. The largest number of refugees in Indonesia came from Afghanistan, namely 6,663 people. This means that half, namely 52.4 percent, of the total refugees in Indonesia come from Afghanistan. After Afghanistan, there are refugees from Myanmar.
- 35) Until now, refugees are still experiencing problems related to clarifying their status in

⁶ In this provision, criminal acts that can be punished with special criminal acts are very serious or extraordinary criminal acts, including, among other things, narcotics crimes and criminal acts Terrorism crimes, corruption crimes, and serious crimes against human rights. For this reason, the death penalty is included in a separate section to show that this type of punishment is truly special. When compared with other types of punishment, the death penalty is the most serious type of punishment. Therefore, it must always be alternatively threatened with another type of punishment, namely life imprisonment or a maximum imprisonment of 20 (twenty) years.

Indonesia, which is exacerbated by the minimal response to the problems complained by the refugees⁷.

- 36) Refugees in Indonesia are waiting for resettlement status to a third country or resettlement. Waiting times in Indonesia can extend for several years and are characterized by a low probability of immediate safety but no certainty.
- 37) Based on existing data, opportunities for resettlement are very limited for refugees. So, it becomes a resettlement challenge to ensure that refugees get this opportunity⁸.
- 38) The minister of education and technology has issued an official letter, number 30546/A.A5/HK.01.00/2022 (May 12, 2022) states that refugee children can attend national schools as long as they do not burden the state budget. International organizations are required to pay education costs To access formal education. So, this policy is not truly "free" access to education. However, refugees cannot receive a diploma as a form of appreciation for completing their education.
- 39) Indonesia currently has poor access to health facilities for refugees because they can only access it up to the community health center level (for free). Due to their inability to work, most refugees won't be able to provide for their health. Non-governmental organizations also provide health access for refugees (Dompot Dhuafa Hospital).
- 40) Indonesia does not have regulations on refugee working rights, including formal and informal working fields. SUAKA noted that between 2021-2022, there were 2 cases reported to SUAKA regarding detention due to working informally. The situation may be because Indonesia still needs to ratify the 1951 Convention on Refugee Rights.
- 41) The situation does not stop with the new wave of Rohingya refugees disembark in Aceh between November and December 2023. There is a high wave of hate speech on social media caused by hoaxes and misinformation. The peak of hatred was reflected in the actions taken by students from several universities in Aceh on December 27, 2023, namely by forcibly expelling refugees from their temporary shelter with a truck. This action was carried out because they wanted Rohingya refugees to be 'expelled' back to their country of origin.
- 42) The Indonesian government hasn't mentioned the lack of access to justice for refugees in the government's official report to the UN.
- 43) Recommendation:
 - a. Ratify 1951 Convention
 - b. Refugee children should be able to access education without discrimination and be able to obtain an official diploma certificate.
 - c. Health facilities should be equally accessible for every person living in Indonesia, including migrants, refugees, and asylum seekers, at least by 2024, as recommended in the 3rd period of UPR.
 - d. Indonesia needs a regulation for the working rights of refugees in Indonesia, especially those working in a non-formal sector.
 - e. The government must implement Presidential Decree 125 of 2016 while protecting the rights of Rohingya refugees. They must be free from fear of pressure from society.

Access to justice, independence of the judiciary, and fair trial (Response to paragraphs 196-204)

- 44) The criminal law situation in Indonesia declined in 2023, with the Rule of Law (RoL) Index score at 0.53 since 2022 and the Corruption Perception Index figure at the bottom since 2015.

⁷ Ayu Putri, D., & Zulhair Achsin, M. (2023). The Role of the United Nations High Commissioner for Refugees (UNHCR) in Handling Overseas Refugees in Indonesia in 2016-2022. *Hasanuddin Journal of International Affairs*, 3(2), 82–101. <https://doi.org/10.31947/hjirs.v3i2.27709>

⁸ UNHCR Jordan. (n.d.). *Labor Mobility Pathways*. UNHCR Jordan. Retrieved January 5, 2024, from <https://help.unhcr.org/jordan/en/labor-mobility-pathways/https%3A%2F%2Fhelp.unhcr.org%2Fjordan%2Fen%2Flabor-mobility-pathways%2F>

- 45) Based on data on handling LBH-YLBHI cases, criminalization (judicial harassment) of human rights and environmental defenders on the Government's National Strategic Project agenda needs special attention. This is based on the high level of conflict arising from related projects. Until 2023, of the 35 PSN projects advocated by LBH-YLBHI, at least 85 people were criminalized. Several patterns were found, namely a) criminalization using repressive articles, b) SLAPP, c) intimidation to get people to hand over land, d) forced arrest and maximum detention, and e) harsh sentences for victims of criminalization).
- 46) In the last two years, violence against human rights defenders and the environment has increased. There were 212 recorded eruptions of agrarian conflict, which resulted in 497 cases of criminalization of land rights fighters (*land rights defenders*)⁹. At least 268 defenders of human rights, environmental issues, and indigenous peoples were attacked. Repression is also experienced by human rights defenders who come from vulnerable and minority groups, such as people with disabilities, indigenous peoples, ethnic, religious, and belief minorities, sexual orientation and gender identity minorities, children, migrant workers, and refugees. In 2024, so far, repression will increase ahead of the 2024 Presidential election.
- 47) Recommendation:
- a. Carrying out reforms within the police.
 - b. Provide opportunities for the community to participate actively in decision-making.
 - c. Request the Indonesian government's commitment to adopt laws and regulations and implement comprehensive policies to protect human rights defenders.
 - d. All state institutions, especially the TNI and Polri, must carry out their duties to protect every citizen, including human rights defenders, in exercising their fundamental freedoms and constitutional rights.
 - e. Human rights institutions such as Komnas HAM, Komnas Perempuan, Witness and Victim Protection Agency (LPSK), Indonesian Child Protection Commission (KPAI), and National Commission for Disabilities (KND) to strengthen the protection of human rights defenders.
 - f. Request the Civil Committee and the UN Special Rapporteur on Human Rights Defenders to monitor the situation of Human Rights Defenders in 2024 and urge them to create a special policy to protect them.

Freedom of conscience and religious belief (Response to paragraphs 206-215)

- 48) The Joint Ministerial Regulation (JMR) gives FKUB the authority to issue written recommendations for establishing places of worship. In practice, FKUB often refuses to provide recommendations when the 90:60 requirements are unmet or because of mass pressure, as happened in Gresik in 2019. FKUB rejected the request for a recommendation for the Gresik Ahmadiyah Muslim Mosque even though it had fulfilled the 90:60 requirements based on the 3 Ministerial Decree on Ahmadiyah and MUI Fatwa. It is necessary to review the role of the FKUB as a provider of recommendations for establishing places of worship, especially as FKUB membership in many regions still does not include all representations of religious and belief communities in Indonesia.
- 49) In practice, the role of district/city FKUB in providing written recommendations on requests to establish places of worship is a burden for district/city FKUB members, especially in matters of verification and administration. The potential of FKUB in building inter-religious dialogue and becoming a facilitator or mediator in society is not optimal because of these administrative matters. Often, FKUB is trapped as one of the conflicting parties instead of being a mediator in a religious conflict, especially when it comes to the issue of establishing a place of worship¹⁰.

⁹ 2022 Final Report of the Agrarian Reform Consortium (KPA)

¹⁰ KOMNAS HAM, Op.Cit. p.5

50) Recommendation:

- a. Urge the Ministry of Religion and the Ministry of Home Affairs to evaluate the implementation of JMR by involving all religious groups, including minority groups, adherents of ancestral religions, and tribal and traditional religions.
- b. Urge the Ministry of Religion and the Ministry of Home Affairs to revise the JMR, especially regarding burdensome administrative requirements for minority religious groups.
- c. Urge the Ministry of Religion and the Ministry of Home Affairs to remove the authority of FKUB as a provider of recommendations for establishing places of worship.

Freedom of Expression (Response to paragraphs 216-228)

- 51) On December 5, 2023, the Government and DPR agreed and ratified the second revision of the Internet and Electronic Transactions (ITE) Law. This change was encouraged considering that the articles in the ITE Law are often used as the basis for reporting and as a weapon for the authorities to silence the critical voices of citizens, including journalists. However, we see that problematic articles are still maintained in the revision of the ITE Law, such as the following articles, including Article 27 paragraph (3), although there is a reduction in the penalty for defamation and is formulated as an absolute complaint offense or the addition of Article 28 paragraph (3) regarding false news causing riots on purpose which was previously also contained in Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations.
- 52) The retention of these articles has the potential to add to the long list of cases of criminalization of citizens' freedom of opinion and expression. Failure in revoking these problematic articles will have the impact of not achieving the objectives of revising the ITE Law to decriminalize articles that threaten human rights, especially freedom of opinion and expression. The regulation of Article 40 of the ITE Law also has the potential to be used as a basis for the government's arbitrary practices in blocking and cutting off access to the internet illegally or labeling public content hoaxes. It is feared that the significant government authority granted through this article will become a tool for censorship of information and critical public voices.
- 53) Nearly 26 years after the Reformation, the fate of press freedom in Indonesia increasingly hangs in the balance. This is based, in part, on the existence of the ITE Law, which criminalizes journalists through articles on defamation and hate speech. From data collected by *the microsite* Semua Bisa Kena Affected Since 2021, almost all journalists have been criminalized or punished under the ITE Law because the news they wrote did not go through a complaint mechanism to the Press Council but was directly reported to the police. Semua Bisa Kena collected data on journalist reporting through the ITE Law, and the results were that approximately six journalists were reported. From the data collected by Semua Bisa Kena, all of the reporters or parties who felt disadvantaged by journalists' reporting were state officials. The articles that are often used to trip up journalists are Article 27 Paragraph 3, Article 28 Paragraph 2, Article 45 Paragraph 1, Article 45 Paragraph 3, and Article 45 (a) Paragraph 21.
- 54) Apart from the ITE Law, AJI also noted that in 2023, there would be 89 attacks and obstructions, with 83 individual journalists, five groups of journalists, and 15 media becoming victims. The most violence occurs against journalists who cover accountability and corruption, followed by violence against journalists who write about social issues and violence against journalists who cover environmental issues.
- 55) The student press also has its problems. Protection for the work of the campus press has not been carried out adequately, so their position is very vulnerable to being banned by the campus. In 2023, the Bandung Bergerak team surveyed and covered news about violence against 28 student presses in Greater Bandung from 2013 to 2023. From the survey results, it turned out that most of the perpetrators came from campus officials (9 cases), officers (8 cases), and

fellow students (7 cases). The most cases of violence against private persons occurred in 2022, with 12 cases. The types of violence that occurred varied; the forms of violence that often occurred were verbal threats (15 cases), news retraction (14 cases), and terror and intimidation (10 cases).

- 56) On December 5, 2023, the Government and DPR agreed and ratified the second revision of the Internet and Electronic Transactions (ITE) Law. This change was encouraged considering that the articles in the ITE Law are often used as the basis for reporting and as a weapon for the authorities to silence the critical voices of citizens, including journalists. However, we see that problematic articles are still maintained in the revision of the ITE Law, such as the following articles, including Article 27 paragraph (3), although there is a reduction in the penalty for defamation and is formulated as an absolute complaint offense or the addition of Article 28 paragraph (3) regarding false news causing riots on purpose which was previously also contained in Articles 14 and 15 of Law Number 1 of 1946 concerning Criminal Law Regulations.
- 57) The retention of these articles has the potential to add to the long list of cases of criminalization of citizens' freedom of opinion and expression. Failure to remove these problematic articles will have the impact of not achieving the objectives of revising the ITE Law to decriminalize articles that threaten human rights, especially freedom of opinion and expression. The regulation of Article 40 of the ITE Law also has the potential to be used as a basis for the government's arbitrary practice of blocking, illegally cutting off internet access, or labeling public content hoaxes. It is feared that the significant government authority granted through this article will become a tool for censorship of information and critical public voices.
- 58) Recommendation
 - a. Law Enforcement Against Violations of Press Freedom: Strengthen laws and regulations that protect press freedom, including revising existing laws that restrict press freedom and providing strong legal protections for journalists.
 - b. The government must act firmly against all forms of violence against journalists, both by the private sector and the authorities, to create a safe environment for journalistic practice. The government must also ensure strict law enforcement against violations of press freedom.
 - c. Collaboration with NGOs and International Organizations: The government can collaborate with NGOs and international organizations that care about press freedom to strengthen advocacy and implementation of press freedom protection in Indonesia.
 - d. Review the rubber articles of the ITE Law.
 - e. Provide opportunities for civil society to participate actively in decision-making.
 - f. Stop the criminalization of civil society

Freedom of Association (Response to paragraphs 229-236)

- 59) Civil space in Indonesia has continued to shrink over the last five years. At the 41st UN Universal Periodic Review (UPR) Session in 2022, 269 recommendations were addressed to the Indonesian government to address this problem. This includes guaranteeing freedom of association and repealing or amending repressive laws that limit civic space. CIVICUS's latest annual assessment 2023 also placed Indonesia at 46/100 because it only met the minimum requirements for a free and fair democracy. Meanwhile, the Economic Intelligence Unit (2021) categorizes democracy in Indonesia as a 'flawed democracy' because there are still concerns about civil liberties.
- 60) This condition is a classic problem of citizenship politics in Indonesia, which revolves around the dimensions of recognition, distribution, and participation. In the context of freedom of organization, various forms of violations of the right to freedom of organization experienced by civil society and the increasingly complex regulations that limit the movement of civil society

organizations (CSOs) indicate serious systemic weakening efforts made by the State towards the ability of citizens to enjoy and operate civil space as a vehicle to fight for their rights.

- 61) The legal system in Indonesia guarantees the right to freedom of association through the 1945 Constitution and Law 39/1999. The enjoyment of this right is also regulated through the Foundation Law and the 1908 Staatsblad concerning Associations for legal entity organizations. Therefore, Law 17/2013 concerning Community Organizations (which has been amended to become Law 16/2017 - Law on Mass Organizations) and various derivative regulations have become irrelevant and only have the urgency to control critical CSOs and are considered to be at odds with government policy, which originates from the New Order paradigm which places CSOs as threats and not actors of democracy and development. Therefore, the settings use a security and control approach.
- 62) Based on monitoring carried out by the Freedom of Association Coalition (KKB), from 2014 – 2020, there were at least more than 800 cases with 1,115 acts of restriction and violation of the right to freedom of association which was the impact of the implementation of the Mass Organizations Law in Indonesia, in the form of mandatory registration for CSOs with have a Registered Certificate (SKT); giving illegal or illegal stigma to unregistered CSOs; excessive monitoring of CSOs and civil space with a security approach; prohibition of activities for unregistered CSOs; limiting access to resources for CSOs; dissolution of CSOs without going through a judicial process; to the existence of criminal sanctions that have the potential to criminalize CSO members.
- 63) The problem is also strengthened by the derivative regulations of the Ormas Law (PP 58/2016 and PP 59/2016), which further confirm that CSO registration is an obligation and not voluntary. This also has implications for limiting CSOs' access to resources. This is reflected in arrangements requiring international non-government organizations (INGOs) to have principle and operational permits. The terms of both permits were very short; the principal permit is only three years, and the operational permit is at most three years, making it impossible for INGOs to develop long-term programs to support Indonesian CSOs.
- 64) The Mass Organizations Law has also given the government the authority to carry out excessive supervision using a security approach which has the impact of limiting access to resources through the work of the Foreign Mass Organization Monitoring Team (TPOA).²⁶. TPOA will select programs and obtain program reports from various CSOs that access funding from international donors in Indonesia in partnership with the Ministry of Home Affairs. Excessive supervision and potential restrictions on access to resources for CSOs are also reflected in the emergence of the idea to audit Indonesian CSOs from the coordinating minister for Maritime Affairs and Investment (Menko Marves), which was presented to the public from 2021 to 2023.
- 65) In the context of alternative funding sources, Law 9/1961 concerning the Collection of Money or Goods, PP 29/1980 concerning the Implementation of the Collection of Donations, and Minister of Social Affairs Regulation 8/2021 concerning the Implementation of the Collection of Money or Goods provide restrictive and bureaucratic policies in public fundraising operations carried out by Indonesian CSOs. The minimal legal aid budget allocated by the government for legal aid organizations (OBH) and institutions aiding victims also causes the provision of access to legal aid uneven. It does not cover the assistance needs of victims, especially as legal aid funding tends to prioritize the process of legal aid through litigation, so it is lacking in capturing the need for non-litigation legal assistance (Indonesian Judicial Research Society (IJRS), 2023).
- 66) Based on the TURC finding, companies in Indonesia often challenge their workers to form independent labor unions. This challenge often comes with establishing a "yellow union" created by the management to be a pro companies union to manipulate the freedom of association principle. In Karawang, the Ministry of Manpower even involved itself in building the yellow unions, which broke the independence of the Union itself. Similar things also

- happen in PT Sai Apparel Grobogan. Discrimination against independent Unions can exist since the management uses the pro-management unions as their tools to weaken the independent Union; hence, this is a violation of ILO convention number 87 & 98¹¹
- 67) Second, The Ministry of Manpower denied the registration of the Campus Worker Union (SPK) in 2023 because some of its members are civil servants, which only permitted them to join Korpri. The restriction clearly violates Indonesia's commitment to the ILO Convention number 87 about the freedom of association and protection of the right to organize¹².
- 68) Third, In the new industrial areas like Grobogan, whether in company expansions or relocations, the Manpower Office has violated freedom of association. For example, union registration in Grobogan, which should be 14 days, has been extended to 6 months. Then, the Manpower Office also intervenes in the memorandum of the association/articles of the association of the Union, especially in the internal meeting mechanism. Besides Union Busting in PT Sai Apparel, Grobogan also happened with support from the Ministry of Manpower local officers. It is considered as a violation of ILO Convention Number 87¹³.
- 69) Fourth, The Omnibus Law of Job Creation breaks the ILO Convention number 98 about collective bargaining rights since the stipulation of a wage minimum rise each year only depends on market force and alpha variables that are selected by the government, which cannot represent workers' interests. This in itself restricted or, more precisely, broke the possibility of the unions voicing their interest based on their decent live wage survey. Besides, there needed to be meaningful participation in drafting the omnibus law and Perppu Ciptaker, which broke ILO convention number 87. Perppu Ciptaker was even based on urgency alone, which is the urgency itself only defined by the government without any single participation from all the Union's federations and confederations¹⁴
- 70) Fifth, regarding the freedom of association principle on ILO Convention Number 87, there was a threatening appeal regarding the prohibition of a national strike with an issuing letter from Apindo number 542/DPN/1.4/3C/XI2023 after wage negotiations reached a deadlock. This makes workers afraid to strike when the right to strike after negotiations reach a deadlock is legal according to ILO convention numbers 87 and 98, which Indonesia's government had ratified¹⁵.
- 71) Recommendation:
- Withdraw the Law on Mass Organizations from the national legal system and ratify the Bill on Associations as the appropriate legal framework for regulating civil society organizations in Indonesia.
 - Revise Law 9/1961 and its derivative regulations to improve the supporting environment for CSOs and philanthropy in Indonesia, especially alternative domestic funding sources.
 - Revise various regulations relating to the finances of providing legal aid, including Law 16/2011 concerning Legal Aid, PP 42/2013 concerning Conditions and Procedures for Providing Legal Aid and Distribution of Legal Aid Funds, and various derivative regulations.
 - Repeal the Omnibus law and make a more participative labor law based on the Union's

¹¹ <https://spn.or.id/model-pemberangusan-serikat-buruh-di-pt-sai-apparel-industries-grobogan/>

¹² https://drive.google.com/drive/u/1/folders/1t2n7AGssNU4KqNgRjdBdCpZ54VZCWE5?q=sharedwith_public%20parent:1t2n7AGssNU4KqNgRjdBdCpZ54VZCWE5

¹³ <https://majalahsedane.org/model-pemberangusan-serikat-buruh-di-pt-sai-apparel-industries-grobogan/> & <https://spn.or.id/model-pemberangusan-serikat-buruh-di-pt-sai-apparel-industries-grobogan/>

¹⁴

<https://www.ksbsi.org/home/read/2231/Talk-Show-KSBSI--Regulasi-Cipta-Kerja-Langgar-Konvention-ILO-98-1949?-Check-out> & https://news.detik.com/berita/d-6506264/suara-penolakan-kelompok-buruh-terhadap-perppu-cipta-kerj_a-jokowi

¹⁵ https://drive.google.com/drive/u/1/folders/1UGUTqPnN8TtcwqH3KSbb0YnZS0u8LXpu?q=sharedwith_public%20parent:1UGUTqPnN8TtcwqH3KSbb0YnZS0u8LXpu

- and confederation's involvement.
- e. Prohibit APINDO or other organizations from issuing letters calling for a strike ban after negotiations at the factory, company, regional, or national level reach a deadlock.
- f. Diminish government and/or company intervention in the union building, which already has an independent union since it often represents a manipulation of the freedom of association principle.
- g. Recognize immediately the registration of the Campus Worker Union. This case should also be considered as the beginning of the implementation of freedom of association for civil servants because Korpri is not a trade union and, hence, cannot represent the struggle over industrial relations for workers who are considered civil state apparatuses.

Internally Displaced Persons (IDPs) in Papua

- 72) It has been more than five decades since Papua was integrated into the Republic of Indonesia, and the armed conflict in Papua has never ended. This situation is very tense and threatens the lives of residents in these conflict areas. As a result, the community took the worst option, fleeing as far as possible from the location of the conflict. Adult women and school-aged children, including teenagers, also fled because they had no other choice.
- 73) This causes teaching and learning activities to be paralyzed and health services to stop completely because neither teachers nor health workers dare to take risks that threaten their lives. They joined the IDPs procession. Education facilities and health infrastructures are used as bases for military operations by the TNI/Polri in conflict areas. Every time the TNI/Polri uses these facilities, they are left behind in serious damage. They are no longer suitable for civilians who have survived or returned from IDPs camps.
- 74) This situation needs to be handled properly by regional authorities. Until now, there has been no courage to carry out disaster mitigation, emergency response, rehabilitation, recovery, and emergency assistance activities as regulated in Article 1, Paragraphs 9, 10, 11, 15, and 18 of the Disaster Management Law Number 24 of 2007. This condition occurs because the status of a disaster emergency has not yet been determined by regional authorities (article 1 paragraph 19) as a social disaster (article 1 paragraph 4), which is faced by IDPs who are victims of armed conflict.
- 75) Synods and Dioceses of churches serving in conflict areas – GKI Tanah Papua, Kingmi Papua, GKII Papua, Baptist Papua, GIDI, Jayapura Diocese, Timika Diocese, Manokwari-Sorong Diocese – have stated that IDPs are still scattered in many places, including The other districts are Jayawijaya, Mimika, Yahukimo, Puncak, Puncak Papua, Lani Jaya, Intan Jaya, Paniai, Nabire, Jayapura and Sorong, South Sorong, and Maybrat, with a huge and varied number of IDPs. Meanwhile, the condition of the IDPs, who are predominantly women and school-age children, is very worrying. There are sick, injured, and disabled people who even die because there is no health service while in IDPs camps. School-age children also lose the opportunity to enjoy the world of education they deserve.
- 76) The IDPs, who numbered more than 60 thousand people, experienced loss of customary rights, residence, places of worship, land, and economic resources because their territory was controlled by the parties to the conflict (TNI/Polri and KKB). Hunger and trauma are bad conditions that continue to be experienced, and new social conflicts often occur when IDPs enter other people's customary areas and set up camps and gardens to survive. Sexual harassment often occurs, which results in the psychological condition of victims of sexual harassment becoming double trauma. Many are forced to live in forests or caves with minimal equipment. In this situation, the church is still the most trusted party to distribute aid to IDPs.
- 77) Recommendation:
 - a. A humanitarian through a ceasefire between the conflicting parties and giving access to humanitarian aid to handle these refugees.

- b. Declaration of disaster (social) emergency status from government authorities that there has been a social disaster due to armed conflict in several conflict areas in Papua.
- c. The government creates steps and strategies for handling IDPs, a coordination system and contingency plans developed together, and a division of roles with full involvement of local churches as the main partners in handling IDPs.