

**National Commission on Violence against Women  
(Komnas Perempuan)**

**National Human Rights Institution  
Independent Report**

**on**

**25 Years of Implementing the Beijing Platform for Action  
(BPfA+25)  
in Indonesia**

**Submitted to the  
Commission on the Status of Women (CSW)**

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## Introduction

1. This report was created by the National Commission on Violence against Women (Komnas Perempuan), an independent state institution and one of the human rights mechanisms in Indonesia dedicated to the enforcement of women's human rights. Komnas Perempuan was established by Presidential Decree No.181/1998 which was reinforced by Presidential Decree No.65/2005. Komnas Perempuan was established as a state response to demands of civil society, especially the women's movement, that called on the government to take responsibility for the widespread violence against women, especially the sexual violence experience by Chinese Indonesian women during the May 1998 riots.
2. Komnas Perempuan works in accordance with the 1945 Constitution of the Republic of Indonesia, Law No.7/1984 regarding the Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Law No.5/1998 regarding the Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1993 Declaration on the Elimination of Violence Against Women and other relevant policies and legal instruments related to women's human rights.
3. Komnas Perempuan has the specific mandate to create a situation that is conducive to the elimination of all forms of violence against women and the fulfilment of women's human rights in Indonesia. This includes increasing efforts to prevent and reduce all forms of violence against women and protect women's human rights. Komnas Perempuan has the mandate to increase awareness in the community, carry out monitoring, fact finding and reporting on situations related to violence against women as violations of human rights; provide advice and recommendations regarding policy to state institutions and community organisations; and develop cooperation at the national, regional, and international level.
4. Komnas Perempuan during the last 20 years, has played an active role as a National Human Rights Institution (NHRI) in accordance with the Paris Principles. As a NHRI,

Komnas Perempuan has fulfilled its responsibilities by submitting routine independent reports to the international human rights mechanisms of the UN (Universal Period Review report in 2011 and 2016, CEDAW in 2012 and 2016, CAT in 2008, report to the Special Rapporteur on Torture 2007, report to the ICCPR in 2017, report to the ICESCR in 2015, report to the Committee on Migrant Workers in 2017, report to the Special Rapporteur on Adequate Housing 2013, report to the Special Rapporteur on the Right to Food in 2018, report to the Special Rapporteur on the right to Health 2017, report to the UN High Commissioner on Human Rights in 2012 and 2018, submission to the ICCPR regarding the interpretation of Right to Life in 2017, submission to the Independent Expert on SOGIE in 2019. Komnas Perempuan has also participated as a NHRI in various international and regional forums, including the Commission on the Status of Women, the Minority Forum, ASEAN People's Forum, APWLD, and others.

5. Komnas Perempuan's strategic approach in developing and carrying out its mandate is to hold consultations with various stakeholders, especially communities of victims, human rights institutions, civil society organisations, as well as government bodies from the legislative and judicial arms.

The information conveyed through this report is based on the results of field monitoring and consultation processes carried out by Komnas Perempuan in coordination with relevant stakeholders.

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## A. Overview Analysis of Achievement and Challenges Since 1995

Indonesia has a large population made up of diverse cultural, linguistic, religious and ethnic groups. Indonesia has the world's largest Muslim population of any single country. In 2015 data from Indonesia Central Statistics Agency (BPS) showed that the number of women in Indonesia was 126,950,255 and men 128,231,889.

After Indonesia's independence in 1945 an important moment in the history of the nation's advancement of human rights was the political reform era in 1998 which changed Indonesia into a democratic country, through a number of changes including the reduction of the military's power.

Efforts to eliminate corruption were sped up through the establishment of the Anti-Corruption Commission (KPK) and human rights mechanisms were strengthened through the ratification of a number of international human rights conventions. So far Indonesia has ratified 9 of the core human rights instruments, but has yet to ratify the Convention on Disappeared Persons.

Political reform introduced a more participatory democracy, freedom of expression, and increased women's political participation. Indonesia has fundamentally changed its political system by amending the Constitution of 1945 to integrate human rights into the constitution. Direct presidential elections have been conducted since 2004 and a limit of two terms has been placed on presidents. Various independent institutions have been established to optimise monitoring of the arms of government. Indonesia possesses three human national human rights institutions (NHRI): the National Human Rights Commission (Komnas HAM), Commission for the Protection of Children (KPAI) and Komnas Perempuan. Indonesia also has an Ombudsman (ORI), an Institute for the Protection of Witnesses and Victims (LPSK), a Prosecutors Commission, National Police Commission, and a Commission on Public Information.

Significant change has also occurred in the field of women's political rights. The Law on Political Parties, and the Law on General Elections has opened up space for women to take an active role in parliament. The general elections of 2019, although the minimum threshold of

30% women was not met, demonstrated how increasing numbers of women have been chosen as members of parliament, from 14.3% in 2014 to 20.5% in 2019.<sup>1</sup>

The passage of Law No.23/2004 regarding the Elimination of Domestic Violence was the result of hard work by civil society, especially the women's movement, in lobbying parliament for 10 years. This legislative success was a symbol of the parliament taking a stance to break the silence about injustice and domestic violence, which before was a taboo in society.

A number of other policies reinforced the fulfilment of women's human rights and vulnerable groups' rights such as the Law regarding the Crime of Human Trafficking, the Law on Disabilities, the Supreme Court's regulation regarding guidelines for the handling of cases of women faced with the law. This was followed up by the ratification of the CMW and ACTIP conventions. Currently there is a struggle for the ratification of two pieces of legislation regarding the elimination of sexual violence and the increasing of the legal marriage age for girls from 16 to 18.

The government has also implemented a number of international agreements or resolutions into national law, including the UNSC Resolution 1325 regarding women, peace and security, which was incorporated into Presidential Decree No.18/2014 regarding the Action Plan for the Protection and Empowerment of Women and Children in Social Conflict (RAN P3AKS); Presidential Decree No.59/2017 regarding Reaching the Sustainable Development Goals. The mechanism regarding business and human rights was also incorporated into the action plan.

In regards to the strengthening of women's machinery, Indonesia continues support the Ministry of Women's Empowerment and Child Protection (KPPPA) and Komnas Perempuan. The government's support for these two institutions can be seen through the allocation of funding, human resources, and others. Although the government has made efforts to increase the fulfilment of women's human rights and gender equality in Indonesia, Komnas Perempuan has documented a number of challenges that continue to hamper the achievement of these goals.

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<sup>1</sup> Data from Puskapol UI which has been widely referenced by media:  
<https://nasional.kompas.com/read/2019/07/26/10465321/keterwakilan-perempuan-di-dpr-2019-2024-diprediksi-paling-tinggi>.

## Overview of Advancements & Developments: Findings based on Komnas Perempuan's Annual Notes

<b>Critical Area &amp; Progress</b>
<p><b>Women and Poverty:</b></p> <ul style="list-style-type: none"><li>• MoU between Indonesia and Saudi Arabia regarding the Deployment of Indonesian Migrant Workers (2014).</li><li>• The passage of Law No.18/2017 regarding the Protection of Indonesian Migrant Workers (2017).</li></ul>
<p><b>Education and Training of Women:</b></p> <ul style="list-style-type: none"><li>• Statement from the Minister of Education and Culture, Anies Baswedan, saying that all students have the right to take part in the National Exam, including pregnant students (2015).</li><li>• The education of followers of traditional beliefs: The Education and Culture Minister's Regulation No.27/2016 which acts as a legal umbrella for the provision of education to the followers of minority beliefs, in accordance with their beliefs (2016).</li></ul>
<p><b>Women and Health:</b></p> <ul style="list-style-type: none"><li>• The revocation of the Health Minister's Regulation regarding Female Circumcision. This occurred through Ministerial Regulation No.6/2014 regarding the Revocation of Ministerial Regulation No.1636/Menkes/Per/XII/2010 regarding Female Circumcision (2014).</li><li>• The creation of Government Regulation No.61/2014 regarding Reproductive Health.</li></ul>
<p><b>Violence Against Women:</b></p> <ul style="list-style-type: none"><li>• Increasing recovery services for women victims of sexual violence through the Law regarding the Protection of Victims and Witnesses (2014).</li><li>• The increasing number of female police to handle cases of violence against women (2014).</li><li>• The #GerakBersama Campaign to End Sexual Violence (2016).</li><li>• The Elimination of Sexual Violence Bill (RUU PKS) was entered into the national</li></ul>

priority legislation program in 2016 (2016).

- The signing of a MoU between Komnas Perempuan and LPSK regarding access to protection and recovery services for victims of violence against women (2017).
- The new Jakarta Province hotline to report cases of violence and the added numbers of safe houses in the municipality (2017).
- The regulation to provide for free medical examinations to increase access to justice for victims of violence against women and children in Jakarta. This occurred through Governor's Regulation No.154/2017 (2017).
- The Constitutional Court Decision which rejected the expanding the definition of certain articles in the criminal code regarding extra-marital sex, which if passed, would criminalise victims of sexual violence (2017).
- Truth and reconciliation Commission (KKR) in Aceh with the structure of a Women's Working Group (Pokja Perempuan) (2017)
- Papua Provincial Regulation (Perdasus Papua) regarding the Recovery of Indigenous Women's Rights from Violence and Violations of Human Rights, which was officially passed in 2011 but began being implemented in 2018 through its integration into a Governor Regulation (2018).
- Increasing public support for the 16 Days of Activism against Gender Based Violence Campaign (2018).
- KPPPA committed to increasing the effectiveness of the implementation of the Elimination of Domestic Violence Bill (2019).
- The signing of the Jayapura Regent's Decree (Pergub Jayapura No.35/2019) regarding a regency free from violence against women (2019).
- Provision of welfare support to survivors of past human rights violations in Jakarta through a support scheme for pensioners.

#### **Women in Power and Decision-Making:**

- The return of women's political rights through the Judicial Review of the MD3 Law (2014).
- Between August 2014 and October 2015, 25 policies conducive to the fulfilment of women's rights were produced by the Regional Government. Including regulations regarding gender mainstreaming, services for women victims, protection for women, anti-sexual violence, and human trafficking (2014-2015).
- The appointment of a KPK selection committee which consisted of 9 women.



These 9 women were chosen by President Joko Widodo (2015).

- Agreement between 13 government ministries and agencies to facilitate the integrated handling of cases of violence against women (2017).
- Positive policies: 6 regional governments produced bylaws to promote the protection of women and children, namely: Cirebon, Serdang, Padeglang, Sikka, South Sumatra, and Jakarta (2018)

#### **Institutional Mechanisms for the Advancement of Women:**

- Ratification of the National Action Plan for the Protection and Empowerment of Children and Women (RAN P3AKS) through Presidential Regulation No.18/2014 (2014).

#### **Human Rights of Women:**

- Agreement between national human rights institutions, LPSK and the Palu Municipal Government (2014)
- Agreement about the Integrated Criminal Justice System with the Government of Central Java (2014)
- Meeting between the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on Women (ACW) on 26 August 2015 in Jakarta which adopted the Regional Work Plan on Elimination of Violence against Women 2016-2025 (2015)
- Improving the provision regarding Compensation for Victims in Government Regulation No.92/2015 (2015)
- Memorialisation: The inauguration of the May 1998 Statue and the Komnas Perempuan Building as a memorial to the May 1998 tragedy (2015)
- Mass graves of the 1965 tragedy in Semarang, Central Java has begun to be spoke about and victims buried there will be soon given gravestones (2015)
- Recovering of women married in mixed marriages' constitutional rights to non-discrimination (case IF) (2015-2016)
- Passage of Law No.8/2016 regarding People with Disabilities (2016)
- Supreme Court Regulation (Perma) No.3/2017 regarding Guidelines for Trying Cases of Women Faced with the Law and support for its implementation (2017-2019)
- Judicial Review of Law No. 23/2006 and Law No. 24/2013 regarding Civil

Administration for Followers of Traditional Beliefs (2018)
<p><b>Women and the Environment:</b></p> <ul style="list-style-type: none"> <li>• President Joko Widodo’s recognition of indigenous forests (2016)</li> </ul>
<p><b>The Girl-Child:</b></p> <ul style="list-style-type: none"> <li>• The provision of a legal basis to ensure regional governments play a role in protecting children’s rights through Law No.35/2014, which revised the Protection of Children Law (Law No.23/2002).</li> <li>• Policy of providing restitution for children who become victims of crimes, increasing girls’ access to recovery through Government Regulation No.43/2017 regarding “Implementation of Restitution for Children who Become Victims of Crimes. (2017)</li> <li>• Judicial Review of Child Marriage: The Constitutional Court ruled to raise the minimal age for girls from 16 to 19 (2018)</li> <li>• Judges from the Municipal Court in Depot sentenced a perpetrator of rape to a more severe sentence than that requested by the prosecutor (2019)</li> </ul>

\*Additional data from Komnas Perempuan’s findings

## Challenges

The challenges documented by Komnas Perempuan during the implementation of BFFA over the last five years are as follows:

### 1. Impunity and a lack of recovery services for victims.

Impunity occurs in cases of state-perpetrated violence — including serious human rights violations — violence that occurs in the community<sup>2</sup>, and domestic violence. Impunity is caused by weak law enforcement and a patriarchal legal culture which tends to blame women victims.

<sup>2</sup> There are several cases of human rights violations that have not been resolved by the State to date, which victimized women. Komnas Perempuan documented women as victims in various contexts, in the 1965 Tragedy with 122 victims and witnesses, namely 74 cases of rape and 21 cases of sexual slavery, the Tragedy of 13-15 May '98 documented 85 women who were victims of sexual violence and rape, 103 cases violence against women in the context of the Aceh conflict, 138 cases of sexual violence and 14 cases of multi-layered violence in Papua, 72 cases of violence against women in Poso, and 853 cases of sexual violence in Timor Leste.

In the context of past human rights violations, Komnas Perempuan carried out a revisit study in a number of post-conflict areas and discovered that there has been no comprehensive resolution of violations of women's human rights in times of conflict. This has caused ongoing collective trauma, and at times mental disturbances. Impunity occurs when perpetrators are not legally processed which results in women losing feelings of security because with ongoing impunity there is no guarantee of non-repetition of trauma they have suffered.

## **2. No guarantees of non-repetition and no comprehensive recovery services for victims.**

Past human rights violations, especially the May 1998 Riots, which heavily featured racial discrimination and violence against Chinese-Indonesians, have become a cause of the unsolved and ongoing racial discrimination and hate speech based on sentiments of religion and ethnicity. Various recommendations provided by the Committee on the Elimination of Racial Discrimination (CERD) to the Indonesian government in the committee's 2006 concluding observations suggested the Indonesian government quickly resolve the case of the May 1998 riots. Also the government should increase the implementation of special autonomy in Papua by ensuring the fulfilment of Papuan people's human rights. Unfortunately, until now these recommendations remain unimplemented and racist acts continue to occur across the country.<sup>3</sup>

## **3. Developing patterns of violence against women have not been accompanied by sufficient legal reform and existing regulations have not been adequately enforced.**

Based on Komnas Perempuan's notes, domestic violence is an increasingly complex phenomenon. Although the State has already taken steps to provide some protection for victims, the creation of regulations does not always go hand in hand with the implementation or enforcement of these regulations. This results in victims facing difficulties in accessing justice, recovery services, and can even result in femicide when protection is not provided. Cybercrime against women is similar, with increasingly complex patterns that outweigh government responses to prevent and handle cybercrime.

## **4. Increasing fundamentalism and radicalism in various elements of society.**

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<sup>3</sup> There is an occurrence of widespread conflict in Papua since the incursion and racial insults at Papuan Students' Dormitory in Surabaya on August 17th, 2019. This case of racist insult was only a trigger of a bigger problem; the disappointment of Papuans which has not been resolved from one regime to another. The current situation in Papua is a residue of violence and discrimination that has lasted for 5 decades, from the New Order era to the present.

this has resulted in the creation of various discriminatory policies which impact on minority groups and various problematic acts that are not regulated by the law. Various harmful practices, including female genital mutilation/cutting (FGMC), and child marriage are still openly promoted, as is polygamy and the domestification of women. Fundamentalist views are also present in the state apparatus, as evidenced by the documented 421 discriminatory regional regulations that criminalize, stigmatize, and limit women's freedoms in the name of morality.

### **5. Increasing global mobility and isolation from protection.**

In an increasingly globalized world, the movement of people to earn a living is a given. Challenges in the issue of migration include that more efforts are being taken to protect citizens in destination countries rather than protect migrants, this includes in relation to the death penalty. The ban on the deployment of migrant workers to a number of regions, despite a high demand, results in the emergence of undocumented migration, which places migrants in a vulnerable position. Drug trafficking networks have also targeted migrant workers to exploit their mobility and vulnerability. Increasing numbers of women migrant workers are also being targeted by terrorist networks for recruitment.

Indonesia has ratified a large number of the key human rights conventions, including ICCPR, ICESCR, CEDAW, CRC, CERD, CAT, CMW, CRPD and two optional CRC protocols; however, the state has not yet fulfilled its obligations in reporting to these mechanisms. Indonesia is currently three years late in submitting its report to CEDAW, as the most important mechanism through which to achieve the elimination of all forms of discrimination against women.

### **6. Corporations and the vulnerability of human rights defenders.**

Another significant challenge is the frequently occurring environmental resources conflicts in various regions. The conflicts occur because of tension caused by the state's efforts to build infrastructure and advance the economy through land acquisition that makes use of repression at the hands of government apparatus. Criminalisation and stigmatization of women human rights defenders (WHRD) often occurs in conflicts related to natural resources,

Environmental degradation results in the unfulfillment of various economic, social, and cultural rights, such as the right to water, right to health, and the right to decent work, as women farmers are forced to change professions.

Conflicts with corporations are most felt by human rights defenders, especially WHRD, as conflicts with corporations often involve security forces and the supremacy of corporations is stronger than the due diligence of the state, especially regional governments. WHRD struggle for their rights with little acknowledgement, protection, security or support for their work.

## B. Progress in the Implementation of the Critical Areas of Concern of the Platform for Action Since 2014

### B.1 Women and Poverty

#### **B.1.1 Natural Resources Conflicts in Indonesia and their Contribution to Impoverishment of Women**

Twenty-six cases related to changing functions of the land (natural resources) have been reported to Komnas Perempuan. Each of these cases has resulted in the impoverishment of women.

These cases consist of: A) 11 land conflicts caused by gold mining and industrial forestry.<sup>4</sup> B). 6 cases of infrastructure development that has impacted on environmental degradation and pollution.<sup>5</sup> C) 5 cases of forced evictions resulting from infrastructure development.<sup>6</sup> D) 3 Cases of internally displaced people as a result of natural resources conflicts (and also 1 case of internally displaced peoples from the Nduga conflict in Papua, and 1 case related to foreign conflict involving Rohingya in Myanmar now seeking refuge in Aceh<sup>7</sup>.)

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<sup>4</sup> Cases of land and forests (mining, plantations and industrial forest permits (HTI)): 1. Criminalization of women activists in Soe regency and clearing of coffee plantations in Manggarai regency, East Nusa Tenggara (NTT); 2. Violence against women in land reclaiming by farmers in Pematang Siantar, Simalungun regency, North Sumatra; 3. Alas Tlogo forest case, Pasuruan, East Java; 4. Mining case in Sape, Bima regency, West Nusa Tenggara (NTB); 5. Kemenyan forest case in Humbang Hasundutan regency (indigenous and tribal community Vs PT. Toba Pulp Lestari), North Sumatra; 6. Case of gold mine in Dairi regency, North Sumatra (PT. Dairi Prima Maining); 7. Land swapping in Surokonto Wetan, Kendal, Central Java; 8. Conflict of natural resources with the indigenous community of Pemunggu in Deli Serdang regency, North Sumatra; 9. Land conflicts on Pari Island, Thousand Islands, Jakarta Capital Special Region (DKI); 10. Impact of Buyat Bay pollution in North Sulawesi; 11. Pollution of hazardous and toxic waste in Mojokerto, Central Java.

<sup>5</sup> Cases of Environmental Damage and Pollution: 1. The construction of Integrated Landfills in Bojong, Depok city; 2. The case of the construction of a cement factory in the Kendeng mountain range, Central Java, 3. Conflict over Hydro-Electric Power Plant (PLTA) which was built in the Seko indigenous community area in North Luwuk regency, South Sulawesi; 4. Development of a geothermal power plant on Mount Talang, West Sumatra; 5. Gold mining in Tumpang Pitoe, Banyuwangi regency, East Java; 6. Lapindo Mud Case, Sidoarjo, East Java;

<sup>6</sup> Eviction Cases: 1. Jatigede Reservoir, Sumedang regency, West Java; 2. Eviction of residents of Bukit Duri, South Jakarta, DKI; 3. Eviction of residents Jl. Cacing, Cilincing, North Jakarta, DKI; 4. Expulsion of Gafatar residents, Membawah regency, West Kalimantan; 5. Eviction of Taman Kota residents, West Jakarta, DKI; 5. Eviction of residents around the toll road in Kendal, Central Java;

<sup>7</sup> Internally displaced persons (IDP) and refugees: 1. Victims of the Sinabung natural disaster, Tanah Karo regency, North Sumatra; 2. Victims of natural disasters in Palu, Central Sulawesi; 3. Conflict victims in Nduga, Papua; 4. Rohingya refugees in Aceh;

Findings from Komnas Perempuan's monitoring suggests that in every case related to natural resources conflicts, gender-based violence occurs. Following are a number of examples.

- a) **Occurrence of criminalisation of women:** Women who fight to hold onto their land face arrest and detainment without proper legal procedure, such as the cases that occurred in Banyuwangi and Gunung Talang Sumbar, where women were deprived of their right to work and make a living.
- b) **Women suddenly become the main breadwinners in their families:** Criminalisation, arrest, and detention of men who fight for their rights to their land leads to their wives becoming the main breadwinners while having to take care of their children. Cases occurred in Surokontho Wetan, Banyuwangi and Pulau Pari districts.
- c) **Women lose their sources of livelihoods:** As a result of changing functions of the land, corporations' activities, environmental degradation such as water sources being spoiled, medicinal plants being increasingly rare, and increasing pollution. This causes women to face difficulties in obtaining clean water, and means that they must spend more money to buy water for their family. They also face difficulties in accessing medicines and fodder for cattle. Also floods occur, such as in Kendeng and Banyuwangi.
- d) **Girls become the targets of sexual violence:** Girls from families that rejected the construction of a powerplant in Seko became targets of sexual violence from village officers that supported the powerplant. The sexual violence caused the families of the victims to have to pay for treatment for the girls recovery and for the legal process in the regional capital city which was far from where they lived.
- e) **Women experience health complications:** Waste products that make women itchy (such as the case in Buyat) and have to pay for water because their water was contaminated (such as the case in Mojokerto).
- f) **Women's cultural rights and social relations suffer because of forced evictions:** 3 cases of forced evictions occurred in Jakarta. Residents were moved into vertical housing which meant that women's lifestyle and consumption patterns changed.
- g) **Displaced persons from disasters and conflict are impoverished:** because they lose their sources of income, access to food and housing and experience sexual violence (case of refugees in Palu and Rohingya refugees in Aceh).

Indonesia possesses Presidential Regulation No.18/2014 regarding RAN P3AK; however, its implementation is often misguided, and can even result in the criminalisation of women.

It is possible that women will increasingly face vulnerabilities to experiencing impoverishment and violence in natural resources conflicts and social conflicts, because of the national priority program that prioritises the development of infrastructure and forces the developments to proceed with the result local residents are forcefully displaced and evicted.

### **Recommendations to the government:**

1. Build understanding and capacity within government agencies and personal regarding international human rights instruments, especially related to business and human rights, so that the development of infrastructure and businesses do not sacrifice local communities, indigenous communities, and especially women.
2. Ensure that women's ECOSOC rights are guaranteed by the state in situations of natural resources conflicts, and carry out economic empowerment for women victims.

### **B.1.2. Migration and Poverty; Women migrant workers and its Protection's Issues**

In the past four years, from 2014 to 2018, the placement number of Indonesian migrant workers decreased significantly from 429,874 in 2014 to 283,640 in 2018. However, the feminization of migration continues, which is dominated by women who work in the household sector. In 2014 the percentage of Indonesian women migrant workers constituted 57% of the total number, and in 2018 it accounted for 70% of the total number. In terms of the type of work, the percentage of Indonesian migrant workers who work in the informal sector, such as domestic work and caregiver increased from 42% in 2014 to 53% in 2018.<sup>8</sup>

Furthermore, the falling number of Indonesian migrants' workers most likely caused by the implementation of the Decree of the Labor Minister number 260 of 2015 on the prohibition and termination of the placement of Indonesian migrant workers to the private employers in the Middle East countries. Consequently, apart from the decreasing number of placement of

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<sup>8</sup> Data from the Research, Development and Information Center (PUSLITFO) Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI).



migrant workers, there have been shifting in terms of destination countries, for instance, the placement of Indonesian migrant worker in the Kingdom of Saudi Arabia was decreased from 44,325 in 2014 to 5,894 in 2018, while in Hong Kong the number of migrant workers rose dramatically almost doubled from 35,050 to 69,182 between 2014 and 2018.

Nevertheless, Indonesian women migrant workers still experience various types of violence and violations of human rights, which its types and patterns have not been changed for decades. According to the Komnas Perempuan's Service and Referral Unit, the patterns and types of violence and violations of the rights of women migrant workers have not been changed in the last 20 years. Female migrant workers experienced physical, psychological and sexual violence, violations of the right to information, long working hours and excessive workload, violation of contracts, exploitation, overcharging, the prohibition from returning to the homeland, violation of freedom of religion, debt bondage and exaction. Such situation reiterated by the data from the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) that showed the number of violation cases threefold increases in past four years from 2014 to 2018; there were 835 cases in 2014, and in 2018 the number reached 2,761 cases. The number of cases in 2018 increased by 1,103 from 2017 which was 1,658 cases. The types of cases experienced were similar to those reported to Komnas Perempuan.

### **Poverty and Violence against Women behind Indonesian Migrant Workers's Death Penalty**

In addition, Komnas Perempuan also receives complaints regarding the death penalty faced by women migrant workers as well as conducted the human rights monitoring on such issues, both Indonesian women migrant workers in destination countries and foreign women domestic workers who stranded in Indonesia. According to the Ministry of Foreign Affairs, 166 Indonesian citizens are sentenced to death abroad in 2018, which 80% of them were migrant workers.<sup>9</sup> In the past four years from 2014 to 2018, four migrant workers were executed in the Kingdom of Saudi Arabia which three of them women, namely Siti Zainab and Karni bt Medi (executed in 2015), and Tuti Tursilawati (executed in 2018). While in Indonesia, two women migrant domestic workers, who were victims of human trafficking for

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<sup>9</sup> Kementerian Luar Negeri Republik Indonesia (2018), *Laporan Kinerja Kementerian Luar Negeri*, p. 186.

drug smuggling purposes, obtained reprieve from the President in the last minutes prior to execution. Those are Mary Jane Veloso (citizen of the Philippines) in 2015 and Meri Utami (WNI) in 2016. However, even though both are safe from the execution, thus far, they still waiting in uncertainty over their legal status in prison.

According to Komnas Perempuan's report of human rights' monitoring on "the impact of the death penalty of women migrant workers and their families, migrant workers and their families experienced various type of vulnerabilities, human rights violations, as well as economic, social and psychological impoverishment, as follows<sup>10</sup>:

1. Prior to migrate as migrant domestic workers and deal with capital punishment, women migrant workers who sentenced to death have experienced multiple gender-based violence both on a personal and structural level. The majority of them were single parent who experienced economic and social hardship after divorcing their husband due to domestic violence.
2. Women migrant workers who sentenced to death for committing murder and drug trafficking most likely prompted by self-defense for experiencing sexual violence, inhuman and exploitative working conditions, being trapped by the criminal syndicate of human trafficking for drug trafficking purposes. Consequently, as most women migrant workers were the economic backbone of the families, the aftermath of imprisonment leads to the disadvantages of the families left behind.
3. Women migrant workers who sentenced to death penalty experienced violation of the right to fair trial and lack of access to justice. As a result, they cannot defend themselves properly and obtained severe punishment and the death penalty.
4. Some of the women domestic workers who sentenced to death experienced physical, sexual and psychological torture and ill-treatment during police custody and pre-trial detention. Moreover, as most women migrant workers coming from the rural area, it required a tremendous amount of money for transportation and accommodation cost for rescuing their family members. Consequently, they should have to sell their assets, such as land and house, as an effort to save their family members from the death penalty. It leads to the economic hardship for the family left behind.

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<sup>10</sup> Komnas Perempuan (2016), *Kematian Berulang, Dampak Hukuman Mati terhadap Perempuan Pekerja Migran dan Anggota Keluarganya*, Laporan Pemantauan Komnas Perempuan, retrieved from <https://www.komnasperempuan.go.id/read-news-kematian-berulangperjuangan-perempuan-pekerja-migran-terpidana-mati-dan-keluarganya-merebut-hak-hidup>.

5. Aside from depriving the right to life, the death penalty of women migrant workers also caused the economic, social and psychological impoverishment, for the loss of the mother, sisters, daughters and the family's economic backbone.
6. The lack of government efforts in protecting and fulfilling the right to justice and recovery of women migrant workers and their families in each stage those who are waiting for the execution, safe from the death penalty and being executed.

### **The Setback and Progress of the Migrant Workers' Protection's Policies**

In the past five years, from 2014 to 2019, there has been drawback and progress in the migrant workers' protection's policies. The setbacks policy was the enactment of the Decree of Minister of Labor number 260 of 2015 on the termination and prohibition of the Placement of Domestic Workers to Individual Employers in 19 countries in the Middle East; Arab Saudi, Algeria, Bahrain, Iraq, Kuwait, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Palestine, Qatar, Sudan, Syria, Tunisia, United Arab Emirates, Yemen and Jordan. Such policy was a discriminatory policy as it confines the right to migrate and work of female migrant domestic workers. In addition, this policy leads to the vulnerability of migrant workers to be an irregular migrant and ends up being victims of human trafficking. Following the enactment of the policy, it showed the indications of the growing number of irregular migrations of migrant workers through Umrah and the mode of human trafficking as the growing demand of female domestic workers in those countries.<sup>11</sup>

Meanwhile, the progress of the migrant workers' policy can be seen in the adoption of the Law number 18 of 2017 on the Protection of Indonesian Migrant Workers (PPMI Law) issued at 22<sup>nd</sup> of November 2017. Such Law replaces the previous number 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, which was more profit-oriented and lack of protection. Aside from its limitations<sup>12</sup>, in terms of protection, in any case, PPMI Law is more comprehensive in protecting migrant workers in all stages of

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<sup>11</sup> BNP2TKI noted that throughout 2017 undocumented migrant workers reached 387 people, an increase from 2016 (133 people).

<sup>12</sup> These limitations include: still focusing on improving the governance of migrant worker placement with a developmental and gender neutral approach, so that the specific vulnerabilities of women migrant workers and migrant domestic workers have not been recognized and addressed, also still contains prerequisites for husband/parent or guardian permit to be placed abroad (article 13 (b), which has the potential to restrict women from becoming migrant workers and open space for various abuses (Komnas Perempuan's critical note on the PPMI Law, 2017).

migration; pre-departure, during the work period and returning. However, in the practical level, PPMI Law has not been applied tangibly and has not had real impact on the migrant workers' welfare. Moreover, there are 28 regulations under the PPMI Law that should have been ruled in two years since the enactment of the law. So far only two regulations have been passed by the government, namely the Minister of Manpower Regulation No. 17/2018 on the Social Security for Migrant Workers and Minister of Manpower Regulation No. 10/2019 on the Private Employment Agency of Migrant Workers. In other words, the reform of migrant workers protection and migration governance that expected after the adoption of PPMI Law has not occurred yet due to the issues of commitment and political will of the government in applying the Law. As a result, the progress of protection policies of migrant workers is only powerful on paper but insignificant at the practical level.

### **Recommendations:**

1. The Government of Indonesia has to evaluate the enactment of Minister of Manpower Decree Number 260 of 2015 on the termination and prohibition of the placement women domestic workers to individual employers in the Middle East countries. Also, it has to respond quickly to the numerous cases of violence against migrant workers' rights which continuously occur due to the lack of the implementation of PPMI Law.
2. The government of Indonesia has to ensure the application of gender-sensitive and victim's perspective in handling cases of violence against migrant workers' rights as well as the protection and the fulfillment of the victim's rights, such as access to justice and the right to remedy. Moreover, involving the migrant workers as subject and center in its legal and recovery process.
3. The Government of Indonesia has to apply consistently CEDAW general recommendations no. 26 on Female Migrant Workers.

## **B.2 Education and Training of Women**

### **B.2.1 Right to Education for Religious Minority: Education Services for Students of the Indigenous Religions**

On 22 July 2016, the Minister of Education and Culture issued the Minister of Education Regulation No. 27/2016 concerning Education Services to the followers of Indigenous Religion (*Penghayat Kepercayaan*) in the Education Unit. This regulation complements the existing legal basis of the 1945 Constitution (specifically Article 28C paragraph (1) concerning the right to education and Article 28E paragraph (2) concerning the right to believe and the Law No. 20 of 2003 concerning the National Education System concerning the right to religious education and belief for every citizen as part of human rights. This regulation is the result of the long struggle of the people of indigenous religions and the networks of freedom of religion and belief to obtain recognition from the state on the right to education of faith that has not been served for long time.

Based on the results of Komnas Perempuan's monitoring and consultation with the community of believers, nearly three years after this Ministerial Regulation came into force, various incidents of violations and discrimination regarding the educational rights of the followers of indigenous religions are still found, including: students of indigenous religions are forced to study other religions at school, and wearing religious attributes such as the hijab; (b) the lack support from Department of Education to the community of indigenous religions, so that infrastructure and supporting facilities for them are still minimal (for example; teachers, curriculum, budget), and (c) educational services are only provided to registered organizations, even though some community of indigenous religions deliberately choose not to register their organizations in the Ministry of Education and Culture, because having an organization is a right, not an obligation. The education service policy should provide an equal opportunity to the registered or unregistered organizations of the indigenous religions.

Whereas the Ministerial Regulation was issued before the revolutionary Constitutional Court Decision Number 97 / PUU-XIV / 2016 on November 7, 2017, which affirmed the recognition and guarantee of juridical-constitutional rights of indigenous religions. The Constitutional Court's ruling does not only have dimensions of population administration, but also has the dimension of the right to education of citizens of faith that has been discriminated against. After the Constitutional Court Decision, the fulfillment of the rights of the believers including the right to religious education should be restored and equal as is the service of the followers of other major religions in Indonesia.

In the Article 4 of Law Number 20 Year 2003 concerning the National Education System, it is emphasized that education is carried out in a democratic and fair manner and is not discriminatory by upholding human rights, religious values, cultural values, and national pluralism; If this is the case, then the treatment of the followers of indigenous religions must also be based on government policies that uphold the rights of the all followers of the faith, especially their human rights in the field of religious education.

### **Recommendation:**

The government needs to provide an affirmative action or "a temporary special measure" related to the education of the children of indigenous religions to catch up with other religious education, including in the provision of teaching staffs, preachers, and curriculum based on the needs of the indigenous religions.

### **B.2.2 Discrimination in Education against Sexual Minority Groups**

The case that received a considerable public attention and was submitted by a sexual minority group in the consultation with Komnas Perempuan, was a ban circulating in the media for sexual minority groups to continue their tertiary education at the Andalas University, West Sumatra, in 2017. The Andalas University posted in their website the list requirements for new students where it is stated that prospective students are required to submit an LGBT Free Statement. The university even provides an LGBT free statement form.

This kind of policy received protests from various groups because it was considered against the principles and values of non-discrimination in education. According to the Article 28 I paragraph (2) that every person has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment. Finally the LGBT free conditions were officially abolished by the Andalas University. The Minister of Research, Technology and Higher Education Professor Mohammad Nasir said that universities should not discriminate against certain groups, including LGBT, but he supports the prohibition of LGBT organizations from being active on campus which of course conflicts with the right to freedom of organization and peaceful assembly as guaranteed by the Constitution.

Komnas Perempuan concerned that discourse related to the prohibition of LGBT to enter university often appeared in the public. This is due to the stigma attached to this group, so that they are vulnerable to being targets of violence and discrimination in this society. It is coupled with the attitudes of prominent politicians and religious leaders who also made some homophobic statements. Every year Komnas Perempuan has recorded cases of violence and discrimination experienced by LBT women in the Annual Notes of Violence against Women, including the impediment access to education that they have experienced.

### **Recommendation:**

The government must ensure that national education policies do not discriminate against sexual minority groups and synchronize policies in the education sector both at the national and regional levels in order to achieve the harmonious rules and policies of education.

### **B.2.3 Rules on Mandatory Hijab in the Public/State Schools**

Various policies and rules about Muslim and Muslimah dress code in the public/state schools are still happening. The latest cases that have surfaced in the public discourse and encouraged Komnas Perempuan to take action are in the Rambah Hilir State High School in Rokan Hulu, Riau , SMP Negeri 3 Genteng, Banyuwangi, in SMPN 5, 7 and 11 Yogyakarta reportedly requiring the headscarf. In 2018, the same case appeared at SMPN 8 Yogyakarta. One of the parents complained to the Republic of Indonesia Ombudsman (ORI) representative of Yogyakarta that the school made a rule requiring every Muslim woman student to wear a headscarf. She felt this rule was not appropriate to be applied in the public/state schools.

Komnas Perempuan has long monitored the policies governing dress code for women. Komnas Perempuan data show that in the range of 2000 to 2016 , as many as 70 out of 421 regional policies discriminatory issued regulates the restriction and regulation of clothing. Although the rules about Muslim dress code apply to men and women, in practice the focus of implementation is more on women. The veil appeal in the public schools is an indirect initiative to strengthen the Islamic identity that is rife in Indonesia; Komnas Perempuan is worried that it will eventually lead to discrimination in the public sphere. When clothing is used as a benchmark of morality,

women who are used as a symbol of the morality of their community are the first to be charged to comply with these rules.

The discriminatory aspect of the dress code comes in the form of restrictions on constitutional rights to freedom of expression. Wearing or not wearing hijab is an integral part of the space to express one's identity, a choice of how to express thoughts and attitudes that are in accordance with their conscience. This independence is a basic right guaranteed in the constitution (Article 28E (2), 28I (1)) of the 1945 Constitution of the Republic of Indonesia. Rules that require certain clothing as the only legitimate way of dress, therefore, restrict the freedom of expression of citizens.

Ministry of Education and Culture, through Ministerial Regulation No. 45 of 2014 article 3 paragraph 4, stipulates that the school has the authority to regulate the uniforms of its students. But schools must "still pay attention to the rights of every citizen to practice their respective religious beliefs". Through this regulation, Muslim students who want to wear the hijab are, of course, guaranteed their rights as citizens. However, some schools actually make it as an obligation for Muslim students to wear the hijab. In practice, for female students who do not wear the hijab, reprimand is given by the teacher or the principal, even if the school is a public / state school. Students who are not veiled also experience *bullying* and exclusion from peers. The students did not dare to express their rejection openly because they were afraid that they would be judged by the community as immoral students/women and even accused of opposing their religious teachings.

### **Recommendation:**

The government must ensure that educational institutions do not issue any appeals, rules or policies related to the imposition of certain religious dress code for students because they are contrary to the principles in the National Education System Law where education is held democratically and fairly and is not discriminatory by upholding human rights, religious values, cultural values, and the diversity of the Indonesian nation.

### **B.2.4 Right to Education for Displaced Women in Various Contexts of Disasters**

This report is based on three Komnas Perempuan monitoring visits:



1). Monitoring of the displaced persons camp for people fleeing the volcanic eruption in Sinabung, North Sumatra in September 2015, five years after the first eruption of the volcano. The volcano has erupted repeatedly until 2019. 2.) Monitoring of the after effect of the earthquake, tsunami and liquification in Palu, Sulawesi in February 2019, after the Tsunami in September 2018. 3.) Landslide in Sentani, Papua which occurred on 16 March 2019.

At the time of monitoring in Sinabung, 10,184 people were situated in 10 internally displaced people camps (BPNB, 23 June 2015).

In one GBKP Command Post in Simpang 6 Sinabung there were 1425 people consisting of 787 women, 738 men. Including 97 elderly citizens, 12 pregnant women, and 28 babies.

In Palu 62,359 people were in 147 internally displaced people's camps (BNPB, 7 October 2018). In Sentani there were 9,691 displaced peoples in 18 camps (BNPB, 20 March 2019).

Many issues regarding displaced persons and the role of the state were reported to Komnas Perempuan, these issues contribute to the difficulty of fulfilling their rights, because: a) displaced persons psychological conditions are often fragile after experiencing trauma, they are scared and receive minimal support recovery support that is in accordance with their needs; b) The camps often change locations. This occurred in Sinabung because of multiple eruptions, also in Palu when people moved further away from the tsunami prone locations, and in Sentani where people moved because they were afraid of aftershocks; c) Uncertainty about their refugee status and the duration they will be forced to live in camps. In the context of Sinabung, displaced people lived in an "emergency response" status for a prolonged time, meaning that the support that they received was continually in the form of emergency aid and not recovery support which would allow them to slowly get their lives back together. In the context of Sentani, the displaced people were only provided short term aid which was not sufficient. This led to women having to raise money by selling things to be able to live and support other displaced people. In Palu the government decided to end the emergency phase and enter into a transition towards reconstruction and rehabilitation, however, the problematic handling of the emergency phase which continued into its fifth month, made a number of parties anxious about the handling of the disaster in the reconstruction-rehabilitation phase, because a number of fundamental issues which should have been resolved in the emergency phase; d) Aid is often not distributed evenly and is stockpiled in certain locations because regional governments have inaccurate data. Monitoring showed that in Palu much of the aid

was stored at the military base with the reasoning to protect it from the looting that occurred a number of days after the disaster.

### **B.2.5 Educational discrimination in the Kendeng Conflict**

In June 2014, Komnas Perempuan received a complaint about a natural resources conflict from women in an organization called the Network that Cares about the Kendeng Mountains. These women called themselves the 9 Kartini's of Kendeng, in reference to one of Indonesia's heroines who was from the same geographic region. These women are fighting against the plan of construction and operation of Cement Factories in their home region of Rembang, Central Java Province. The cement factory takes rocks from the surrounding karst mountains to make cement, which affects their water sources which they use for irrigating their rice fields and for consumption. The water sources provide the water for a lot of East Java and Central Java Provinces. The women represent Java's population that is committed to fight for and guard their water sources in the mountains of Kendeng. They have reported various issues related to the cement factory that can endanger the sustainable supply of water in the region, for both their generation and upcoming generations. The struggle of these 9 women has encountered resistance from the cement company and the Central Java Provincial Government. The residents opposed to the cement factory filed an administrative court case contesting the legality of the Governor's permission for the operation of the factory. The Kendeng residents won this case. The Government of Indonesia, represented by the Presidential Staff Office, then carried out a Strategic Environmental Impact Study regarding the development. Based on the findings of this study they determined the site would be a conservation site and could not be exploited. However, the Governor of Central Java has failed to obey the direction of the Supreme Court to halt the operations of the company and has ignored the environmental feasibility test. The governor has even defended all acts of PT. Semen Indonesia (Cement Indonesia) and approached local residents of the impacted site to ask for permission to build the factory.

One public relations technique utilized by PT Semen Indonesia is to offer tours for local teachers to local cement factories to see how the employees of the factory and residents who live around the factory have prospered from the development. This picture of prosperity made the teachers have a positive view of the factory. Especially because the Provincial and

District Government's view the construction of the factory as a national development program.

The company and government safeguard the development of the factory by repressing the residents who oppose it. Teachers, who represent the government, have stigmatized the children of those who reject the development of the cement factory. The teachers stigmatize opposition as being "hard headed" and detrimental to the development of the state. The children of those who oppose the development have experienced violence and pressure from their teachers who support the development. A horizontal conflict has occurred in the community which has destroyed the social harmony which was typically nurtured by women. There is tension between pro and anti-cement groups. At the time of the monitoring of natural resources conflicts in Seko, Luwu Utara, South Sulawesi Province in 2017, Komnas Perempuan also discovered that children of families who opposed the infrastructure developments in the region had been beaten in front of their classes because their families rejected the powerplants.

The Kartinis of Kendeng are also afraid that their knowledge, which has been passed down from generation to generation, will end in their children's hands. Until now they have taught their children to respect nature with knowledge passed down from their ancestors. For example, seeing nature as a living creature. The trunks of large trees are wrapped in cloth as symbols of living things that need to be cared for, as gratitude to trees that function as a source of oxygen, storage of water, barrier to landslides, and others.

Learning from nature, including studying medicinal plants which have healthy effects for humans, has begun to be lost, because nature has been overexploited in the Kendeng mountains. Children have been taught from a young age about environmental education so that every day they fear their sources of livelihoods will be lost in the name of development. The loss of the sources of energy and sources of livelihood are feared as is the loss of the natural school that has become the place where children learn their culture.

### **Recommendations:**

1. Revitalize women's knowledge about nature and medicinal plants that are increasingly rare, as this knowledge has been passed down for generations.

2. For the regional leaders, such as the Governor and the Regent, set a good example for their residents which can be a good precedent in education about environmental sustainability for future generations.

### **B.2.6 Limitations on the right to Education for Pregnant Students who have Suffered Sexual Violence**

Based on Komnas Perempuan's monitoring from 2015-2019, there have been a number of violations of the right to education for students that have experienced sexual violence in SLTA and SLTP in a number of regions. In a number of specific cases girls have experienced unwanted pregnancies. In cases like these often girls are expelled from school, or asked to leave school voluntarily. Cases like this have affected girls in class 12 who are ready to sit the final exams.

The cases of pregnant girls forced to leave school have occurred in various cities, including Aceh, Payakumbuh and Padang (West Sumatra), Pematang Siantar (North Sumatra), Riau, Bandar Lampung, Jakarta, Serang (West Java), Bogor, Lumajang (East Java), Makassar, Palu, Bali, and Sumba (NTT). In 2015, 7 cases were noted, in 2016 13 cases, in 2017 1 case, in 2018 there were 14 cases and as of July 2019 6 cases had been reported. These cases don't include the cases reported by the media that did not report to Komnas Perempuan.

The school's decisions in these cases do not reflect the human right guaranteed in the constitution in Article 31 Paragraph (1) "Every citizen has the right to obtain education." Besides this there are other policies, including a Circular published by the Body of National Standard Education (BSNP) No. 0016/SDAR/BSNP/IV/2013, 10 April 2013 regarding the strategy to overcome problems that arise during national exams. This circular was directed at the rectors of high education institutes and the heads of provincial education departments across Indonesia. The letter states pregnant students and students in trouble with the law have the right to sit national exams. Two ministers of education and culture, M. Nuh<sup>13</sup> and Anies Baswedan<sup>14</sup> have verbally stated that there are no prohibitions on pregnant or married students from continuing on with their schooling and joining national exams. However, in reality, 'policies' from schools, in this case teachers or principals, are more concerned with

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<sup>13</sup> (DetikNews, Kamis, 4 April 2013)

<sup>14</sup> (CNN Indonesia, Kamis 16 April 2015)

guarding the "Good reputation" of their schools. Pregnancies outside of wedlock are considered to be amoral and taboo; despite the fact Komnas Perempuan has found that many of these girls were pregnant as a result of sexual violence or dating violence. This situation causes women victims of sexual violence, who should get support and protection, to instead experience layered violence and revictimization, from families, school friends, and schools.

### **Recommendations:**

1. The government should evaluate its strategy on disseminating information about regulations, especially to educators, so that they build perspective and knowledge about national policies.
2. It is important to integrate a human rights and gender perspective into the curriculum for prospective teachers to ensure that future teachers can better respond to issues that arise.

## **B.3 Women and Health**

### **B.3.1 Female Genital Mutilation/ Cutting (FGM/C)**

Female Genital Mutilation and cutting or women's circumcision as it is known in Indonesia, is an issue that affects many women world over. The argument about FGMC continues. According to the Health Ministry, the occurrence of FGMC is not the responsibility of the Ministry. This is also true of the Indonesian Doctors Association (IDI), Gynecology Association (POGI) have the opinion that in education for doctors and specialist doctors there is no standard operational procedure regarding female circumcision. In principle there is no medical interventions regarding whether or not the practice is allowed.

Demands from civil society, Komnas Perempuan, and international human rights mechanisms have encouraged the Health Ministry to publish a Circular from the Director General of Community Health No. HK.00.07.1.3.1047a 2006 regarding the prohibition of the medicalization of female circumcision for health practitioners. Besides that, in 2015, the Health Ministry published a Health Minister Regulation (Permenkes) No.6/2014 regarding the revocation of Permenkes No. 1636 regarding Female Circumcision.

However, the Health Minister Regulation No.6/ 2014 has not reduced the prevalence of female Circumcision. In 2017, Komnas Perempuan along with the UGM University carried out research into FGM/C in 10 provinces and 17 regencies that were identified as regencies with high prevalence of female Circumcision based on a 2013 study.

The results of this study showed that there were various traditions and methods of FGM both in local wisdom and in the medical field. The research found that in different regions there were different understandings and practices related to FGMC. The various practices of FGMC influenced the making of decisions in the research areas. Generally medical professions who carry out FGM/C are midwives, but there are also traditional healers/shamans that carry out the practice. This tradition has been passed down from generation to generation. Cultural and religious reasons are why the process continues in Indonesia.

Other key findings from the research area showed that FGMC affected frigidity, resulting in bleeding in infant, and sometime FGMC used equipment like nail clippers, coins, knives etc. Through this research Komnas Perempuan introduced the Indonesian translation of FGMC: *Pemotongan/Pelukaan Genitalia Perempuan (P2GP)*.

Based on the results of this study, the health ministry has begun an information campaign aimed at medical practitioners, especially midwives, aimed at stopping the practice. The main message of the campaign is that that as long as there is no cutting or injuring of the female genitals then FGMC has not occurred. However, for Komnas Perempuan FGMC is not only physical but the term also refers to acts that reduce the dignity of females.

### **Recommendations:**

1. Reach a joint agreement that FGM/C is a violation of sexual and reproductive health rights and can endanger the lives of girls.
2. Consolidate the civil society movement, and the child protection movement, to help stop the practice of FGMC in Indonesia. Hold forums that bring together different parties to discuss and study in more depth religious interpretations related to FGMC in Indonesia.

### **B.3.2 Child Marriage**

The minimum age of marriage for men and women in the Marriage Law No. 1/1974 is not separated from the assumption that the postponement of marriage will open the space for illicit sexual relationship (zina) for men and women. Child marriage is one of the harmful practices which up until now has no solution yet. The Judicial Review (JR) process on Marriage Law on the minimum age of marriage ended with the decision of Constitutional Court No. 22/PUU-XV/2017 on 13 December 2017 which gave opportunity for parliament up to three years to revise the existing minimum age of marriage, which was 16 for women and 19 for men. For this, it is open to public, including organisations which are concerned with child right and reproductive rights, to give inputs on the minimum age of marriage. Some organisations proposed the same age of marriage, minimum 18, and others proposed 19 with their own reasons. Komnas Perempuan proposed 21 years old as the minimum age of marriage for both men and women. The reason for this proposal is that women would be ready physically, psychologically, socially and economically be productive. 21 years old is also considered to be legally capable. In addition, 21 years old is already stated in the Marriage Law No. 1/1974. However, on 12 September 2019, the parliament decided to increase the age of marriage to be 19 years old for both men and women.

The main concern of human's rights perspective on child marriage is how children have the opportunity to develop optimally and are free from various situations which jeopardise their reproductive and sexual organs in their bodies. Girls in their childhood or under the age of 18 are vulnerable to Human Papilloma Virus, the virus which cause cervix cancer. Therefore minimum age of marriage should be above 18 years old. Unhealthy sexual behavior will contribute to the damage of reproductive organ. Child marriage will also result in stunting because the baby is born from the mother whose age is too young and therefore the baby would tend to be born underweight. Unreadiness of girls to give birth will also result in baby blues syndrome. This syndrome is often being regarded to be ordinary because of the belief that to be pregnant and to give birth is women's nature.

In addition, based on the data from Badan Peradilan Agama/Badilag (Religious Courts), the Court has granted children under the age of 16 to get married because the children have been pregnant. Marriage has been regarded to be the solution to save the status of the baby to be born because the baby born out of wedlock will only be regarded to belong to his/her mother only. Child marriage also contributed to the high rate of divorce. Komnas Perempuan Annual

Report 2017 recorded that there were 312 cases of child marriage and 1.340 cases of forced marriage which became the cause of divorce.

Child marriage also contributed to the high rate of domestic violence. Komnas Perempuan Annual Report recorded that the highest number of victims of domestic violence was in productive age, including children age. Unfortunately, most cases of domestic violence were ended with divorce. This means that there is no police report to charge the perpetrators, and therefore there was no deterrent effect for the perpetrators.

Based on the above elaboration, child marriage led to many violations of women's human rights, especially girls. Child marriage can be regarded as sexual violence or rape against girls legitimated by the state. This violence against women under the disguise of marriage gives more space for femicide, women's suffering which end with death.

### **Recommendation:**

1. To improve education about reproductive health and sexuality for every individual without any exception, in order to reduce sexual behavior which threaten women's lives.

### **B.3.3. Right to Health of Female Drug Offender and Women's Incarceration of Drug Crimes**

Based on data from Directorate General of Corrections, Ministry of Law and Human Rights, the number of female prisoners and detainees in 2017 were 13.569.<sup>15</sup> Of these, 90 % were incarcerated to drug offences.<sup>16</sup> Indonesia is one of the countries that apply the criminalisation approach and severe punishment in dealing with drug crimes. As a result, the number of women's incarceration highly increased as well as overcrowded prisons. Furthermore, Indonesia considers drug offend as a serious crime and applies capital punishment and other severe penalties such as life imprisonment on it.

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<sup>15</sup> Direktorat Jendral Pemasyarakatan Kementerian Hukum dan HAM (2017), *Data System Laporan Jumlah Narapidana di Indonesia* retrieved from [http://smslap.ditjenpas.go.id/public/grl/status\\_pas](http://smslap.ditjenpas.go.id/public/grl/status_pas),

<sup>16</sup> Penal Reform International (2017), *Global Prison Trends 2017*, p.16, [https://cdn.penalreform.org/wp-content/uploads/2017/05/Global\\_Prison\\_Trends-2017-Full-Report-1.pdf](https://cdn.penalreform.org/wp-content/uploads/2017/05/Global_Prison_Trends-2017-Full-Report-1.pdf),



According to the Komnas Perempuan's Report on the human rights monitoring on the women's incarceration of drug crimes, there is the intersection between the personal and structural of gender-based violence experienced by female prisoners, as well as migration and trafficking in persons, in terms of causes, patterns and impacts of such crimes. Some key findings in the monitoring (*Laporan Pemantauan Kekerasan Terhadap Perempuan Dalam Pusaran Migrasi, Perdagangan Manusia dan Narkoba: Interseksi dan Penghukuman*, Komnas Perempuan, 2018) as follows:

1. Most female drug offenders have experienced the long history of violence, either in the personal and structural level, such as economic scarcity, homelessness, divorce, economic violence, early or forced marriage or unregistered marriage or being the mistress.
2. Most female drug offenders, which either consciously involved or being trapped in drug smuggling by the drug crimes organisations, were forced to be a drug user and smuggler. Some of them forced to smuggle the drugs by inserting into their organs which affected their health condition in the long run, while at the same time also sentenced to death.
3. Some female migrants workers who entangled in drug crime organisation were female migrant domestic workers. They were being recruited and framed because their ownership of the passports, which mean open the access to mobile transnationally across borders and prone to be exploited. Furthermore, the exploitative and inhumane working condition of migrant female domestic workers leads to other forms of exploitation and manipulation conducted by the drug crime syndicates.
4. Most female drug offenders experienced ill-treatment during the justice investigation both in police custody and pre-trial detention. Such situation continues in the correctional centre as Indonesia has serious problem with the overcrowded prison, which affected the prisoner wellbeing and the fulfilment of their rights including the right to health such as access to proper sanitation, water, food and access to healthcare.

### **Recommendations:**

1. The government of Indonesia has to abolish capital punishment from its Penal Code
2. The government of Indonesia has to ensure the Fair Trial principle applies correctly is all stages of the legal process, including taking into account the intersection between gender-based violence, migration, trafficking in persons and drug smuggling.

#### **B.3.4 The Health Issues of Elderly Women, Victims of Past Human Rights Violations**

The World Health Organization (WHO) states that the elderly are those who have aged 65 years and over. In the year 2010, there were 20.7 million elderly people in Indonesia and is expected in the year 2050 in the global proportion of elderly will be higher compared to the children of age under 14 years old. From around 25 million elderly in Indonesia, 80% of them are still productive and incorporated in some formal associations, while the rest are not yet accessed with programs that are held. In the coming years 2025, Indonesia is projected to have about 33 million elderly (Komnas HAM, 2016).

Until now, the existence of the Elderly is still not well recognized by either the public or the government. They are still considered as people who are not productive, troublesome and become a burden, whether for family, society or even the country. The Law No. 13/1998 on the Rights of Elderly, shows the approach is still charity-based and tend to be discriminatory. In addition, the problem faced by the elderly has not yet become a serious concern for the government.

The right of the elderly is guaranteed in the 1945 Constitution, article 28H A (paragraph 3) that "every person has the right to social security which enables his or her of their full development." The article 34 paragraph 1 states that "the poor and displaced children are maintained by the state." These contain a very broad meaning, including the obligations of the state which must protect and maintain the poor elderly. For the achievement of well-being that should be fulfilled is the role of government as well as the support of the community to make it happen.

The findings of Komnas Perempuan on the elderly issues focusing on the elderly female who are victims of human rights violations, as the following:

### **a. Multi-layered Discrimination and Violence:**

The majority of the victims of past human right violations in Indonesia, (e.g. 1965 tragedy, Talangsari, May '98 riots or Military Operation Mission in Aceh), they are now in the age of 70s years and older. Komnas Perempuan finds some difficulties in accessing assistance provided by the government. The situation was exacerbated by the stigma as if they are the perpetrators of human rights violations that made them being marginalized from their social environment. The fulfillment and endeavor to restore the rights of the elderly, victims of violence in the past should use the ecosoc approach. From the dimensions of the economy the elder victims of violence in the past have difficulty in searching a source of income to finance their daily life, so they greatly rely on the help of the government or their friends. From the social dimensions, the elderly victims of violence in the past are generally found multi-layered social stigma, because there is no any space of recovery and recognition. Most of the victims utilize the program from the protection of witnesses and victims organization using the letter of Human Right Commission. But there are some victims who cannot access that program because there are no categories of victims in the scheme or policy. From a cultural approach, people's perceptions and cultures about the elderly are no longer considered productive, burdensome and become a burden on the family and social environment. Especially the elderly victims past human right violence times, not all parties would accept, acknowledge and be willing to restore their traumatic, anxiety and feelings of alienation. Komnas Perempuan has recorded at least there are 61 victims of elderly women in the case of human rights violation of 1965.

### **b. The development on the rights of transitional justice:**

Supposedly, the victims of past human right violation get the right to justice, truth, recovery, and guarantees of non-repetition. However, because the rights are not yet fulfilled, Komnas Perempuan and other institutions in the country and CSOs try to make recovery efforts recovery to meet the basic needs of the elderly:

- 1) Citizenship services, among others as the Citizen Identity Card (KTP) as a basic right for accessing other services. Because they are hampered to obtain the right to identity the basis of this because of the stigma as a political prisoners;

2) The services of medical and psychological; the government through the Ministry of Social has spawned a variety of programs including medical services for elderly groups. However, the program is not yet optimal running and touching up to the district/city where many elderly are poor and in displaced areas. The specific psychological program are not yet optimal, especially for the elderly people who become victims of past human rights abused. Some programs including programs of psychosocial that received because of the letter of recommendation from the Commission on Human Rights which states that the elderly who were victims of human rights violations have rights;

3) Service Facility and Welfare Program, the facilities of the elderly such as wheel chairs, sticks, listening tool. This program is to make sure that social services in the province to distribute the tool to help it with the good and the right target. Related welfare, Family Hope Program (PKH) and various service program services are felt not optimal, especially from the aspect of the fulfillment of the rights of the needs of the basic group of elderly people from the class of poor and displaced. The lack of socialization as well as the accessibility of a group of elderly, data collection population is a series of factors that cause the program is less than optimal. Included in the service of this facility is ensuring that food for the elderly (milk, etc.) is provided in diverse products and easily accessible. In addition to that, the service assistance is also still needed by the elderly victims of violations of human rights.

### **Recommendations:**

1. Integrate the fulfillment of the rights of the elderly, including elderly women victims of past human right violence in national policies related to human rights (National Action Plan for Human Rights (RANHAM), SDGs and others).
2. Ensure the coordination across ministries/agencies, including agencies in the region to implement programs/policies of the elderly.

### **B.3.5 The Conditions of Women with Psychosocial Disabilities**

In 2018, Komnas Perempuan carried out monitoring of women with psychosocial disabilities such as in mental health hospitals (RSJ) and mental health treatment facilities (rehabilitation centers) to be able to make comprehensive monitoring reports on situations of torture and

situations of treatments or punishments that are cruel, inhuman or degrading human dignity mandated in the Convention Against Torture (CAT). The sites monitored by Komnas Perempuan are four mental health hospitals, two government-owned institutions and one community-owned institution in three regions, namely Central Java, West Sumatra and North Sumatra.

Komnas Perempuan's findings show that violence against women contributes greatly as a trigger that aggravates women victims to experience psychosocial disabilities. The forms of violence against women that cause and aggravate the psychological disorders of victims that Komnas Perempuan found include victims of sexual violence, victims of dating violence, victims of domestic violence, women who experience postpartum depression, victims of forced marriages, women who lose the custody rights of their children, former migrant workers who experienced fraud, and elderly women who were neglected by their families.

It is also encountered that service and treatment in places of psychiatric rehabilitation centers for women with mental disabilities still do not meet human rights standards such as the Convention against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Indications of violence that occur in women in all mental health hospitals/rehabilitation centers include the location of open bathrooms in which not infrequently they are stripped and bathed together which is a form of depersonalization or degradation of dignity as a woman, minimal reproductive health care, vulnerable to sexual violence committed by fellow residents because the treatment room is only divided with temporary partition, or it can also come from the staff because male staff can still access the female treatment room or the lack of female staff, especially at night. The problem of family acceptance post-treatment is also a problem.

Another finding is that there is coercion in form of forced contraception. For example, in one psychiatric home in Semarang, all women of childbearing age, who will become residents, will be fitted with contraceptive implants. At the regional mental hospital in Semarang, female patients will undergo a tubectomy, with informed consent from the patient's family. While for patients delivered by the Public Order Agency (Satpol PP) after conducting raids on the streets, contraception installation procedures were carried out without informed consent.

Komnas Perempuan also found that there are forms of torture in the name of treatment and healing, such as: being smeared all over with carbolic acid and sulfur for the treatment of itching, electroshock/electroconvulsive therapy (ECT), restrained, detained in small cells with bars, disposed of by the family, never visited by the family, twisted to bleed, beaten, sprayed with water, held in a collective cage, and given drugs that have the risk of damaging organs that can lead to facial stiffness, heart problems, kidney problems, or decreased intelligence.

## **Recommendations:**

1. That the government establish clear standard operating procedures for handling women with psychosocial disabilities, for example not bathing them in open spaces, giving them female nurses (to avoid sexual violence) and providing strict sanctions for violators.
2. For the government to perform any medical procedure with informed consent, in accordance with CEDAW General Recommendation No. 24 on women and health.

## B.4 Violence against Women

### B.4.1 Mapping of Violence against Women in Indonesia

Komnas Perempuan publishes Annual Notes (CATAHU) on Violence against Women on March 7<sup>th</sup> every year to celebrate International Women's Day. This Annual Notes is the yearly data compiled from the real cases reported directly from the victims to Komnas Perempuan, cases handled by community service institutions for women victims of violence and cases reported to state institutions, including law enforcement agencies, religious courts and Komnas Perempuan's partner service providers.

Regarding data on violence against women handled by the Religious Courts which is equivalent to disclosure of information in the court settings, it can be seen that there have been several progress and improvement on the efforts made by the Religious Courts in documenting the cases handled. Since 2008, the Religious Courts' data accounted for 70-95% of the total documented number of cases on violence against women in Komnas Perempuan. This data is significant to comprehend the number of: divorce cases initiated by the husband (*cerai talak*), divorce cases initiated by the wife (*cerai gugat*), and the Court permission to practice polygamy. *Cerai gugat* is accounted the largest number. This large number of women filing divorce is because the institution of marriage is not a safe space for women. Although the State has given protection to women in households as stated on Law No 23/2004 on the Elimination of Domestic Violence which provides criminal sanctions for perpetrators of domestic violence, most women choose divorce to immediately separate from the perpetrators. Information on the causes of divorce are used as data on violence against women in this annual notes.

The following data is the number of cases collected in the past five years of CATAHU: CATAHU 2019 recorded 406,178 cases; CATAHU 2018 recorded 348,466 cases; CATAHU 2017 recorded 259,150 cases; CATAHU 2016 recorded 321,752 cases; and CATAHU 2015 recorded 293,220 cases. In presenting the data, Komnas Perempuan sorts out the locus of violence into: the personal sphere (domestic violence/personal relations), the community sphere and the sphere of the State. Here are CATAHU trends based on the locus of violence:

1. **Personal sphere.** This violence often occurs in personal relationships, in which the perpetrators are known very well by and are close to the victim such as family members or relatives. For example, violence committed by husband against wife,

father against children, uncle against niece, grandfather against grandchildren. This violence can also arise in courtship relationships, or experienced by people who work to help domestic work (maids) and/or settle in the household. In CATAHU 2015-CATAHU 2019, the highest percentage of cases are violence against wives (marital violence). This shows unequal gender relation between husband and wife which put wife in subordinate position in the institution of marriage; and that marriage is no longer safe for women. However, the increasing number of reported cases of marital rape can be read in a positive way. This means that the victim is aware that coercion of sexual relations in a marriage is a rape that can be followed up with due process. Rape in a marriage is a serious matter and is still not widely recognized despite having a legal basis (Article 8) of Law No. 23/2004 concerning the Elimination of Domestic Violence.

The second position is cases of violence in courtship (courtship violence). Substantially, both marital violence and courtship violence are forms of violence against women in personal relations where the perpetrators and victims are in a love relationship. The difference between marital violence and courtship violence lies in the legal status of perpetrators and victims. In marital violence their status is husband and wife, in courtship violence their status is boyfriend and girlfriend. In Indonesia, there is no legal basis to protect victims who are in the courtship relationship or whose perpetrators are ex-boyfriends or ex-husbands. Therefore, it is difficult for them to access justice. The forms of violence experienced are physical violence, sexual violence, psychological violence and economic neglect or exploitation. In addition, the number of violence in courtship with the trend of revenge porn increased. Usually the perpetrators are ex-boyfriends who are angry because their girlfriend ended the relationship and thus spread the video/photo with pornographic content. This is also often done by ex-husbands who make any form of documentation during sexual intercourse of their partner.

Violence in personal sphere for girls is also getting higher every year, meaning that homes are no longer safe for girls. Incest cases in 2018 numbered 1,017 cases as well as in 2017 numbered 1,210. The highest number of culprit was the biological father.

Moreover, femicide, or murder of women because they are women, is a serious issue that is of global concern but is still of little concern to Indonesia. At least it can be seen from the data collection that still simplifies the issue of femicide as ordinary criminal. There have been unexplored dimensions of gender-based violence and lack of femicide reports to service institutions because the victims have died. The processed data show that femicide is an extraordinary abomination. This is based on the motives for the murder, the pattern of murder and its impact on the victims' family.

2. **Public/community sphere.** Violence in the community is violence that occurs in public areas such as workplace. This can be in the form of discriminatory treatment

against women, arbitrary termination of employment, sexual harassment, or other forms of exploitation and abuse. It can also be in the form of rape and sexual harassment against women. Every year the number of sexual violence occupies the highest position among other forms of violence in the community. In CATAHU 2019 there were 3,915 cases, in 2018 there were 2,448 cases, in 2017 there were 2657 cases, in 2016 there were 3,092 cases. In the realm of community, there have been new phenomena of cases of violence against women based on cyber or cyberspace, especially in CATAHU 2019 and CATAHU 2018. Cyber violence against women includes revenge porn, malicious distribution, cyber harassment, bullying, spamming, impersonation, cyber stalking/tracking, cyber recruitment, sexting and cyber hacking. The virtual world open the space for violence against women to increase in dimensions and depth such as digital judgments about sexual nuances and online prostitution under the guise of religion (in ayopoligami.com and nikahsirri.com). Girls can also be vulnerable to sexual exploitation in cyberspace, especially those who often use digital devices and access uncontrolled pornographic content sites without adult supervision. In addition, sexual violence in the form of rape, sexual harassment and attempted rape continues. Unfortunately, the perpetrators do not receive punishment due to the lack of evidence and witnesses. There are also cases of trafficking and violence against migrant workers.

3. **State sphere.** The perpetrator of this violence is the state apparatus who are duty but they allow violence to happen without any efforts to prevent it. Forms of violence in this sphere include sexual harassment and mistreatment of victims who are defending their land, or their beliefs, or their houses of worship; cases of trafficking which are slowly or not being handled by the police; and cases of abuse by police officers. In addition, it could also be in the form of falsification of civil documents and the policy of granting marriage dispensation to increase the number of cases and perpetuate child marriages. Criminalization of some activists and victims who defend their lands which were used to build infrastructure and cement factories is also a trend of violence against women in the state sphere. Unfortunately, the violence committed by the state tends to be less-reported, even though our qualitative data show that the state becomes both the direct and indirect actor (through omission) of various forms of violence.

Komnas Perempuan also noted the progress and the setback of laws in Indonesia. Within these five years, the progress of law-making processes was influenced by political interests rather than the needs of citizens who have the rights for the fulfillment of their human rights. The politics of contestation produced new policies as legal breakthrough on the one hand, but on the other hand, there are policies which discriminate against minority and protect the majority or the powerful groups such as the state and other non-state actors. The state also responded well to international policies by ratifying them into national regulations. However, at the level of implementation, it is difficult for victims to access justice when they deal with the justice system and law enforcement officers. Policies, such as the Supreme Court Regulation (Perma) Number 3/2017 on Guidelines for Judging Women's Cases Dealing with Law and the amendment of KUHAP through Presidential Decree No. 92/2015 on the



provisions of compensation, that can ensure justice for victims are often being forgotten to be used by the court in legal proceedings. To respond to this situation, several state institutions have initiated collaboration by signing Memorandum of Understanding such as between Komnas Perempuan and National Institution on the Protection of Witnesses and Violence Victims (LPSK) on the Protection of Witnesses and Victims for Cases of Violence against Women, producing Joint Agreement of 13 Ministries/Government Institutions for "Implementing Integrated Management of Cases of Violence Against Women", providing Free Visum as Access to Justice for Victims of Violence Against Women and Children. Unfortunately, discriminatory policies against women and the minority groups in the name of religion and morality are still issued by the Regional Government.

In advancing the law, Komnas Perempuan encourages other state institutions to optimize their role as duty bearers of laws which protect women. For example, Komnas Perempuan was involved in evaluating the implementation of the Domestic Violence Law (UU PKDRT) and found that law enforcement officers have lack of understanding the scopes of domestic violence and the philosophy of Domestic Violence Law comprehensively. The Ministry of Women Empowerment and Children Protection (KPPPA) as a duty bearer has formulated Government Regulation No. 4 of 2006 concerning the Implementation and Recovery Cooperation which later gave the mandate to establish a Coordination Forum for the Implementation of the Cooperation for the Prevention and Recovery of Victims of Domestic Violence (mandated in Indonesian Women's Empowerment Ministerial Regulation Number 01/PERMEN PP/VI/2007). Furthermore, Komnas Perempuan and KPPPA found that some law enforcement officers break this Law by committing economic neglect. Among the four types (physical, psychological, sexual and economic neglect) of cases of domestic violence, the most common cases tried in the Court are the cases of physical violence because physical violence are more easily proven than other types of domestic violence. KPPPA is committed to accelerate the optimization and effectiveness of the implementation of Domestic Violence Law by building a national scheme for the elimination of domestic violence and working with law enforcement officers, Komnas Perempuan and other related agencies as well as by establishing clear standards on cases that can be resolved by restorative justice and by handling the cases through empowering victims who are accompanied by companion who has certain qualifications.

### **Recommendations:**

1. All elements of the state to carry out all recommendations from international human rights mechanisms to eliminate violence against women, to revoke discriminatory policies, to stop harmful practices, to prevent impoverishment, and to submit government CEDAW report to CEDAW committee even though it is already late.
2. Indonesian Police to make comprehensive data collection on femicide so that the data can become the basis to prevent and handle the cases of femicide.

3. The Attorney General's Office of the Republic of Indonesia and the Indonesian Supreme Court to coordinate in ensuring the protection of women who are dealing with the law.
4. The government to conduct awareness training for the public and law enforcement officers about cyber-based violence against women as an effort to prevent and handle the cases of violence against women and to provide a mechanism which facilitates victims to report their cases easily.
  1. The government, through the Ministry of Communication and Information, to evaluate the implementation of the Electronic Information and Transaction Law because it has criminalized many victims, especially women, including women human rights defenders (WHRD), and to maximize the government efforts in reducing cyber-crime that threatens women.
  2. The Government through the Ministry of National Education to encourage educational institutions to actively strive to prevent and deal with violence against women and build a curriculum for women's human rights education including on sexuality and reproductive health, as well as building a system of prevention and handling violence against women, especially sexual violence.
  3. The Government, Ministry of Women's Empowerment and Child Protection (KPPPA) as the leading sector, to build a national scheme to eliminate domestic violence, which encourages law enforcement officers to consistently implement the Domestic Violence Law with gender perspectives.
  4. Government, across Ministries, to continue strengthening the support for victims' advocacy institutions and services, so that they are easily accessible and are friendly to victims throughout smaller islands, remote areas and overseas (for migrant workers' services).
  5. The People's Representatives and the government to accelerate the discussion and enactment of the Elimination of Sexual Violence Bill (RUU PKS) which contains six key elements and principles of women's human rights, namely: prevention, procedural law including the rights of victims and/or their families, nine types of criminal acts, punishment, monitoring and recovery.
  6. The media in reporting cases of violence against women, especially cases of sexual violence, to pay attention to the rights of privacy of victims and not to exploit news related to prostituted women, and to stop writing misogynistic reports or articles which tend to blame women.
  7. Communities to participate in encouraging discussion and enactment of the Elimination of Sexual Violence Bill and to be part of the prevention and handling violence against women.

#### **B.4.2 Complexity of Issues and Legal Protection for the Elimination of Sexual Violence**

Based on Komnas Perempuan's annual records from 2001 to 2011, there were at least 15 types of sexual violence which patterns continue to these days. The fifteen types of sexual

violence include: 1) Rape; 2) Sexual intimidation including threats or attempted rape; 3) Sexual Harassment; 4) Sexual Exploitation; 5) Trafficking of Women for Sexual Purposes; 6) Forced Prostitution; 7) Sexual Slavery; 8) Forced Marriage, including Hanging Divorce; 9) Forced Pregnancy; 10) Forced Abortion; 11) Coercion of Contraception and Sterilization; 12) Sexual Torture; 13) Inhuman and sexual nuanced punishment; 14) Traditional sexual practices that endanger or discriminate against women; 15) Sexual control, including through discriminatory rules based on morality and religion.

However, the complexity and forms of violence have not been regulated in the existing law. The Criminal Code only regulates two types, namely rape and molestation, trafficking in persons is regulated in the Law on Combating Trafficking in Persons (PTPPO), sexual exploitation is regulated only in the context of children through the Child Protection Act. That is, adult women cannot be protected by the Act. Rape in the Criminal Code is narrowly defined, only involving the entry of the penis into the vagina, even though what happened in the field, there is rape by inserting hard objects that damage the vagina. While sexual immorality only involves sexual harassment involving body contact, while those that do not involve bodily contact such as verbal sexual harassment or showing pornographic images are not charged by law. In addition, the Criminal Code does not regulate the prevention of sexual violence, the rights of victims, criminal procedural law in favor of victims. These legal limitations make it difficult for victims and their companions to obtain justice.

Based on this situation, Komnas Perempuan and the Service Providers Forum (a network of service provider institutions for women victims of violence in various parts of Indonesia: currently there are 115 service institutions for women victims of violence in 33 provinces) took the initiative to draft a Bill on the Elimination of Sexual Violence (PKS Bill) in 2014-2016 which contained six key elements and principles of women's human rights, namely: prevention, procedural law including the rights of victims and/or their families, nine types of criminal acts, convictions, monitoring and recovery.

The struggle to advocate for the PKS Bill faces serious challenges, including rejection on behalf of religion and morality, that this bill has the potential to legalize adultery and support LGBT people. In fact, this bill is based on the experiences of the victims and their companions, as well as academics and government parties who handle cases of sexual violence. At the time of writing this report, the Bill was still being processed by the Indonesian Parliamentary Committee and became a public debate.

## **Recommendations:**

That the People's Representatives immediately approve the Bill on the Elimination of Sexual Violence which contains the six key elements above in September 2019.

### **B.4.3 Femicide**

Under the General Assembly of Human Rights Council<sup>17</sup>, femicides are premeditated killings of women caused by hatred, revenge, and the feeling that someone (usually a man) considers women as possession so they can do as they please. The word 'femicide' is considered different from homicide (homicide) because it emphasizes the existence of gender inequality, oppression, and systematic violence against women as a cause of murder against women. WHO states that the majority of femicides offenders are partners or former partners.<sup>18</sup> The definition of femicide is indeed very diverse, some even include FGM/C as femicide.

Komnas Perempuan's annual record, which was compiled from documentation in the media, which was verified by partners of service institutions, including the police, showed that the number of cases and reports related to femicides from January to August 2019 were 94 cases that appeared in the media.

Femicides as a result of FGM/C that were found by Komnas Perempuan include female infant who died due to FGM/C practices which happened ten years ago. This practice is carried out by traditional birth attendants, who actually did not know and follow medical procedures, by checking the blood type of the baby girl, before and during the procedure. Some cases, the infant can be saved, even though there is quite serious bleeding, because the baby girl has a blood clotting disorder.<sup>19</sup>

What is interesting to find is that the perpetrators of femicides come from the closest people in the family, as stated by WHO, that in general, the perpetrators are spouses or ex-spouses (both those whose relationships are married or not and whose relationships are still ongoing

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<sup>17</sup> OHCHR (2012), *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo*. Human Rights Council, p.6.

<sup>18</sup> WHO (2012), "Understanding and Addressing Violence against Women: Femicide".

<sup>19</sup> Komnas Perempuan (2017), *Persimpangan antara Tradisi dan Modernitas: Hasil Kajian Kualitatif Pembedakan/ Perlukaan Genitalia Perempuan di 10 Provinsi 17 Kabupaten/ Kota*.

or have ended). Actually, the findings of this data have not been able to prove that the couple is the party most likely to do it, but from the chronology of the killings, victims usually have suffered for too long periods of time thus increasing the number of violence against women in the domestic/intimate sphere relatively. However, gender-based violence committed by someone close and trusted can indeed be very harmful to victims and difficult to avoid.

On the other hand, the Indonesian National Police, do not yet have data on sex-associated murder. Such conditions and situations make it difficult to trace whether a woman's murder is due to femicide or ordinary crime. Data on femicides has not yet been carried out by the Indonesian National Police, which was disaggregated because of the victim's vulnerability, such as sexual orientation or personal reasons for the victim and perpetrator.

### **Recommendations:**

1. The state to draw up a femicide protocol and for law enforcement officials to identify a new pattern of domestic violence that extends to being a femicide. Because most femicide cases require gender sensitive police, prosecutors and judges.
2. ASEAN regional member countries to develop a femicide protocol such as that of the Latin American regional countries which has proven successful in reducing the case of femicides in the region.

### **B.4.4 Violence Against Women, Past Gross Human Rights Violations and Impunity Problems**

There are several cases of human rights violations that have not been resolved by the State to date, which victimized women. Komnas Perempuan documented women as victims in various contexts, in the 1965 Tragedy with 122 victims and witnesses, namely 74 cases of rape and 21 cases of sexual slavery<sup>20</sup>, the Tragedy of 13-15 May '98 documented 85 women who were victims of sexual violence and rape<sup>21</sup>, 103 cases violence against women in the context of the Aceh conflict<sup>22</sup>, 138 cases of sexual violence and 14 cases of multi-layered

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<sup>20</sup> Komnas Perempuan report "Documentation of Women's Human Rights, Gender Based Crime Against Humanity – Listening to female victims of 65 Tragedy". The above definition refers to the Convention of Slavery 1925 and Rome Statute Article 7, and being elaborated based on the finding from the field.

<sup>21</sup> Tim Gabungan Pencari Fakta (Fact Finding Joint Team) of May 98 Tragedy documented 1190 death, 91 injured, 85 women who became victims of sexual violence and rape, mostly Chinese women.

<sup>22</sup> This report documents 103 recorded cases of violence against women from 13 cities/districts in Aceh, namely Banda Aceh, Greater Aceh, Aceh Jaya, South West Aceh, Pidie, Bireun, Lhokseumawe, North Aceh, East

violence in Papua<sup>23</sup>, 72 cases of violence against women in Poso<sup>24</sup>, and 853 cases of sexual violence in Timor Leste<sup>25</sup>. Komnas Perempuan appreciates the commitment made by the

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Aceh, Langsa, Central Aceh, Aceh Tamiang and Benar Meriah. These cases are grouped into the following time periods: the Military Operations Era (prior to 1999, 2 cases); b) the Peace Dialogues Era (2000—May 2003, 14 cases); c) the Military and Civil Emergency Era (19 May 2003-15 August 2005, 65 cases); d) the period of the MoU for Peace between the Free Aceh Movement (GAM) and the Republic of Indonesia (August 2005—January 2007, 17 cases); and e) Across Time Periods, which were cases that occurred across two or more of the periods above (5 cases). These 103 cases are the tip of the iceberg as the real number could be higher. More than half of the documented cases were sexual violence (59%, 61 cases) which consist of: 31 rape; 11 sexual torture; 8 instances of cruel and inhuman treatment or punishment with sexual nuances; 3 sexual abuse; and 8 cases of sexual exploitation. The remaining 42 cases involved non-sexual violence i.e. torture (32 cases), cruel and inhuman treatment or punishment (9 cases) and abuse (1 case). Seventy six out of one hundred and twenty eight perpetrators involved in these cases were state security personnel, which is particularly apparent in the cases categorized as torture and inhuman treatment or punishment. Such cases largely targeting women accused of subversion or being Inong Balee (GAM female soldiers), or wives or family members of GAM members. Three cases of cruel and inhuman punishment were perpetrated by GAM members against wives or girlfriends of Indonesian soldiers. "Eighteen victims were minors; the youngest victim was a seven-year-old girl who was repeatedly raped by her neighbour. More than half of the violence cases involved married women; 61 cases are categorized as sexual violence of which 32 of them were unmarried. Violence against women in Aceh, particularly sexual torture and cruel and inhuman treatment or punishment, is a result of the strategic use of women's bodies as a weapon of war by conflicting parties. The sexual torture documented was perpetrated with extreme cruelty, involving rape, mutilation of sexual organs, destruction of female reproductive functions and severe psychological abuse with sexual nuances.

<sup>23</sup> Komnas Perempuan cooperate with service provider institutions and individuals who are part of the Papuan Women Human Rights Network [TIKI] in documenting the pattern of violence experienced by Papuan women through Stop Sudah [Enough is Enough] and Anyam Noken [literally bag weaving]. Anyam Noken recovery method consists of three main activities: documentation, victim recovery and policy advocacy. First: Stop Sudah (2009) has found that within the periods of 1963 – 2009 there are 261 cases documented, which consist of 138 sexual violence victims and 14 multi layered violence victims. See the Annexed Stop Sudah for the complete report. Second, between 2012-2014 there are 1800 victims and survivors who come from 28 Districts in two Provinces of Papua and West Papua. From these two documentations, Komnas Perempuan identify 5 patterns of discrimination and violence: (1) Gender based violence against Papuan women (2) Structural impoverishment, domination over and removal from economic, social and cultural resources as well as political marginalization. (3) The absence of the state, the poor public services and the weak law and impunity. (4) Territorial security approach, violence and stigmatized as separatist (5) Denial of identity and capacity dwarfing.

<sup>24</sup> The violence experienced by women was inherent to the conflict and displacement during armed conflict between religious-based communities in Poso. Of the 72 documented cases, three typologies were identified: a) Violence against Women related to the context of conflict escalation in Poso i.e. forced nudity in the village of Sintuwulembah and a rape case in Malei village. Three non-sexual documented cases were arbitrary killings of women and an attempted murder of women; b) Violence against Women related to the placement of security and military forces in Poso. Since the conflict broke out in Poso, the government deployed security and military forces to restore security. During this period, 58 cases of sexual violence were documented involving personal relationships between security personnels and local women, mostly teenagers. There were also cases of gender-based exploitation of women labor; and c) Violence against women during internal displacement, including domestic violence, dating violence and community violence. Displaced persons came from villages which were attacked during the conflict which occurred in 2000 and 2002. Of the 72 documented cases, Komnas Perempuan identified 86.11% cases of sexual violence of which 93.54% took place domestically and 5.55% in public. The most vulnerable group for sexual violence was women between 18 and 28 years of age (88.66%). The types of sexual violence included rape, sexual exploitation, forced abortion, attempted rape and forced nudity. The majority of cases involved sexual exploitation of young local women by the security/military forces posted in Poso (92.06%). The perpetrator would approach the victim to ask her out which may start since the beginning of their assignment. The woman would then be persuaded to engage in

President to resolve past human rights violations even though there have not been any concrete improvements or actions experienced by victims, especially the rights to justice and truth. Some initiatives including the initiative of the Jakarta Special Region Government in 2015 which conducted a memorialization for victims of the May 13-15 1998 Tragedy as a symbolic remedy for victims<sup>26</sup>, the establishment of a Truth and Reconciliation Commission in Aceh in 2017 which has the mandate to resolve cases of human rights violations in Aceh<sup>27</sup> and the provision of compensation to victims by the Witness and Victim Protection Agency (specifically for 1965 tragedy victims). However, Komnas Perempuan regrets that the resolution measures taken by the State are still very limited, so that the rights to justice for victims of sexual violence has not yet been achieved.

Impunity for cases of sexual violence in past human rights violations is also repeated in the present due to the absence of legal rules that criminalize various types of sexual violence. The absence of rule of law causes various cases of sexual violence to criminalize women victims, including political situations which increasingly narrow down the space for victims to get their rights by politicizing the issue of the rise of the Indonesian Communist Party (PKI), the attack on (Legal Aid) LBH Jakarta, the dissolution of victims when gathered, the Kamisan action has not been responded to in front of the State Palace which has been carried out for more than 600 times.

## **Recommendations:**

1. The state to immediately resolve cases of past human rights violations and ensure the TRC process in Aceh runs optimally as a door to encourage TRC elsewhere.

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sexual acts with the promise of marriage. Then the victims would be abandoned while being pregnant or after giving birth to a child just as the perpetrator would end his tour of duty in the area.

<sup>25</sup> The Chega Report shows that the Commission for Reception, Truth and Reconciliation has documented 853 cases of sexual violence in Timor Leste in various forms: 393 cases of rape, 231 cases of sexual harassment and other forms of sexual violence and 229 cases of sexual slavery. Their perpetrators are members Indonesian security forces and their auxiliaries (796 cases), Fretilin (21 cases), Falintil (10 cases), UDT Forces (5 cases), Apodeti Forces (1 case), others (8 cases). See the full report <http://www.cavr-timorleste.org/chegaFiles/1162273558-Chega!-Report-Executive-Summary.pdf>

<sup>26</sup> The initiative of the Jakarta local government under the leadership of Governor Basuki Tjahaya Purnama has provided support for reparations and recovery for victims of the May 1998 tragedy through the government's involvement in commemoration activities, building a monument dedicated to victims of the tragedy in the Public Cemetery of Pondok Ranggon in East Jakarta, integrating the site of the tragedy into the Encyclopaedia of Jakarta and economically empowering the victims' families by providing them with financial model also organizing thorough counselling.

<sup>27</sup> Qanun Aceh No. 17/2013 on the Aceh Truth and Reconciliation Commission

2. The state to ensure the understanding of human rights with gender perspective for all state apparatus and law enforcement officials so that past human rights violations can be resolved to fulfill 4 transitional justice principles

## B.5 Women and Armed Conflict

### B.5.1 Women's Human Rights Issues in "Post-Conflict" Areas

Komnas Perempuan conducted a review in post conflict areas in Indonesia over a period of 20 years, since the 1998 reform. Areas that were reviewed in the revisit program include: Aceh, Maluku, West Kalimantan, West Nusa Tenggara. Apart from this data, Komnas Perempuan also conducts monitoring in Papua, and other communal conflicts such as Ahmadiyah, Shia and others. Some findings about poverty impoverishment due to conflict include;

The conflict in Papua since 1961 triggered various problems that have aggravated the condition of women's human rights. Collective trauma due to conflict and ups and downs of the security situation, makes Papuan women experience various problems: 1) Loss of security and selling land as a modality of life due to running out of financial resources, for fear of trading and mobility due to lack of security. Though plantation are the main source of Papuan society, and in practice Women as the backbone of the family rely on plantation; 2) Alcohol and impoverishment. The impact of the conflict makes Papuan men consume alcohol as is cases in many other conflict areas, because of collective frustration and unclear alcohol distribution policies and prohibitions. This alcohol consumption also worsens the economy and fosters violence; 3) Locus of violence is not only in the public but also in the domestic area which buries domestic violence and impunity because it is not legally processed.

In the Poso region, based on Komnas Perempuan's findings, as one of the conflict areas in the name of religion and followed by armed conflict in the name of the pursuit of terrorism, triggered other impacts, namely: 4) digital footprint that complicates the reconciliation process because it records sadism and the parties involved in conflict. 5) Impoverishment, farmers lose their sense of security to go to the fields, for fear of being affected by armed contact. Chocolate farming deteriorated, agriculture for staple foods also declined due to loss of security; 6) A number of post-conflict areas lost men who died as a result of the conflict,



so that rice fields which could once be planted for rice were now continued by their wives with vegetable crops that did not need large labor, but their income was reduced drastically.

Situation of conflict in West Kalimantan (Komnas Perempuan monitoring in 2016), where there was a mass expulsion of the Gafatar community, who were driven out in the name of religion. Impacts that occur: 7) Mass eviction in the name of religion for land acquisition. According to the Gafatar community, the land is indicated to have been taken over by a foreign company. Whereas the Gafatar community pioneered independent organic farming as a food supply in the region. Another impact of impoverishment, the Gafatar community stigmatized as a heretical group, making it difficult for them to access a residence to rent, no longer have access to property because they were left in West Kalimantan; 8) Ex-Gafatar is also difficult to get a job because of the misguided stigma.

Ahmadiyah and Shia who were victims of intolerance and led to persecution, the Ahmadiyah group in East Lombok, and the Shiites in Sampang Madura, as a result of the Religious Defamation PNPS Law (No. 1 PNPS of 1965), made the religious community misled into poverty. Impacts include: 9) Become refugees without clarity of status and lack of access to livelihood. At least 8 IDPs, 9 of them Ahmadiyah women in vocational training centers (BLL) must live in refugee camps since 2018 until today as there is no clarity. Shia refugees also have to live for 7 years in the Sidoarjo East Java Flat, making it difficult for them to get access to work because of the stigma of tightening their beliefs, they can get a minimum living allowance of Rp. 450,000 (USD 32) per person per month. They only get low wages because of the limited types of work they can access. 10) Difficulty in accessing assets from their original place. They found it difficult to return to their home areas in Sampang Madura to access their property and homes in the name of residents' rejection.

Conflict management policy refers to the Law on Social Conflict Management No. 7/2012, and Perpres No. 18/2014 concerning the Protection and Empowerment of Women in social conflicts, both of which regulate prevention, stopping, and post-conflict recovery. Even though there is rehabilitation, the steps taken by the state have not prepared long-term economic rehabilitation.

Komnas Perempuan has documented that after 20 years of conflict resolution (which began in 1998-2018) a number of policies have been produced to respond to conflicts that have occurred. Komnas Perempuan divides policy into 4 domains namely; policies related to the attitude towards armed conflict and human rights violations, social conflicts and terrorism (18

policies), policies related to the attitude towards conflicts in the context of freedom of religion and belief (6 policies), policies related to the attitude toward conflict management of natural resources and agrarian (7 policies) and policies related to forced evictions (3 policies).

### **Recommendations:**

1. Reviewing conflict management policies that have long-term and sustainable conflict-affected communities and the recovery of their ECOSOC rights.
2. Development of living space and access to work for women affected by conflicts with women-friendly economic policies.

### **B.5.2 Human rights violations in the forced eviction of Gafatar**

In 2016, the Gafatar community in West Kalimantan was evicted (according to the victims, they did not recognize the perpetrators), which displaced around 2000 individuals and return to their original area, even though they had sold their property to buy land in West Kalimantan and planted crops there. As a result of this forced eviction, the Gafatar community have lost the right to freedom of residence and loss of agricultural land, work, a decent life and livelihood, a sense of security, education, health insurance, the right to citizenship and other basic rights.

Other negative effects are: they experience rejection from residents of the area of origin, trauma, are not accepted as citizens without being given or made difficult to obtain identity cards and negative labels as an infidel. Komnas Perempuan specifically looks at gender-based human rights violations. As a result of forced evictions, there are pregnant women who give birth prematurely, due to the absence of special procedures for mothers and children. Whereas the state apparatus should provide protection and security for women and children from fear and trauma after expulsion. Special treatment for mothers and children when in refugee camps and trips back to the area where they originally lived was also not carried out by the state. As a result, women experience depression due to a lack of security, fear, and stress because of the loss of property they have sold as capital to build a new life in Kalimantan.

This condition has the potential to cause new impoverishment, and deprive them of their empowerment. The forced eviction of the Gafatar group was carried out after allegations emerged that this group was a heretical group and had the potential to oppose the state (makar). The Gafatar group is accused of being a metamorphosis of the NII, and al-Qiyadah al-Islamiyah or the Millah Abraham group led by Ahmad Musadeq. He was sentenced to five years in prison because the defendant committed blasphemy.

The allegation as a heretical sect was later confirmed by the Fatwa of the Indonesian Ulama Council, both central and regional, such as the Aceh Ulama Consultative Council and the NTB Ulama Council which stated that Gafatar was a heretical sect. This deception is based on the views or interpretations of mainstream religion that do not reflect the whole religion itself. This means that the Gafatar group actually has a foothold in religious teachings, even though it is not popular in the mainstream view. As a result of heresy and criminalization, heretical stigma is immediately labeled to them mainly to women who are in fact in a position prone to discrimination, as well as children for a long time.

After the forced expulsion of the Gafatar group, the state did not provide compensation for the amount of losses suffered by the Gafatar group people due to the expulsion. Even though the state saved some of the assets of the Gafatar group, there was no good will from the state to return it. The state also neglected to investigate the eviction, both the motives and patterns of violence carried out by the population massively.

In the eviction protocol issued by the UN Human Rights Commission, regulating that the government immediately provide replacement, compensation and/or alternative accommodation or land that is appropriate and sufficient, according to their wishes and needs, to people or communities who have been forcibly evicted, through satisfactory negotiations, however this did not happen to the Gafatar community.

### **Recommendations:**

1. The government to implement the eviction protocol and no more cases such as forced evictions of the Gafatar community that are carried out without notice, carried out at night, when bad weather hits and their homes are burned.

2. The state to eradicate the misguided stigma against members of the Gafatar community, create SOPs for the handling of women and children victims of conflict, make recovery and think about the survival of displaced victims.

## B.6 Women and the Economy

### B.6.1 Right to Food

The rights to food cannot be separated from other rights including the rights to health, social protection, housing, water and sanitation, land and work, a healthy environment, as well as freedom of expression and assembly in peace based on the principle of non-discrimination, in accordance with human rights conventions internationally ratified by Indonesia. These policies have been regulated and guaranteed because Indonesia is a party to a number of relevant international conventions, The International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). WTO policies that must be implemented by Indonesia related to market access, domestic subsidies and export subsidies also affect the sustainability of the production subsistence of traditional food products which are usually processed by women. Women's knowledge, including knowledge of seed varieties and their uses, has been replaced by genetically designed seeds that require the use of fertilizers and pesticides which harm the health of women and their families.

There are four elements of fulfilling the right to food, namely availability, accessibility, adequacy and sustainability which are trying to be fulfilled through the Food Law No. 18 of 2012. In terms of availability, this law regulates policies to increase food production but the result is too focused on rice production so that it is lacking of food diversity and adequate nutrition. Another thing that affects the availability element is the change in the function of forests and customary land into plantations, mining, forest concessions or extractive industries, sometimes without permission/informed consent, forcing women to change professions and become systematically poor. The availability aspect is not only a matter of being fulfilled quantitatively, but also the availability of food that is sensitive to tradition and

culture. Some indigenous communities have staple foods that are not types of food subsidized by the state; for example in Papua, staple foods are sago, but policies and subsidies encourage ease of staple foods in the form of rice, so that a staple food transition occurs.

Accessibility aspects consist of economic access (purchasing power) and physical access (proximity to reach food to the remote area). In cases of economic violence (domestic violence) husbands can forbid their wives from buying enough food to meet the needs of their families. Komnas Perempuan has received reports from women whose husbands prioritize buying cigarettes rather than buying basic family needs such as food. For cases in refugee camps, the issue of the right to food is an element of adequacy. The problem that affects the nutrition of people displaced by the Sinabung eruption is the quality of food available in the camps. Food is delivered only every ten days, and most consist of poor quality rice and limited fresh vegetables. The available food does not meet the nutritional needs of camp residents, especially those who have special dietary needs such as pregnant women, children and the elderly, making it very difficult for these people to access adequate nutrition. The lack of access to land to be managed makes refugees dependent on government subsidies and results in not fulfilling aspects of sustainability in fulfilling the right to food.

One of the important notes to the Food Law No. 18 of 2012 is that it has failed to include CEDAW as a reference, as a result the elements of substantive justice and non-discrimination are not fulfilled. This can be seen that in the Food Law, women are not seen as stakeholders. In the general provisions of the Food Law, the definition of a farmer or fisherman does not explicitly refer to men and women. This causes the role of women to be over-simplified and ignored. This has an impact on most men's decision making processes often thought to represent the specific needs and ambitions of women. This causes the unique knowledge possessed by women to be ignored when making and implementing policies on food management. This loss of legitimacy leaves women sidelined and they are not involved in various empowerment initiatives aimed at farmers and fishermen.

A number of policies that have been produced by the state contribute to the impoverishment of women. Komnas Perempuan has noted that a number of discriminatory policies have incited obstacles for women to enjoy their rights to food. An example of this type of discriminatory policy is the regional regulation of Pangkep Regency in South Sulawesi, which stipulates that women in Tompobulu sub-district who do not wear headscarves will be hindered their rights to the distribution of subsidized rice that is given free to the poor

(Raskin). Other policies cause Dayak Hibun women in West Kalimantan to suffer drastic negative changes in livelihoods and health because oil palm plantations are taking up their traditional lands and polluting their water sources.

In 2018 the Special Rapporteur on the Right to Food, Ms. Hilal Elver made an official visit to Indonesia and has issued a final recommendation after her official.<sup>28</sup> Some important recommendations from the Special Rapporteur include the policy framework for the Indonesian government to ratify the ILO Convention 169 against the Independent People, ILO Convention 188 concerning the work of fishermen and the full implementation of the FAO Guidelines to support the progressive realization of the right to adequate food. Other recommendations include economic policies to reduce food prices, ensure business practices that are in line with international human rights including the UNGP, integrate a human rights approach into social protection schemes, and others.

### **Recommendations**

1. Indonesian government to prioritize human rights and to review policies on food that do not have a gender perspective.
2. Indonesian government to ensure the availability of a right to food policy for vulnerable groups and in special conditions (women victims of domestic violence, women in refugee camps, conflicts, etc.).

### **B.6.2 Women Workers in the Vulnerable Work Sector**

#### **Women Workers in the garment factory**

In the past four years, from 2014 to 2018, Komnas Perempuan received 204 complaints of outbreaks of violence faced by women workers in the workplace. The majority of violence was sexual violence committed by superiors or co-workers. Corresponding to this data, a study conducted by Perempuan Mahardika, a women organisation, which held in the Industrial area Cakung East Jakarta and involved 733 garment workers aged 17 to 55 years old showed some crucial findings; 1) 56.5% of total respondents experienced sexual harassment in the workplace both physically and verbally. 2) The most common types of

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<sup>28</sup> A/HRC/40/56/Add.2

sexual harassment were physically being touched in an inappropriate way, making an inappropriate sexual gesture, staring in a sexually suggestive or offensive manner, whistling or catcalling, and body shaming, 3) The perpetrators are co-workers such as the mechanics, machine operators, security officers as well as the superiors such as supervisors, 4) The 93.6% of victims did not report the abuse as they were frightened of the revenge, personal security, the risk of being fired and humiliated.

One of the cases that considerably highlighted was the rape allegation towards the high ranked public official, initial SAB, at the Social Security Administration Agency against her female assistant, her initial is RA. The perpetrator abused his power by repeatedly committed sexual abuse and raped the victims.

Regarding the sexual violence in the workplace, the Ministry of Manpower and Transmigration has issued Ministerial Circular Letter (SE) Number 03 /MEN / IV of 2011 on the Guidelines for the Prevention of Sexual Harassment in the Workplace. However, this regulation is not legally binding, as it is only a circular letter. Such regulation is solely the guideline or reference for the employers, and it required further legal foundation so that the employers, workers and agencies can effectively prevent and handle sexual harassment in the workplace. Trade unions networks along with the women's organisations proposed the adoption of Anti-sexual violence Bill which also includes the sexual violence in the workplace. The Anti-sexual Violence Bill stipulates the obligations of employers in preventing and handling sexual violence in the workplace by making policies which include the protection of victims of sexual violence in the context of industrial relation. For instance, the establishment of complaints mechanism in each agency/organisation/corporation as well as the protection for the victims from re-blaming such as the risk of the termination of employment and demotion, weighing the penalties for offenders as well as the involvement of trade unions in preventing and handling sexual violence in the workplace.

In terms of substantial content, the Anti-sexual violence Bill is in line with ILO C Convention Number 190 on the Elimination of Violence and Harassment in the Workplace. Such convention was adopted in the 108th ILO Conference in Geneva in June 2019 that recognised that every worker has a right to freedom from violence and harassment in the workplace, including gender-based violence and harassment, as well as regulating the protection of workers who are involved in domestic violence.

Recommendations:

1. The government of Indonesia has to ensure the responsibility of corporations/agencies to fulfil the rights of the workers, mainly in developing complaints mechanisms to prevent and deal with discrimination and gender-based violence, especially sexual violence in the workplace.
2. The government of Indonesia has to ensure law enforcement and supervision toward companies that violate the rights of women workers.

### Domestic Workers

Based on the National Labor Force Survey (Sakernas) conducted by the Central Statistics Agency in 2015, the number of domestic workers aged ten years old and above was around 4 million people. Of these, 74% were women. The survey also stated that 83% of total domestic workers live outside the employer's home (live-out)<sup>29</sup>. Such survey also approved the global situation of domestic workers, which presented that domestic work is a source of paid-work for the female workforce and economically contributes to the household's income in both sides, domestic workers families as well as the employer household<sup>30</sup>.

However, the recognition and protection of domestic worker have not worked properly. In the policy level, the Ministry of Labor has issued Ministerial Regulation number 2 of 2015 on Protection of Domestic Workers. However, such regulation is burdensome to apply as it is only regulated administrative norms without mentioning further protection, mainly when domestic workers experienced violence and industrial dispute with the employers and private employment agencies. As a result, up till now inadequate and inhumane working condition still experienced by domestic workers such as working without an employment contract, long working hours, excessive workloads, underpaid and unpaid work, physical, psychological and sexual violence and the lack of health and safety working condition.

A study conducted by the International Labor Organization (ILO) country office for Indonesia indicated that domestic workers have longer working hours compared to other workers. Of these, 76% of domestic workers aged between 10 and 17 years old work more than 40 hours per week. While the age group between 18 years old years and over, 60% of

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<sup>29</sup> ILO (2017), "Toward a better estimate of the total number of domestic workers in Indonesia", An unpublished study report.

<sup>30</sup> ILO (2013), "Domestic workers across the world: global and regional statistics and the extent of legal protection, International Labour Office".



them work more than 40 hours per week. Furthermore, in terms of the wage, such study showed that domestic workers receive lower wages than other types of workers. Moreover, 28% of domestic workers in the age group of 18 years and over, earn 1 million IDR or more per month<sup>31</sup>.

### **Recommendations:**

1. The Government of Indonesian government has to ratify ILO Convention 189 on Decent Work for Domestic Workers.
2. The Government of Indonesia and the parliament have to pass the Domestic Workers Protection Bill.

### **B.6.3 Economic Rights of Refugees and Evicted Victims**

#### **Nduga Refugees:**

Nduga Regency is one of the districts in Papua Province that still has refugees. Komnas Perempuan receives reports from women victims of conflict who are also refugees, addressing the following issues. They leave their hometown not without risk, they must leave their property such as houses, gardens, livestock and even family members who are sick because of the location of the escape that must pass through the forest with difficult road terrain.

In addition, the results of Komnas Perempuan monitoring conducted in March 2019 noted that Nduga residents currently displaced in Jayawijaya - Wamena District numbered around 2000s (data: Yayasan Teratai Hati Papua / YTHP), the majority of which are women and children, spread over 18 points. Various problems faced by Nduga Refugees include: 1) the rights to security and fear of armed clashes which frighten women and children so that they are forced to flee, so they cannot carry out their economic activities, the majority of which are gardening; 2) rights to adequate shelter and rights to food: Refugees occupy relatives' homes or even acquaintances who also come from Nduga. Each house occupied consists of 3-4

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<sup>31</sup> ILO (2017), "Toward a better estimate of the total number of domestic workers in Indonesia", An unpublished study report.

families with the number of residents up to 30 people per house. Because the number of people who occupy each house is very big, they mostly eat only 1 (one) time a day. This situation is also experienced by women and children. Health conditions must get attention, they cannot access free health services because they do not have Health Insurance (BPJS). The situation of the settlement is over capacity, and food shortages as a result many of the refugees experience malnutrition.

### **Recommendations:**

The national government and regional government to immediately restore refugee rights by providing security guarantees, opening economic accesses, providing trauma recovery, providing adequate housing, providing food assistance, providing health services, and fulfilling education for refugee children.

## **B.7 Women in Power and Decision Making**

### **B.7.1 Politics of Identity and Marginalization of Women in the Context of Elections**

The politicization of identity in the moment of general elections in the context of presidential, legislative, and regional head elections is increasingly being used to gain public sympathy and votes. In the 2019 presidential election, identity politics was also intensely exhaled using the issue of anti-China, anti-PKI, anti-ulama and so on. This politicization of identity triggers the increase a sharp polarization of society due to political choices and differences. The politicization of religion also occurred in the DKI Jakarta Pilkada in 2017 related to the issue of electing Muslim vs. Non-Muslim leaders, deliberately exhaled by certain groups to win the DKI Jakarta Election. The politicization of identity (religion, ethnicity, ethnicity, etc.) has a serious impact on women's lives. Fear of the threat of isolation in the name of religion, theological terror for choosing different religions, racial nuanced sentiments that aroused the trauma of the May Riots '98 for the Chinese community, the threat of criminalization with the ITE Law because it was considered to spread hoaxes and defamations.

Until now women who want to be involved and compete at the level of legislative and executive elections are still confronted by a number of obstacles, including; there is still a

strong perception in society that political office / power is in the realm of men, women are seen as domestic creatures, political parties have not taken systematic steps to support women's candidacy, women's quotas are implied only in terms of numbers / percentages, political party policies which is still gender neutral (for example; the assumption that male and female candidates are the same, mainly related to the social and economic capital they have to fight in the electoral process), and public views that are still gender biased and misogynistic towards female candidates.

Komnas Perempuan has documented a number of violence against women in the context of the General Election, including through a direct monitoring of the Regional Election process in Papua (2015), receiving complaints through the Service and Referral Unit (UPR), monitoring cases published by the media and cases that are reported when Komnas Perempuan visited various regions in Indonesia.

Findings on violence against women in the context of elections include:

- 1) The increasingly narrow space for women's political participation is caused by the lack of political and economic access, the strong politicization of religion, gender biased cultural practices, and stigmatization of women who are active in the political sphere. All of these aspects hampered women in exercising their civil and political rights;
- 2) An electoral system that is less friendly to women from vulnerable groups such as women who live in remote areas, women's domestic workers, elderly women and women with disabilities.
- 3) The politicization and exploitation of women's issues that are used to overthrow and prevent women as candidates, are still widely used by political opponents and their support groups in the interests of winning elections;
- 4) Violence, threats, intimidation and terror are still experienced by women who become election contestants and also women voters, especially in conflict-prone areas.

As a result of various cultural and structural obstacles experienced by women, until the 2019 general election, women's representation in political space in policy making in this country is far from the minimum target of 30% as mandated in the package of the Political Law.

## Recommendations:

For this reason several things must be done to overcome these obstacles, namely;

1. For the government to carry out the CEDAW mandate by implementing affirmative actions protected by law and enhancing women's decision makers in the political parties as well as in the House of Representative.
2. Encouraging women's issues and eliminating violence against women as priorities in the vision and mission of prospective political leaders both at the regional and national levels.

### B.7.2 Conflict in the context of elections and post-conflict local elections (Papua)

As a post-conflict area, Komnas Perempuan gives special attention to the conditions of fulfilling the Papuan Women's Rights, including monitoring the role of Papuan women in politics, especially in elections and post-conflict local elections. In Constitutional Law No. 21 of 2001 concerning the Special Autonomy of the Province of Papua, it mandates affirmative action for indigenous Papuans, including women in the political sphere.

Komnas Perempuan conducted monitoring in Keerom and Merauke Districts in December 2015. It was the first year that Indonesia implemented the Regional Head General Election. Komnas Perempuan's findings are as follows: 1) **There are Papuan women who cannot exercise their voting rights in the election because they do not have complete administrative documents** (mostly do not have a National Identity Card). There are several complaints of Papuan women who do not get summons, not only because of the difficulty in reaching their homes, but also because they do not have an ID; 2) **Using Women and Politicization of Personal Relations Issues in the Election Process in Merauke Regency:** Issues of cheating and/or dating relationships that use women, are used to bring down political opponents; 3) **Politicization of religious issues to prevent the nomination of female vice regents;** 4) **Women Journalists are forced to report things according to the wishes of certain candidates** (Regent and legislative candidates), if women journalists do not make news according to the demands of certain candidates, they often experience violence that targets the body, or threatens their safety and the safety of their families.

Stigma is generally circulating for Papuan women; they are seen as unfit or unable to become public officials or enter the political sphere. In the Election there are a number of Papuan women who run for legislative candidates in the region (candidates for Regency/City or Provincial Legislative), but because the affirmative action is not implemented, many districts have no Papuan women members.

### **Recommendations:**

1. The national government, parliament and political parties to implement systematic affirmative actions for indigenous Papuans, especially indigenous Papuan women.
2. The government and CSOs, as well as religious institutions to conduct education and awareness raising so that issues of religion and morality are not used as reasons to discriminate against women to play a role in the public sphere including in the political sphere.

## **B.8 Institutional Mechanism for the Advancement of Women**

### **Status of Women Machineries in Indonesia**

Eliminating violence against women has been a commitment of the Indonesian government for the past 20 years. In the Joko Widodo-Jusuf Kalla (Jokowi-JK) leadership era, the Agenda for Respect, Protection and Fulfillment of the Right to Justice is listed as one of strategic targets of the Law and Human Rights Development Goals based on the 2015-2019 National Medium-Term Development Plan (RPJMN). One of the policy directions of the above targets is: Handling Violence against Women and Children.

In its development, this political commitment was not matched by real supporting evidences for the work of the two state instruments for the promotion of women's rights. This agenda has not been well-socialized to the technocrats, one of which is discourse that does not put Komnas Perempuan as a human rights mechanism; aspects of bureaucratic administrative considerations are more foremost than the functions and urgency of women's machineries.<sup>32</sup> In addition, KPPPA also experienced various problems, both adding the issue of children, family planning, to the work of KPPPA, as well as the emergence of the discourse of

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<sup>32</sup> <http://www.republika.co.id/berita/nasional/umum/14/09/06/nbgr3f-komnas-perempuan-perjuangkan-pentingnya-kementerian-pp-dan-pa>

changing the name of the Ministry of Women's Empowerment and Child Protection to the Ministry of Family Resilience and received serious discussion from the public, especially observers of women's issues. This change discourse was conveyed by Minister Yohana Yembise before the House of Representatives Commission VIII when attending a work meeting.<sup>33</sup>

This shows a perspective on the implementation of a partial and insensitive state on the issue of social inequality that has taken root in society. In the formation of the United Indonesia Cabinet Volume II, the Ministerial Regulation changed its name to the Ministry of Women's Empowerment and Child Protection. This change also shows that the Indonesian government is still adopting the state ideology about women that is the legacy of the New Order, which is tying the role of women in their capacity as mothers.

The Ministry of Women's Empowerment and Child Protection (abbreviated as KPPPA) is a ministry within the Government of Indonesia (executive) in charge of women's empowerment and child protection matters. Its main task is gender mainstreaming in all fields in order to realize the equality of men and women.<sup>34</sup> While Komnas Perempuan is the fourth element after the Executive, the judiciary, the legislature, namely the National Human Rights Institution (NHRI) with a specific mandate to eliminate violence against women. An independent state institution that has the duty to monitor and is a mechanism of correction and checks and balances in modern state governance.<sup>35</sup>

The record of the struggle of these two state institutions is a serious concern of the CEDAW Committee which, while noting the positive role played by Komnas Perempuan, recommending the Ministry of Women's Empowerment and Child Protection to strengthen its influence and resources, besides that Indonesia needs to have a national gender policy.<sup>36</sup>

The decline in women's institutional political support also has an impact on internal regulation, including certainty in the support of the National Budget funds to Komnas Perempuan which until 2017 is still concerning. Even though the State's commitment to

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<sup>33</sup> <https://kabar24.bisnis.com/read/20190110/15/877385/kemen-pppa-usul-ganti-nama-jadi-kementerian-keluarga>

<sup>34</sup> Main tasks and functions of the Ministry of Women's Empowerment and Child Protection, <http://www.kemenpppa.go.id>

<sup>35</sup> Komnas Perempuan (2013), *Mengulas Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan) sebagai Lembaga Nasional HAM Nasional di Indonesia atau NHRI (National Human Rights Institution) dengan mandat spesifik.*

<sup>36</sup> CEDAW (2012), Concluding Observations, Paragraph 19.

funding support has begun to improve, as seen below: 2018: 17 billion, 2019: 20.7 billion and 2020: 23.8 billion Even though the quantity of funding support has increased, the funds cannot be used for strengthen human resource support in Komnas Perempuan where the new country supports 45 staff as in Presidential Regulation (Perpres) No. 65/2005, even though the number of staff there are 95 people.

### **Recommendations:**

1. National Women's Machineries need to get a clear mandate and strengthening so that the programs and strategies carried out are not half-measures that have implications for authority, scope of work and budget.
2. The Government Cabinet in the future will strengthen the National Women's Machineries in Indonesia as a top priority in running the government and in the policy process in the legislature.

## **B.9 Human Rights of Women**

### **B.9.1 WHRD (Women Human Rights Defender)**

Komnas Perempuan receives reports and documents a number of vulnerabilities experienced by women human rights defenders (WHRD). Based on Komnas Perempuan, the violence experienced by WHRD over the past 5 years (2014-2019) was still dominated by violence that occurred in the state space which was generally triggered by agrarian disputes/conflicts. This was followed by the intentions of violence against WHRD in the community and personal space.

The distinctive vulnerability experienced by WHRD is an attack aimed at attacking the morals and/or body of the women. Some cases: a) death threats; b) criminalization of WHRD; c) assault of integrity through allegations of having affair/intimate relationship and the like; d) Cyber-based attacks that are often carried out by radical groups based on religion; e) Stigmatization and labeling as communists or members of the Indonesian Communist Party (the forbidden party in Indonesia), liberals, western minions, terrorists, infidels, apostates, and others. WHRD groups at higher risk in Indonesia are WHRD from LGBT

groups, religious minority groups who are victims of religious intolerance, anti-corruption activists and from indigenous communities.

Perpetrators of violence against WHRD in the state space, generally set/came from corporate actors, and state actors/security officers/law enforcement. Specifically for handling cases of violence that occur in the state space, the resolution is slower; there are even a number of cases that just evaporate. Another issue is awareness and apparatus state (apparatus state); there is no specific recognition from the state related to the existence of WHRD so that the protection mechanism becomes limited. In the absence of recognition and protection, then automatically, respecting to WHRD's work are very minimal.

One of the state institutions that seeks to increase public awareness and recognition of the WHRD is Komnas Perempuan by granting tribute and recognition to WHRD who have passed away. Komnas Perempuan also collects data on cases of violence experienced by WHRD and is reported annually through the CATAHU mechanism. Komnas Perempuan's data collection was sourced from partner institutions related to violence experienced by women human rights defenders (WHRD). In addition, the Komnas Perempuan also expanded the definition of women not only in biological meaning, but also to those individuals who identify as women. So that the understanding (meaning) of protection of equality guarantee the same rights of not only between men and women, but further protects trans individuals.

### **Recommendations:**

1. In order for the state to establish a protection mechanism for WHRD, including a comprehensive policy on various forms of violence experienced by WHRD, which includes prevention mechanisms, synergy and coordination between institutions, and regulations that provide a deterrent effect for perpetrators.
2. For the state to provide education and literacy on human rights with a gender perspective and the WHRD conception approach as well as to reward those who are concerned with the struggle of women human rights defenders.

### **B.9.2 The Gradual Weakening of Women's Rights**



The revival of conservatism in Indonesia has been a concern for Komnas Perempuan since 2000, where Komnas Perempuan has documented 421 discriminatory policies that occurred during 2000-2016. These policies are signals of the rise of conservatism through the formalization of discriminatory policies in the name of religion and morality into the body of the state. Increased number of discrimination and intolerance towards minority groups was also strengthened by the Indonesian Ulema Council (MUI). Areas that implement this policy include local governments such as Aceh, West Sumatra, Bengkulu, West Java and East Java, etc. These policies vary; the obligation to dress according to certain religions that discriminate against wearing a veil, rules that prohibit prostitution by criminalization and stigmatization of women, curfew rules which negatively impact on women considering that many women workers return from work at night and because these rules are stigmatized and they are vulnerable to arrest by security forces.

Regional regulations that contradict human rights instruments, one of which was issued by the Government of Aceh through *Qanun* (religious criminal codes) no. 6/2014 concerning *Jinayat* in which there is caning. The practice of caning varies, depending on the type of *jinayat* (crime) imposed. At the end of December 2015, a woman fainted during the fifth lash. The whip was carried out in a public area, and witnessed by children.

Related to discriminatory policy issues, Komnas Perempuan has conducted constructive dialogues with the central and regional governments to encourage prevention efforts on policies that will be issued, and the handling of existing policies through the mechanism of policy cancellation that can be carried out by the central government.

Komnas Perempuan noted that there are three layers of serious problems that encourage discriminatory policies to emerge, namely from the conceptual, structural and political layers. The first layer is a conceptual issue where policy makers still possess limited understanding on the constitutional guarantee of women's rights and substantive equality. For example, the rise of sexual violence against women is considered as an issue of morality and not an issue of crime, politics of favoritism towards the majority, and issues of local character within the framework of regional autonomy which are mistakenly understood.

The second layer (2) is a structural issue relating to national authorities in exercising control over the laws and regulations. Komnas Perempuan's record shows that at the national level which should be the vanguard in compliance with the constitution and constitutionality of legislation; it actually brings back the institutionalization of policies that are constitutional

and discriminatory. The third layer (3) is a political issue in which a number of political elites use the politicization of religion-based identity to win power struggles so that although they have the ability, they are not necessarily willing to prevent and deal with this discriminatory policy firmly.

In addition to the policy level, weakening of women's human rights also occurred in the development of the 5 years, namely the strengthening of discrimination and intolerance towards minority groups, promotion of practices that violate women's rights such as promotion of polygamy practices<sup>37</sup>, female circumcision, child marriage, female domestication, and the circulation of hoaxes to oppose the passage of the Draft Law on the Elimination of Sexual Violence. Fundamentalist groups view that men are family leaders who are tasked to earn a living outside the home, while women are tasked with taking care of the household. The perpetuation of the division of roles based on biological differences is often promoted not only at the national level by a movement in the name of "family resilience", which is even promoted at the international forum of the United Nations by popularizing "gender harmony". Conservative groups also spread the promotion of polygamy through social media and online applications such as *ayopoligami.com*. Whereas victims of the practice of polygamy who were complained to Komnas Perempuan, clearly showed that polygamy is a source of violence against women and has a negative impact on the children born in the family. In addition, when WHRD try to increase the minimum age of marriage in view of the dangers it causes, as well as try to eliminate the practice of female circumcision and encourage the PKS bill to be passed, conservative groups actually carry out attacks using the politicization of religion.

### **Recommendations:**

1. The Indonesian government to act firmly to eliminate the institutionalization of discrimination that is contrary to human rights and constitutional values through the production of discriminatory policies, by creating policies or mechanisms that facilitate the elimination of discriminatory policies, especially policies that discriminate against women and religious minority groups.

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<sup>37</sup> One of them is Lombok Regency Regional Regulation (Perda) No. 3/2013 concerning other valid local original income, including a second marriage permit (polygamy) with a contribution of Rp1,000,000 (One Million Rupiah).

2. The Indonesian government to obey and implement conventions that have been ratified, especially CEDAW, in an effort to ensure zero discrimination against women, such as the prohibition of polygamy in existing laws, prohibiting child marriage and all practices that endanger women such as FGM/C.

## B.10 Women and the Media

### B.10.1 Cyber Violence against Women: The New Form of Violence Against Women

One of the latest data on violence against women in the 2019 National Commission on Violence against Women Annual Notes (CATAHU Komnas Perempuan) is cyber-based violence. Cybercrimes with female victims are often related to women's bodies turned into objects of pornography. A form of this crime often reported is the spread of personal photos/videos on social media and/or pornographic websites. Cases like this usually become public sensation, thereby increasing the psychological burden on victims.

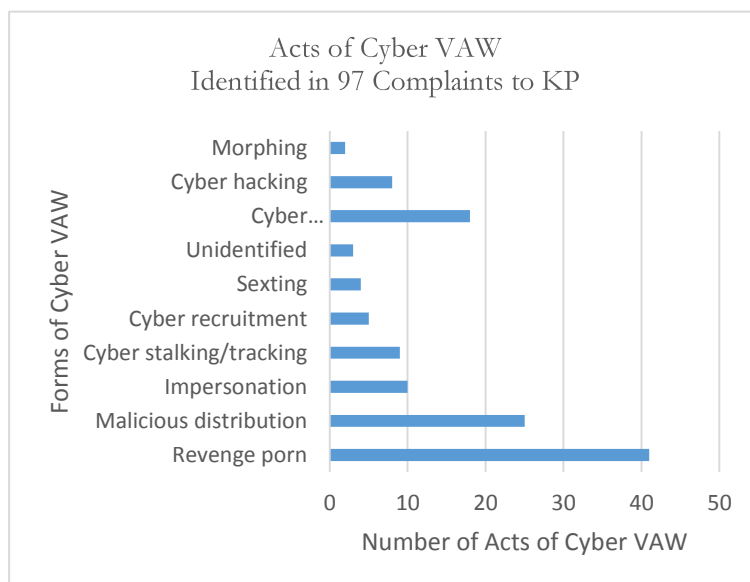
The number of cases of cyber violence against women was obtained from cases directly received by Komnas Perempuan, which consist of 67% through media of complaint (or 65 cases by telephone and direct complaint), and 33% or 32 cases by email. The pattern in cases of dating violence (KDP) and violence by ex-partner (KMP) is almost the same that the perpetrator threatens to distribute photos or videos of the victim, which are sexual in nature, on social media when the victim refuses to have sex or does not continue to have sex with the perpetrator.

The types of Cyber VAW reported to Komnas Perempuan include:

1. Cyber Hacking: The use of technology illegally or without consent to gain access to a system with the aim of obtaining personal information, changing information, or damaging the victim's reputation.
2. Impersonation: The use of technology to assume the identity of others with the aim of accessing personal information, humiliating or insulting the victim, contacting the victim, or making false documents.
3. Cyber surveillance/stalking/tracking: The use of technology to follow and monitor the actions or behavior of victims carried out by direct observation or pursuing victims' traces.

4. Cyber harassment/spamming: The use of technology to contact, harass, threaten, or intimidate victims.
5. Cyber recruitment: The use of technology to manipulate victims into harmful and dangerous situations.
6. Malicious distribution: The use of technology to spread content that damages the reputation of victims or organizations that defend women's human rights regardless of the truth.
7. Revenge porn: A special form of 'malicious distribution' using pornographic content of victim based on the intention of revenge.
8. Sexting: Sending pornographic images or videos to the victim.
9. Morphing: Altering an image or video with the aim of damaging the reputation of people who are in the picture or video.

The matrix below illustrates that of the 97 complaints received by Komnas Perempuan, the biggest case is revenge porn.



### Recommendations:

1. That the state encourages a revision of policies that have the potential to criminalize victims, such as the Law on Information and Technology and the Law on Pornography.

2. That the state makes policies that protect victims of cyber violence against women such as the Bill on the Elimination of Sexual Violence and implements laws that protect women victims of cyber violence against women such as the Law on the Elimination of Domestic Violence and the Law on the Eradication of the Criminal Act of Trafficking in Persons.

### **B.10.2 The Portrayal of Women Victims of Sexual Violence and Women's Issues in the Online Media Frame**

The coverage of women's issues in the media still tends to stereotype women especially the coverage of those who are victims of sexual violence in online media. The portrayal of sexual violence in the media provides a contradiction. On one side, the media provides information that sexual violence occurs and gives a deterrent effect to the perpetrators, but on the other side it gives the opportunity for repeated violence to women victims. This occurs especially in online media. Komnas Perempuan in an online media analysis report in the January-June 2015 period with the theme "To what extent do the media have perspective on victims of sexual violence?" found 225 news reports related to sexual violence. This number represents 18.17% of the total 1,238 news from nine online media. Among them are *Indopos*, *Jakarta Post*, *Jakarta Globe*, *Kompas*, *SindoNews*, *Pos Kota*, *Republika*, *Tempo*, and *Media Indonesia*.

In the media analysis report, Komnas Perempuan found that the nine online media ignored basic things related to the code of ethics. While ideally, the media should also be responsible for fulfilling victims' rights. The media still does not meet the principles of the journalistic code of ethics, especially in reporting sexual violence experienced by women. In addition, looking at the contents of the coverage, there are still many media that lead readers to judge victims, for example in the case of celebrities as sex workers.

One indicator that the news does not pay respect to the fulfillment of victims' rights is the stigmatization of victims as the trigger that provokes violence. From the total 225 news, there are 41 news that mention victims as triggers of violence. In addition, 24 news stories contain tones of victim-blaming/judging and 28 news stories perpetuate stereotypes against victims. This happens a lot in online media because online media value the importance of getting *hits*, *SEO-friendly*, and *Google-friendly* stories to get income. In other words, the current field of

media competition in Indonesia has begun to shift to online media (media in the internet) which makes the use of popular diction becomes a powerful weapon to get a lot of clicks.

Economic considerations negated the principles of journalistic code of ethics. In the report Komnas Perempuan also raised the issue of journalists' understanding of identity and privacy of victims. The media analysis report found 66 news items that revealed the identity of the victim, the identity of the victim's family, home address, or work details. The journalistic code of ethics does not clearly state what elements are included in "identity". However, the Alliance of Independent Journalists (AJI) in the same study on media monitoring also urged journalists to not only pay attention to the journalistic code of ethics, but also to other regulations such as Law No. 35/2014 on Child Protection and Law No. 13/2006 on Witness and Victim Protection to help journalists obtain a framework for understanding "identity".

In some cases, victims or families of victims want journalists to mention the identity of victims in their reporting for certain reasons (with informed consent) but that too must be considered by the media for future impact, because once published in online media, their digital track record cannot be lost. Therefore in the Komnas Perempuan media analysis report it is not recommended to disclose the identity of the victim, the victim's family, address, and other identities for the sake of the future of the victim, the victim's family and their environment.

In addition, in the Komnas Perempuan media monitoring report in the last three months (April-June 2019), the media discussed a lot about the issue of sexual violence which was increasing and surfacing to the public. This is in line with the increasingly massive campaign against sexual violence, but there still were sexist perspectives from journalists, who do not appear to understand gender-based violence or have empathy towards victims. Instead, there are still news stories that emphasize the element of sensationalism in their writing.

Another issue that has surfaced lately in the media is the issue of polygamy. In the reports, women are more stereotyped to the domestic realm as mothers and wives. Women are portrayed as being in weak conditions and as objects of violence.

The portrayal of women in online media is still cliché and this condition is contrary to The Beijing Declaration which states in one of the critical areas that the portrayal of women in the media must be balanced and away from cliché. Another point in The Beijing Declaration that highlights women and the media is the increase of women's participation and opportunities to

express and make decisions in and through new media and communication technologies. In this case, the online media is still unbalanced between presenting news that elevates achievements, women's participation in expression and making decisions, with sensationalist reporting that puts women's bodies in the spotlight.

### **Recommendations:**

1. For media institutions to conduct gender-sensitive journalism training for each prospective journalist, complete with knowledge on international human rights mechanisms and national law that protects women.
2. For the state to help women victims of online media reports to erase stigma by removing the digital footprint of women victims.

### **B.10.3 Criminalization of Women in Social Media through the ITE Law**

Komnas Perempuan has received complaints about the criminalization of women on social media since 2016. Criminalization of women in social media generally occurs in legal proceedings using Law No. 11/2008 on Electronic Information and Transactions (ITE Law). Komnas Perempuan defines the criminalization of women victims as follows: allegations of a criminal act or counter-lawsuit or unlawful act by the party being sued and/or by people who have a chain of interest directed at a woman or group of women who are in the process of fighting for their rights or other people's rights, in a series of legal facts.

Cases of criminalization of women in social media target victims who use social media accounts for work activities, as a network of friends, or others. There are a number of cases, in 2016 occurred to a female victim who experienced domestic violence (KDRT) in West Sumba, East Nusa Tenggara. The victim's husband has committed adultery, threatened and neglected the victim and her child. The victim repeatedly reported to the police but there was no follow up because it was never recorded as a police report. The victim then expressed disappointment in her Facebook status and was reported by her husband as defamation. West Sumba District Police used article 310 of the Criminal Code jo. article 27 paragraph (3) jo. article 45 Paragraph (1) of the ITE Law. Domestic violence was also experienced by a female victim in DKI Jakarta in 2018 who was criminalized using the pornography article by her

husband. Personal photos of victims were distributed by her husband on social media, which came from the victim's cellphone that was stolen. The victim was criminalized on charges of producing pornographic content; while the victim's report to the police regarding the spread of pornographic content, with her husband as a perpetrator, was not processed by the police.

There is also another case involving the exasperation of a victim to a neighbor written in her Facebook account. The neighbor is the perpetrator of physical violence and sexual violence against the victim. The victim reported the case to the police but the legal process did not take place. Meanwhile the case of defamation of the perpetrator using the ITE Law was processed faster. A defamation case also happened to a student at the Papua Dormitory in Surabaya in 2018. The victim was reported as committing criminal acts of insult and/or defamation through electronic media with article 45 paragraph (1) jo. article 27 paragraph (3) ITE Law. Defamation case is also suffered by a worker who experienced repeated rapes from her superiors, a state official, with article 27 paragraph (3) of the ITE Law. Criminalization through ITE Law is also experienced by a victim of the crime of trafficking, where victims received sexual exploitation from a group of pimps. They claimed to spread prostitution service advertisements at the request of the victim to social media. The police then charged the victim with ITE Law over alleged online prostitution.

One of the most prominent cases in 2019 was the criminalization of BN, a victim of sexual harassment in Lombok, West Nusa Tenggara. BN is a woman, mother, and honorary teacher at a school in Lombok, who experienced non-physical contact sexual harassment from her supervisor, the school principal at her place of work. BN feels disturbed every time her boss tells her about his sex fantasy and special relationship with fellow honorary employee. BN recorded her superior when he made phone calls involving contents violating decency. However, some of BN's colleagues asked her to use them as evidence for complaints of the superior's behavior to the education office. It was BN's friends who transmitted and distributed the recording, but it was BN who suffered the impact. Her work contract was not extended and her superior reported her of violation of article 27 paragraph (1) of the ITE Law relating to the distribution of the records.

In the legal process, the Mataram District Court acquitted BN. But a decision by the Cassation Panel at the Supreme Court overturned the Mataram District Court decision by stating that BN's actions fulfilled the elements of article 27 of the ITE Law no. 19/2016 with a sentence of six months in prison and a fine of Rp500,000,000 (USD 35,255). BN reported



her supervisor to the Mataram Regional Police, West Nusa Tenggara, but the investigation was stopped. The Mataram Regional Police thought that the sexual harassment experienced by BN was considered insufficient to prove sexual abuse.

### **Recommendations:**

1. That the government and the House of Representatives immediately pass the Bill on the Elimination of Sexual Violence which creates a new paradigm of sexual violence in daily life and becomes a legal breakthrough so as to provide equal protection for victims of sexual violence, especially women and children.
2. That the Supreme Court:
  - a. Improves the system of court documents and minutes to facilitate *Yudex Yuris* (examination of evidence and facts) so as to fully understand the facts of the trial.
  - b. Strengthens Judges' skills in providing and integrating human rights and gender analysis in legal considerations so that the dimensions of violence against women are reflected in decisions and become important documents as jurisprudence and best practices in protecting women victims of sexual violence at all levels of the justice system.
3. That the state builds the capacity of law enforcement officials on the perspective of human rights and gender in the judiciary from the investigation to the examination at the court.

## **B.11 Women and the Environment**

### **B.11.1 Change of Forest Function and Its Impact on Women and Indigenous People<sup>38</sup>**

The lives of indigenous and tribal people especially indigenous women and the environment (land, forests and waters) cannot be separated because culturally and also because of their reproductive role, indigenous women are burdened to provide food and care for the health of their families and communities which are all closely related to managing living environment.

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<sup>38</sup> Komnas Perempuan (2015), *Pelanggaran Hak Perempuan Adat Dalam Pengelolaan Kehutanan, Laporan Komnas Perempuan untuk Inkuiri Nasional Komnas HAM "Hak Masyarakat Hukum Adat atas Wilayahnya di kawasan Hutan"*.

For decades, in many areas in Indonesia, traditional and heritage lands and forests were claimed by the Ministry of Forestry to be included in the state forest area. This has resulted in women and indigenous peoples losing management space over their territory in the forest area. There were around 400 land/forest cases that were reported to Komnas HAM (The National Commission on Human Rights).

In 2012, there was a legal development that led to the restoration of the rights of the indigenous and tribal people, namely the Constitutional Court Decision Number 35/PUU-X / 2012 in the case of judicial review of Law No. 41 of 1999 concerning Forestry. The Constitutional Court's decision made a constitutional correction on the status of traditional and heritage forest areas, which said that these forests were not state forests. With the Constitutional Court Decision No. 35/PUU-X/2012 Komnas HAM conducted a national inquiry organized by Komnas HAM related to the issue of "Customary Law Community Rights over Its Areas in Forest Areas". Komnas Perempuan became a part of this National Inquiry process, particularly looking at the dimensions of women's human rights.

In the national inquiry there were 40 cases out of 400 natural resource conflict cases that were reported by indigenous groups to Komnas HAM were selected to be included in the General Information Hearing (DKU) in seven regions (Palu, Central Sulawesi; North Sumatra; Lombok, NTB; Ambon, Maluku; Papua, Lebak, West Java and West Kalimantan).

Of the 40 cases included in the national inquiry Komnas Perempuan noted that forestry conflicts occurred due to 4 main things, 1) the presence of Territorial forest resource policy: State policy which states that areas where no certificate of ownership will be declared as state forest or state land. This makes many indigenous territories claimed by the state as forest areas. 2) Commodity of natural resources: this is a colonial legacy adopted by the Government. Nature is placed as a product traded to supply the global market; 3) Militaristic: this is a colonial legacy that was continued by the government by establishing forest police, and is now increasingly driven with the presence of military and police personnel in infrastructure development and conflict management of natural resources; 4) Execution power works: state institutions especially the Ministry of Environment and Forestry, companies and MHA leaders themselves do not take into account the existence of indigenous women.

The conditions of violence and suspected human rights violations experienced by indigenous women in forest management found in the national inquiry are as follows:

1. **Revocation of indigenous women's livelihoods as a result of environmental damage:** The shift in the function of forests results in indigenous women losing the rights to self-determination, decent living, welfare, sustaining life and improving living standards, ownership of natural resources, rights to security, indigenous women's rights for information and participating in development; Free Prior Informed Consent (FPIC) was ignored. The experience of indigenous women is not always included in the calculation of compensation when indigenous groups negotiate with investors or the government including in consultations on the determination of the functions of forest areas of women's interests is not a consideration.
2. **Loss of the role of indigenous women as guardians of family food:** Culturally indigenous women are burdened with the responsibility to meet family food needs. With the transfer of control or function of the forest, it is difficult for indigenous women to find food sources for their families; indigenous women lose the rights to a decent life.
3. **Loss of indigenous women's original knowledge:** Indigenous women are generally farmers, fishermen, artisans and gatherers by changing the function of the forest so most of them are forced to change professions, become industrial workers, domestic workers, migrant workers, etc. So that the original knowledge they obtained from their parents and ancestors could no longer be used.
4. **Indigenous women as agents of peace and spirituality nurses:** Indigenous women have a unique function in maintaining social cohesion, carrying out concrete actions to initiate peace by bringing delivery to the parties to the conflict, and having an important role in the ritual process. The loss of forest biodiversity, especially non-timber forest products, weakens the role of women in maintaining social cohesion among communities due to the lack of delivery they can carry, so that indigenous women lose the rights to culture and the rights to express opinion. In addition, women have an important role in carrying out the rituals of the indigenous people's beliefs, starting to identify and collect special plants for ritual preparation. With the loss of various types of plants in the forest, indigenous women lose the rights to worship according to their religion and beliefs, the right to express their culture.

Post National Inquiry, on December 30, President Joko Widodo (Jokowi), at the Jakarta State Palace submitted a Decree on the Recognition of Indigenous Forests to 9 indigenous

communities scattered in a number of areas.<sup>39</sup> This is the first time since Indonesian independence that the territorial rights of indigenous communities have been recognized by the Indonesian national government. In his speech, Jokowi also committed to returning a total of 12.7 million hectares of land to local and indigenous communities. The President also recognized the important role of indigenous communities in managing the sustainability of their forests and land.

### **Recommendations:**

1. That the government and the House of Representatives of the Republic of Indonesia to immediately pass the Indigenous Communities Bill, to ensure the guarantee of the recognition of the rights of indigenous and tribal communities.
2. For the government to formulate policies at the local level to ensure the recognition and protection of indigenous women's rights

### **B.11.2 Environmental Damage and Impacts on Women**

Indonesia is known to the world to have rich and abundant natural resources. Speaking of natural resources and the environment is closely related to the matter of preservation, management and utilization, according to the constitutional mandate of Article 33 paragraph 3 of the 1945 Constitution, "the earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people ". However, there are a number of state policies that matter, because they provide licensing facilities for companies to exploit the environment, especially in the extractive industries, forestry, plantation and marine industries. These policies include Law No. 41/1999 on Forestry, Law No. 25/2007 on Investment, Law No. 4/2009 on Minerals and Coal, and various Decree of the Minister of Forestry granting Forestry Plantation Industries concession rights over Forest Areas. This has led to conflict, injustice, violence, and can lead to systemic impoverishment. Natural resource conflicts will give birth to various conflicts, including social conflicts that occur within the community, including creating armed conflict because the conflict resolution approach being used is militaristic in nature and uses military

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<sup>39</sup> <https://setkab.go.id/serahkan-9-surat-pengakuan-hutan-adat-presiden-jokowi-pertahankan-fungsi-konservasi-jangan-diperjualbelikan/>

apparatus. From these problems, women are directly or indirectly affected, including experiencing gender-based violence.

Komnas Perempuan pays special attention to conflicts over natural resources and the environment, which in monitoring often involve women as victims due to the fact that everyday women are the main workers or are responsible for their homes, land and other household matters. Therefore, the threat of expropriation or destruction of land/house by any party will always have an impact on women as responsible for the household/family and family food guard. The fact is the pattern of violence against women in environmental and natural resource issues has the same pattern including the loss of the right to water, the right to food, the loss of knowledge about the types of plants including medicinal plants, animals, and others in the forest to be taught to the next generation, experienced violence while defending their land, kept away from economic access, loss of land ownership rights, became bread winner because the husband was arrested so that earning a living was a burden on his wife and had to support his children in various ways, the criminalization of women activists who attacked female bodies, even sexual violence experienced by women.

There have been 19 cases of violence against women in natural resource conflicts recorded in the Komnas Perempuan Annual Notes based on reports from 2015 to 2019. These cases include:

**A) Water crisis and damage to coastal areas in Dairi Pakpak Barat, North Sumatra**, due to the presence of lead mining permits, water debit is reduced so that residents, especially women, will find it difficult to do daily work such as cooking, washing, bathing. Including if special needs occur such as menstruation, it will be increasingly difficult because it requires more water. Environmental damage also occurs in coastal areas and has an impact on coastal fishermen who are dominated by women who have to lose their livelihoods looking for mussels and clams and manage marine products due to sewage sludge from gold and copper mines. The right to food is threatened. Women also get the threat of not getting groceries from the government if they do gatherings because they refuse mining permits.

**B) Water pollution in Nguter, Sukoharjo, Central Java**, the water turns green due to the activities of residents who produce synthetic textile materials with logs that are mixed with chemicals so that it disrupts the health of children, pregnant women and the elderly there.

**C) Gold mining and damage to the health of residents in Tumpangpitu, Banyuwangi,** these mines damage the environment of coastal areas, the sea and surrounding mountains, damage cohesion and social order, disrupt the livelihoods of local residents, provide diseases such as skin diseases and respiratory infections, also damage supporting infrastructure such as roads. It also loses the availability and access to clean water. Terror and criminalization of women occurred as a series of rejection of the gold mine. Victim F is accused of damaging heavy equipment and must receive prison for 6 months. In addition, victims of DRS were accused of spreading communist ideals that she had no knowledge of.

**D) Land grabbing: Another attack in West Kalimantan, Kubu Raya Regency** was beaten and arrested on 11 residents, including 4 women due to land claims by PT. Sintang Raya. In addition, in 2017, the forced transfer of residents' land titles that have been occupied for years has triggered resentment of residents to the company PT. Bumi Asri Pari where protesters' hair were grabbed and dragged, neck strangled, and kicked. Residents finally refused and asked the police and military to not interfere, but at that time there was a riot that caused the women to be pulled, dragged, and pushed to the wound.

**E) Conflicts and violence due to infrastructure development plans:**

- i. The issuance of the principle license for electric power business to Asripower which subsequently changed its name to PT. Seko Power Prima by the North Luwu Regional Government in 2012. This permit is the basis for the company to drill. The provision of respecting the culture and customs prevailing around the location of the activity and empowering the surrounding community and protecting the environment was not implemented by the company, only the environmental impact analysis socialization in the Pohoneang and Hoyane indigenous territories. There is no explanation of the impact felt by the community after the project started. This caused pros and cons to emerge in the community towards this project, which led to the rejection of citizen action. There were 70 women who took action to the company location. Police officers and company employees pushed, fired 6 shots up and threatened these protesters until someone fainted. There was even a case of sexual violence against the Seko Customary Law Community, an 18-year-old girl whose father actively voiced rejection of the construction of hydropower in the

village led by the perpetrators, so this was allegedly a way of conquering the company to residents who resisted.

- ii. The case of the geothermal development plan in Gunung Talang, Solok Regency, West Sumatra, the company made a casting in the area without the residents knowing. The company is eyeing agricultural land instead of barren land, so this makes people afraid of damage such as loss of water resources. Residents finally refused and asked the police and military to not interfere, but at that time there was a riot that caused the women to be pulled, dragged, pushed to the wound. There were also children who were separated from their mothers because they were carried around by the authorities. The impact caused by the loss of jobs so that the regional economy down, for wives whose husbands are arrested or become into the list of wanted persons to make a living is a burden on the wife to support her children in various ways, there are children who are traumatized and eventually have to drop out of school because their parents cannot afford it. In addition, community life in the area has also become distant due to differences of opinion between those who agree and disagree with the existence of this geothermal company in their area.

The above cases are not in line with General Recommendation No. 34 of 2016 CEDAW Committee (ratified by Indonesia through Law No. 7/1984 on Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women) on Rural Women. The Committee emphasized: the state must consider the vulnerability of discrimination experienced by rural women, especially from the background of poor farmers and migrant workers, related to land and natural resources. The importance of the content of the Environmental Protection and Management Act (PPLH) to be able to recognize the ideal conception of the role of the state in carrying out development is environmentally friendly and sustainable, and for the maximum welfare of the people.

### **Recommendations:**

1. To avoid acts of violence and intimidating actions towards citizens in handling cases of natural resource conflicts.

2. To immediately investigate thoroughly the forced eviction, beatings, threats and other violence that have involved law enforcement officials and take firm action and punish the perpetrators and parties involved in the violence by referring to UN Security Council Resolutions 1325 and 1820, and Regulations Head of the Republic of Indonesia National Police No. 8 of 2009 concerning Implementation of Human Rights Principles and Standards in Implementing Duties of the Indonesian National Police.
3. To see corporate land grabbing and natural resource conflicts as the root of the problem in this case. Therefore this dispute is not a criminal offense. The criminal, arrest and detention proceedings experienced by citizens constitute acts of abuse of authority and are unfounded.
4. Relevant parties such as law enforcement officer to work together with the government to provide protection including compensation for the destruction of residents' homes and land, as well as efforts to recover from the effects of violence experienced by residents, especially women and children.

## B.12 The Girl-Child

### B.12.1. Incest

Incest is both violence against women and violence against girl-children. Incest cases increase with the increase in perpetrators other than biological father, uncle and brothers both older and younger. Referring to the data of the National Commission on Violence against Women Annual Notes (CATAHU Komnas Perempuan), in 2017 incest reached 1,210 cases and in 2018 it reached 1,071 cases.

Regarding incest cases in the last two years, the numbers have decreased, but as with other violence against women cases, they does not always reflect the real conditions, given the perpetrator of incest has blood relation with the victim, which makes reporting incest cases can be interpreted as bringing disgrace to the family. Therefore there is an iceberg phenomenon in incest cases, in which the number drop does not necessarily mean that incest cases in 2018 are reduced in number.

Furthermore, the decrease in incest cases should not be seen only from the ups and downs of the numbers, as incest is a form of sexual violence that is difficult for victims to report. It is



especially difficult because it involves familial relationships and usually if the victim is a girl-child, the victim's mother has difficulty questioning the perpetrator who is her actual husband. Seeing that the highest perpetrators of incest are fathers and uncles, it can be imagined how difficult it is for victims to report their cases because upholding the family reputation is still a culture in Indonesia. The incest case with the perpetrators of fathers and uncles (see categories of perpetrators) is the same as last year (2017) showing that both fathers and uncles are two figures who are not necessarily protectors in the family.

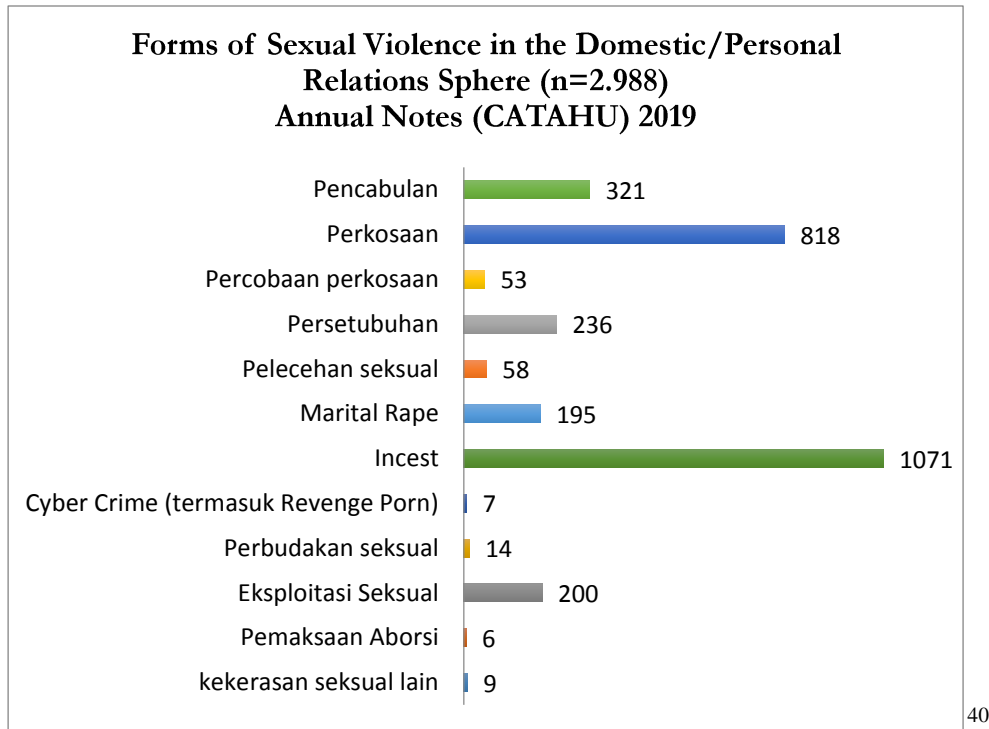
The power relations between biological father, uncle and older brother to the victim reflect that a more mature age creates an opportunity for them to be more likely to commit acts of violence. As for the case when the perpetrator is the younger brother of the victim, it illustrates that gender construction has so far led men to remain in power over women's bodies even at a younger age.

One of the observable cases is the incest case in Jambi, which happened to victim WA by her younger brother, resulted in pregnancy, and ended with the termination of pregnancy (abortion). The act of abortion leads to criminal sanctions on WA, while in fact the termination of pregnancy (abortion) is carried out at the request of WA's biological mother. This experience illustrates that the criminalization of victims of sexual violence is increasingly threatening women victims that need solutions related to unintended pregnancy due to incest.

The lack of understanding of reproductive health lead to the perception that pregnancy is the greatest risk of the victim. That if pregnancy does not occur, it is as if the victim did not receive serious risks such as trauma, stigma, and the transmission of infections that can lead to infertility or exposure to HIV/AIDS.

For the penalization of perpetrators of sexual violence against children, Government Regulation in Lieu of Law (Perppu) No. 1/2016 on Child Protection set the penalty for perpetrators of violence as chemical castration and the installation of electronic detectors. Penalization with castration is still being discussed, where Komnas Perempuan does not agree, because sexual violence is not only a matter of genital issues but a matter of consciousness. Referring to cases of sexual violence that are not always carried out with intercourse, then castration does not provide an adequate solution. Cases of sexual violence cannot be separated from how the offender wants to assert his power. This is reinforced by

the social construction of sexuality which has been understood as the ability of men to subdue and dominate women and girls in sexual relations.



Referring to the figures above which show that within the domestic scope sexual violence is dominant, then the strengthening of information on reproductive health and sexuality as part of sexual and reproductive health and rights (SRHR) should be seen as a need that cannot be delayed any longer. In addition, there is also a need of changes in the perspectives of women and girls and strengthening through empowerment until women and girls reach the stage of being able to say “no” in the name protection of reproductive and sexual organs.

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<sup>40</sup> Pencabulan = maltreatment  
 Perkosaan = rape  
 Percobaan perkosaan = rape attempt  
 Persetubuhan = adultery  
 Pelecehan seksual = sexual harrassment  
 Marital rape  
 Incest  
 Cybercrime (including revenge porn)  
 Perbudakan seksual = sexual slavery  
 Eksploitasi seksual = sexual exploitation  
 Pemaksaan aborsi = forced abortion  
 Kekerasan seksual lain = Other sexual violence

## **Recommendations:**

1. Acts of incest cannot be separated from the lack of understanding of sexuality and reproductive health. For this reason, the fulfillment of information on the importance of reporting by parents and family members is important, including that incestuous events result in trauma for the victims.
2. The incest perpetrator does not need to get special treatment, for that understanding of integrated complaints procedures such as complaint services and fulfillment of victims' rights, including remedies, is needed. Moreover, the right to obtain pregnancy termination services needs to be seen as part of the victim's right to remedy.

### **B.12.2 Dating violence**

Dating violence or better known in Indonesia as KDP (*kekerasan dalam pacaran*) is a type of violence against women in the personal sphere. Komnas Perempuan notes that dating violence figures tend to increase year by year, namely 1,873 in 2017 and 2,073 in 2018.

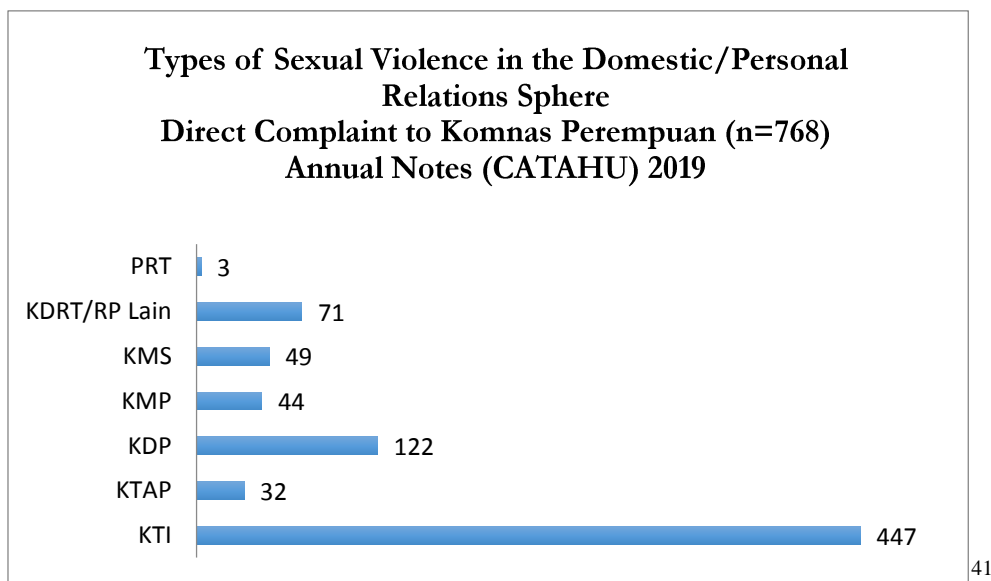
As in the cases of violence against women, dating violence cannot be separated from the imbalance of gender constructions and power relations of the couple. Komnas Perempuan notes that forms of dating violence include forced sexual relations, broken marriage promises, cyber violence, physical violence and economic violence.

In the form of broken marriage promise, the perpetrator uses the approach of flattering, persuading, and seducing the victim to be willing to have sex and convincing to marry the victim if the victim experiences pregnancy due to sexual relations with the perpetrator. But a number of victims who did experience pregnancy were forced to have abortion or abandoned by the perpetrator. In the form of economic violence, the victim is often exploited economically in the form of extortion and so on. The pattern in cases of dating violence (KDP) and violence by ex-partner (KMP) is almost the same, in which the perpetrator threatens to distribute photos or videos of the victim, which are sexual in nature, on social media when the victim refuses to have sex or does not continue to have sex with the perpetrator. (CATAHU Komnas Perempuan, 2018).

Referring to the 2018 Komnas Perempuan Annual Notes, the Office for Women's Empowerment, Child Protection and Family Planning (DP3AKB) recorded dating violence

cases as many as 703 cases, Women Crisis Center (WCC)/Civil Society Organization (CSO) recorded 323 cases, Integrated Care Center for the Empowerment of Women and Children (P2TP2A) recorded 322 cases, the National Police's Women and Children's Protection Units (UPPA) recorded 296 cases and 216 cases in the District Court (PN). Dating violence cases processed to the District Court amounts to 216 or about 10% of 1,857 dating violence cases received by service providers other than the District Court, which illustrates that dating violence cases face the barriers of culture, structure and substance. Observing the data that the victims are 13-18 years old and the perpetrators are 19-24 years old; shows that the majority of dating violence cases that reach the District Court uses the Child Protection Law to charge the perpetrators.

Below are the types of violence in the private sphere that are reported directly to Komnas Perempuan.



<sup>41</sup> PRT = violence against domestic worker  
 KDRT/RP lain = domestic violence/other  
 KMS = violence by ex-husband  
 KMP = violence by ex-partner  
 KDP = dating violence  
 KTAP = violence against the girl-child  
 KTI = violence against wife

The above experience makes it clear that there is a lack of knowledge about reproductive health and sexuality, child growth and development, especially in physical and psychological changes in the child's body towards adulthood, better known as adolescence. In the adolescent stage, attraction to the opposite sex or the same sex is part of the process. However, when attraction develops into the agreement to establish a relationship, gender inequality will be present in the dating experience and will continue to control the body of a girl-child. Control over women's bodies starts with simple things like how women should show loyalty, restrictions on relationships, to restrictions on how to dress. Being a good woman often involves being submissive, not complaining, even when experiencing physical and sexual violence. Therefore, a complete understanding of what consists of a healthy relationship and dating experience is needed so that women and girls can reject things that are harmful to them, especially to their reproductive and sexual organs.

Childhood and adolescence should ideally be filled with a variety of activities that can lead to an understanding of life without violence. If during the dating stage of women and girls have already experienced violence then it could contribute to the number of domestic violence in the future. Domestic violence would also lead to increasing divorce rates. Divorce becomes an alternative solution considering that criminalizing the perpetrator (husband) is not easy. In the midst of the plight of women, empowering women and girls to the stage that women and girls can make decisions in the interests of their own body and their own future, becomes a necessity. Outside of that, changes in legal substance such as the Draft Bill on the Elimination of Sexual Violence and the Draft Revision of the Criminal Code that can guarantee the protection of women victims and criminalize perpetrators of dating violence, even if the victim is no longer a child, are also needed.

### **Recommendations:**

1. More comprehensive reproductive health and sexuality education, especially related to human rights with gender perspective.
2. Considering several cases of dating violence end in unwanted pregnancy, which made middle and high school students had to quit school, a special policy is needed for women victims of dating violence.

### **B.12.3. Child Marriage**

Child marriage is an acute problem which has happened in Indonesia for a long period of time. This problem has become the focus of women's movement since the first Indonesian Women's Congress in 1928. However, up until now this problem cannot be solved well. Indonesian Marriage Law No. 1/1974 itself "allows" child marriage by setting the minimum age of marriage for girls is 16 years old, while Law No.23/2002 on Children Protection defines children as those who are under the age of 18. Worse than that, there is a room for Religious Court to give dispensation for children under 16 years old to get married, and therefore, practically, there is no minimum age of marriage at all in Indonesia.

CATAHU 2019 shows the increasing number of child marriage from year to year. This can be seen from the data of Religious Court in the last three years which gave dispensation to get married to 8.488 children in 2016; to 11.891 children in 2017; and to 12,504 children in 2018. The main cause of the high number of proposals to ask this dispensation is unwanted pregnancy: in order the baby born from this pregnancy can have parents who are married. This is to prevent stigma of having a child out of wedlock which carry negative label of "illegitimate child" which last for the whole life of the children.

Child marriage is one of the forms of sexual violence against children. Children are biologically not ready to reproduce and cannot give consent to have sexual relationship. By using marriage certificate, children are forced to have sexual relationship with their husband. Child marriage also takes away children's rights to access education, which can improve the quality of their life. In addition, child marriage is also vulnerable to divorce and violence against children. When the children who are married get pregnant, they are vulnerable to maternal mortality. The baby born from these children is also vulnerable to be underweight because the baby has to compete with the mother who is in her growing age to get nutrition.

There have been many efforts done by Komnas Perempuan, civil society and many elements of state in eradicating child marriage. In 2015, a number of civil society organizations and individuals who are concerned with women's reproductive health such as Yayasan Kesehatan Perempuan (Women's Health Foundation) and Koalisi 18+ (Coalition of 18+) proposed Judicial Review of the Marriage Law Article 7 point 1 to the Constitutional Court in order to increase the minimum age of marriage from 16 to 18 years old. Komnas Perempuan participated as the related party in that Judicial Review. However, this proposal was rejected by 8 judges of the Constitutional Court on 18 June 2015. Only one female judge, Maria

Farida, gave dissenting opinion to the rejection of this proposal. The reason for this rejection given by the eight judges is that the increasing age of marriage cannot guarantee the reduction of divorce cases, health and social problems.

The Judicial Review to increase minimum age of marriage was also proposed by three victims of child marriage in 2017 in order the minimum age of marriage for women is the same with that of men: 19 years old. The voice and the experience of victims who have lost their childhood to enjoy their right to access education had successfully convinced the judges to grant their proposal to increase minimum age of marriage for women. On Wednesday, 13 December 2018, Constitutional Court granted this proposal and asked the parliament to increase the minimum age of marriage for women in the next three years after this Constitutional Court's decision. At the moment, various ministries and government institution, including Komnas Perempuan, are discussing the minimum age of marriage.

The main obstacle in solving the problem of child marriage is religious belief<sup>42</sup> and poverty. Poverty has made some parents decide to marry off their daughters during their childhood in expectation that she will be looked after by her husband. In fact, many husbands cannot give maintenance to their wives and therefore they become additional burdens for the wife's parents when the daughter and her husband have to live with the daughter's family. In addition, some parents are worried if their daughter has sexual relationship before being married and therefore some parents decide to marry off their daughters at the early age for fear of committing *zina* or having unwanted pregnancy. Ideally, parents give education on reproductive health in order their children can protect themselves and not to have sexual relationship until they are married and their body is ready for reproduction.

### **Recommendations:**

Komnas Perempuan recommends 21 years old as the minimum age of marriage for men and women. The reasons for this recommendation are: (1) non-discriminatory principle (men and women have the same minimum age of marriage); (2) even though the definition of children in Convention of the Rights of Children (CRC) is up to 18 years old, but to be ready to get married both men and women (a) need physical, mental, social and economic readiness, (b)

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<sup>42</sup> Some Muslims believe that the Prophet Muhammad married Aisyah when Aisyah was six years old and began to live together when Aisyah was 9 years old. Recent research, however, shows that Aisyah was married at the age between 14 until 27 years old.

need preparation to have comprehensive access to their human's rights, especially their civil and political rights; and (3) the existing Marriage Law No 1/1974 Article 6 (2) already states that the marriage age is 21 years old.



## C. GENERAL RECOMMENDATIONS

To establish a systemic and preventive mechanism and prevention of violence against women:

- a. Provide legal protection and reform laws/policies for issues of discrimination and violence, including the ratification of the bill on the elimination of sexual violence, revision of the Electronic and Informational Transaction Law, revision of the Marriage Law to raise the minimum age, revision of the draft laws of criminal penalties, ratification of the OP CAT, etc.
- b. Resolve cases of impunity both past human rights violations and natural resource conflicts, including the issue of intolerance and violence in the private and community spheres which have so far been touched by the law.
- c. Build systemic policy derivatives and mechanisms for women victims of layered violence and provide a service mechanism that is responsive to the complexity of the issues (WHRD, natural resource conflicts, cybercrime victims, disability).
- d. Build global and regional protection for cross-territorial issues (migration, trafficking, terrorism, etc.).
- e. Internalize the importance of an education standard that includes the values or perspectives of human rights and gender as one of the elements of the assessment indicators.

That the State consistently performs due diligence roles:

- a. Establish state supremacy in front of corporations (business and women's rights),
- b. Tackle conflicts that emphasize a dialogical approach rather than being repressive and restoring the rights of victims of conflict.
- c. Counter radicalism and terrorism that touches the root of the problem.
- d. Reform places of detention and similar detainees
- e. Fulfill the the right to remedy of victims from various violence against women contexts

To strengthen women's machinery:

a. Women's Empowerment and Child Protection Ministry:

- 1) Focus on the CEDAW mandate of "women", not to be added with mandates that played down the focus of work on women's issues,
- 2) Build a strong women human rights perspective for the Women's Empowerment and Child Protection Ministry apparatus at all levels,
- 3) Select high-quality human resources from ministers to large teams in the regions.

b. Komnas Perempuan:

- 1) Strengthen legal, administrative and strong status, independent and strategic,
- 2) Raise support according to the work nature of Komnas Perempuan as an independent NHRI.

## Annex 1

### **The making process of report**

This report was submitted by the National Commission on Violence against Women (Komnas Perempuan), one of the National Human Rights Institutions (LNHAM) in Indonesia with a specific mandate to develop conducive conditions to the elimination of all forms of violence against women and for the fulfillment of women's human rights.

The BPfA + 25 Review Report Advocacy began with the holding of a Focus Group Discussion (FGD) initiated by the Civil Society Organization (CSO). The FGD, which was held on May 9, 2019, was held to provide input on the preparation of a BPfA + 25 review report. The meeting discussed strategic issues related to women's human rights that will be raised in the report. The FGD was attended by 22 organizations representing various critical issues in BPfA plus several emerging issues that were not yet included in the BPfA.

Then, on July 4, 2019 Komnas Perempuan held another FGD with CSO to consolidate the preparation of the report. The meeting discussed input in the form of updates and sharpening points of the BPfA + 25 review report. This meeting also encouraged two reports to be prepared, namely an independent report by Komnas Perempuan and a shadow report by a CSO.

For independent reports, Komnas Perempuan appointed a team of writers and selected key women's human rights issues. The team then made a critical and reflective note on these issues in depth. So that each writer then includes the progress and setbacks of the situation of fulfilling women's human rights, the latest findings, and key recommendations. Reports were prepared using primary data from Komnas Perempuan's findings, reports and monitoring.

In compiling this report, Komnas Perempuan conducted external consultations, in addition to CSOs as well as with the victims' community. On August 27, 2019, Komnas Perempuan held a consultative meeting with women victims communities and independent state institutions to sharpen input and provide space for victims so that their concerns could be contained through this report.

After that, Komnas Perempuan edited it on September 6, 2019. This process was then continued with the finalization of the report consisting of the final editing, translation and

proofreading of both the English and Indonesian versions. Finally, the completed report is submitted to the UN Regional Office.

## Annex 2

### List of policies, publications, references

Table: Annual records of the National Commission on Violence against Women (CATAHU Komnas Perempuan) in the last 5 years (2015-2019)

Published Year	Number of Cases	Trend of VAW ; 2015-2019		
		Private Sphere	Community Sphere	State Sphere
CATAHU 2019	406.178	<ul style="list-style-type: none"> <li>The rate of violence against girls is getting higher, meaning that homes for girls inside are no longer safe. Moreover, incest cases in 2018 have 1,017 cases, where the culprit is biological father as many as 425 people.</li> <li>192 reported marital rape cases showed the victim's awareness that the coercion of sexual relations in marriage was rape that could be followed up with due process.</li> </ul>	3,915 cases of violence against women occur in the community sphere. Sexual violence took 1,136 cases of sexual abuse, 762 cases of rape and 394 cases of sexual harassment. Meanwhile intercourse is a term used by the Police and Courts based on Indonesian national law (KUHAP) as many as 156 cases.	Eviction and sexual harassment of WHRD (victim's companions) and victims when fighting for their managed areas.
CATAHU 2018	348.466	Incest in girls in 2017 numbered 1,210, the culprit was biological father	Of 3,528 cases, 76% of sexual violence: 911 cases of sexual abuse, 704 cases of sexual harassment, 699 rapes, 343 cases of sexual	Eviction and threat of eviction in the case of spatial conflicts in the residents of Batu Ampar (Bali), Cilincing (Jakarta), Taman

			intercourse.	Sari (West Java) and Baraya Raya (South Sulawesi).
CAT AHU 2017	259.15 0	<p>Violence against wives with a form of physical violence amounted to 4,281 cases, sexual violence 3,495 cases, and psychological violence 1,451 cases and economic violence 978 cases.</p> <p>Types of violence in the form of rape in marriage (marital rape) as many as 135 cases. Rape in a marriage is a serious matter and is still not widely recognized despite having a legal basis (article 8) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law). Meanwhile personal relationships in courtship are the most difficult to find access to justice because of the lack of legal basis and protection for these cases.</p>	Of the 3,092 cases, the most sexual violence: 2,290 cases, physical violence 490 cases and psychological violence 83 cases and migrant workers 90 cases and trafficking 139 cases	<ul style="list-style-type: none"> <li>• Eviction in Bukit Duri, Kampung Pulo, Bongkaran Tanah Abang, Cakung Cilincing in the Jakarta region.</li> <li>• Physical and economic violence experienced by women from the Central Java provincial government in community and company conflicts in the construction of cement in the Kendeng mountains.</li> <li>• • The high number of marriage dispensations, as many as 8488 cases, which means that the state legalizes underage marriages.</li> </ul>
CAT AHU 2016	321.75 2	11,207 cases in the realm of domestic violence / RP included 4,304 cases of physical violence, 3,325 cases of sexual violence, 2,607 cases of psychological	5,002 cases included sexual violence, 3,174 cases, 1,117 cases of physical violence, 176 cases of psychological violence and 64 cases of economic violence. Also	Falsification of civil documents: falsification of marriage certificates 2 cases in West Java, 2 reporting cases of wives who experienced domestic

		violence, and 971 economic cases. This means that households that are supposed to be safe places for shelter are not safe for women.	violence against migrant workers 93 cases and trafficking 378 cases	violence were unable to access the legal process because marriages were not recorded in NTT. 1 case of trafficking that was blocked by the police, and 3 cases of persecution by the police.
CAT AHU 2015	293.22 0	Types of violence included: violence against wives 5,102 cases, violence in courtship 1,784 cases, violence against girls 843 cases, violence against ex-girlfriends 63 cases, violence against ex-husband 53 cases and violence against domestic workers (31).	Sexual violence which includes rape, molestation, sexual harassment and trials 2,183 cases and 677 cases of trafficking.	24 cases; 1 case related to adoption rights in Aceh, 4 cases related to virginity testing in West Java, 2 cases of criminalization of victims of domestic violence and 17 cases related to migrant workers in DKI Jakarta.

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