

**STATEMENT ON THE REVIEW OF INDONESIA
THE UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS (CESCR)
GENEVE, 29TH April 2014**

The honorable committee members and distinguished ladies and gentlemen,

My name is Pratiwi Febry, a Public Interest Lawyer of Jakarta Legal Aid Institute. Our organization is an NGO focused on providing legal aid for the poor, legal illiterate and the marginalized. My organization is also a part of National Network Advocacy for Domestic Workers (JALA PRT) and Human Rights Working Group.

I am honored to address you on behalf of millions of people of Indonesia whose economic, social and cultural rights being violated for many years.

Indonesia has the objectives of state livelihood stipulated in Our Constitution Preamble which are:

1. To protect all the people of Indonesia and all the independence and the land that has been struggled for,
2. To improve public welfare,
3. To educate the life of the people
4. To participate toward the establishment of a world order based on freedom, perpetual peace and social justice

In this honorable forum I would like to address 4 issues concerning failures of the Government of Indonesia to fulfill their responsibility in fulfilling, respect and protecting Indonesian people's rights in:

1. Domestic Workers and Indonesian Migrant Workers Right
2. Trade Unions Rights
3. Education Rights
4. Housing and Land Rights

ISSUES RELATING TO THE SPECIFIC PROVISIONS OF THE COVENANT

A. Article 6 - The right to work

Domestic Workers in Indonesia

The Condition: Nowadays there is no regulation made to protect them. So approximately 10 million Indonesian people are unprotected from : Working with unlimited burden without contract letter and job description especially domestic workers live in with the employer, Long working hours: generally more than 14-16 hours per day until night and they must always be ready on call, no minimum wage and underpaid or even unpaid, no right to annual leave, weekly holiday, menstruation leave, pregnancy leave or maternity leave and others normative workers right. Lack of or minimum of social-communication access that cause domestic workers to be restrained or kept away from social contact, whether from family, neighbor or community, which led to the lack of intervention and social control. Domestic Workers endure psycho-social situation such as anxious feeling, scared of making a mistake, afraid of stating an opinion, expression, and consider themselves underestimated. There is no mechanism of dispute settlement; therefore settlement was often spatially biased. Exploitation by domestic worker supplying agency or other party that deliberately trafficking workers. There isn't any

standard of decent work situation, no domestic workers protection law. The situation is relatively dependent on the employer, so the domestic worker is vulnerable to exploitation and violence, physical, psychological and verbal abuse.

Civil Society has submitted Draft of Domestic Workers Rights Protection National Law (Bill) to National Parliament (DPR RI) and Government since 2004. Legislation of the Bill on Protection for Domestic Workers (RUU PPRT) has been running for 10 years. During Parliament and Government's second terms of duty the law on Protection for Domestic Workers has been proposed, nonetheless there has been resistance from the Parliament and Government to deliberate and pass to be the law.

No willingness also of Government and Parliament to ratify the ILO Convention 189 and Recommendation 201 about Decent Work for Domestic Workers. Although the President of Republic Indonesia has stated on 100th Session of International Labour Conference 14 June in Geneva that Indonesia supports and will ratify the ILO Convention Decent Work for Domestic Workers and will create domestic workers protection law.

But until now there are no realization on both of the Domestic Workers Law and ILO Convention No. 189.

Recommendations

In the protection for domestic worker, we recommend that:

- a. Parliament and Government of the Republic of Indonesia must immediately deliberate and pass the Domestic Workers Protection Law
- b. Parliament and Government of the Republic of Indonesia must immediately ratify ILO Convention No. 189 on Decent Work of Domestic Worker.
- c. Integrating Human Rights principles in the regulation of domestic worker in Indonesia, including also Draft Bill on Domestic Worker presently under consideration, as well as UDHR, ICESCR, CEDAW, CRC, CMW, and ILO Convention No. 189.

Migrant Workers

We acknowledge that migration is a human right. But we should address there is a special context of migration in the developing country. We named as a forced migration, since it happened because of poverty and lack of working place and the failure of the state to fulfill the education right. But now the phenomenon of Indonesia Migrant Workers is been commoditized, since there is no proper regulation to protect Indonesian Migrant Workers. The regulation only emphasized on the MW placement, regardless their right to be protected.

Recommendations:

The Government of Indonesia should pass the Revision of The Law No. 39 Year 2004 on Placement and Protection of Indonesian Migrant Worker's Abroad and synchronize the revision of this law with all the principles contained in International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that has been ratified by law No. 6 of 2012.

B. Numerous legislations which guarantee the freedom to form and join trade union have failed to protect the rights of big number of labors and workers at private and state owned companies.

The freedom of assembly and association is guaranteed by Article 28 of the 1945 Constitution, and it is where the interrelated principle of human rights applied.

Labors who form or join trade unions are usually facing suspension, mutation, demotion, do not get any tasks and faced unilateral dismissal. The labors who joined the trade unions and rally, or strike are often sanctioned or even criminalized. The board of trade unions are reported to the police with allegation of aspersion or defamation. There are some regulations made by the local governments which prohibit the right to strike for civil servant, explicitly, for example in Makassar, South Sulawesi. In other area, the cases were some governors gave sanctions to civil servants who joined strike (E.g.: in Bandung, West Java). The legal basis used by the local governments are Law No. 53 Year 2010 about Civil Servants which regulates about the prohibition for civil servant to join political activities, or others activities which give or cause bad impacts direct or indirectly to the state.

In the last 4 years, from tens of report on union busting there were only 1 prosecuted case where the employer charged with union busting in the King James case in East Java. Other cases were discontinued at the police or the prosecutor. The law enforcers have not had adequate capacity and knowledge on labor crime especially on union busting. By omitting the union busting, the fulfillment of labor rights will keep on impeded.

The irony in union busting is that some significant perpetrators are state-owned companies, such as PT. ASDP (port company), PT. ASKES (which already changed its name to BPJS Kesehatan – social security company), PELINDO (water transportation company), PT. Pertamina (oil & gas company).

Recommendations:

1. Increasing the quantity and quality as well as the capability of labor inspectors with human rights and gender perspective regarding to enhance the law enforcement in labor law.
2. The Government addressed the labor law enforcement especially criminal sanction for every labor crime.

C. Qualified education in Indonesia can only be accessed by the rich who lives at big cities. And for that, we appeal to the Committee to recommend the Government of Indonesia to:

- The Government of Indonesia should Immediately drafting Indonesian education politic to safeguard and prevent premature, inconsistent policies which potentially violate the fulfillment of the right to education;
- The Government of Indonesia should ensure the right of all children, especially those from poor and disadvantaged groups, without discrimination, to receive formal education. The right to education must be ensured starting from primary education, secondary education, until higher education with the same standard and quality in all corners of Indonesia, even in the remotest areas,;
- In pursuing the fulfillment of education right, the government shall revoke or amend all policies and practices that contradict with the fulfillment and protection of the rights to education and be responsive to gender issues and the rights of girls in education. Especially Law No. 12 Year 2012 on Higher Education which shifts the responsibility from the State to the private sector and students.

This is based on the statistic of one of top universities in Indonesia, University of Indonesia, which shows their revenue from the students were 48% in 2008, 42% in 2009, 44% in 2010, 46% in 2011 and in 2012 significantly increased become 57%. The numbers show that privatized universities depending to their students as the source of revenue. This will directly and indirectly increase the tuition fee. Consequently, only those with financial capacity could access higher education and amount to violation of the equal right to education.

- Implementing the Supreme Court Judgment No. 2596 K/PDT/2008 and Provincial Court Judgment No. 377/PDT/2007/PT.DKI and Central Jakarta Court Judgment 228/Pdt.G/2006/PN.JKT.PST which revoke the national examination (*Ujian Nasional*) for students. Since there are still many different standart quality of education

D. Housing and Land Rights

1st The failure of the government in conducting Agrarian Reform since 1960s through the enforcement of Law No. 5 Year 1960 on Core Agrarian Laws, has caused the occupation of most land by the landlords and millionaires, and most are abandoned. While on the other side, the poor cannot afford some land for their housing. The failure of the State in conducting land ownership and abandoned land census has caused the violation of the right to land for most of Indonesian nationals.

Moreover, the rise of land mafias who easily evict the people who occupy abandoned land or community land for tens of years by the reason that they do not have legal documents (land registry).

The government also has not regulated eviction procedures according to human rights principles, especially as enshrined in the General Comment No. 7 on Forced Eviction. The government even enacted Law No. 2 Year 2012 on the Land Use for Public Interest as a legal basis to evict, without clear evidence on the definition of public interest. The case of "BMW Garden" in North Jakarta is the evidence of such practice, where the Government evicted poor people who have lived for years in the land for the establishment of public garden. However it turned out that the land is used for commercial apartment.

Recommendation:

1. Based on aforementioned, we recommend the Government to conduct land ownership census all over the territory of Indonesia and redistributing the land ownership as a form of remedy for the failure of Agrarian Reform and to ensure social justice.
2. Develop legislation which provides eviction procedures based on international human rights principles and prohibiting forced eviction or eviction for public interest without initial public consultation and consent of the evictee.

2nd Problem:

"In West Timor province, most of the an estimated 113,000 people who have chosen to remain in the province after their displacement from East Timor in 1999 live in sub-standard houses with inadequate facilities and they are generally poorer than the local population due to their lack of land ownership and sustainable livelihoods and their limited access to government services. In

early 2014, some 22,000 people continued to live in these camps, requiring livelihood and shelter assistance. The lack of tenure security, exacerbated by land scarcity and tensions between IDPs and the host community, was identified as a key obstacle to durable solutions."

Recommendations:

Accessibility to land by displaced populations should be improved through a land policy that recognises diverse tenure situations. Also, enhanced coordination is needed between the different agencies working on land issues and between the national and local level.

As programs specifically targeting ex-IDPs ended in late 2013, it is important to ensure that their outstanding needs, in particular those related to access to land and tenure security, are mainstreamed in local and national development initiatives.

In early 2014, the government held consultations with West Timor local authorities and a number of international agencies in order to use their experience in working with protracted IDPs as input into the national development National Medium Term Development Plan (RPJMN) of 2015-2019. These consultations should be broadened to other former conflict-affected provinces, including Aceh, Maluku, North Maluku, Central Sulawesi, West and Central Kalimantan, but also Papua and West Papua.