



The National Commission on Violence against Women
(Komisi Nasional Anti Kekerasan terhadap
Perempuan - Komnas Perempuan)

Promotion of the Right to Freedom of Thought, Conscience, Religion, or Belief at the National and Local Level – Ga Report of the Special Rappporteur on Freedom of Religion or Belief

The Indonesian National Commission
on Violence against Women
(Komnas Perempuan)'s Input:

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to Freedom of Thought,
Conscience, Religion, or Belief
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Religion or Belief**

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1. How different constitutional arrangements impact the enjoyment of freedom of religion or belief, such as in relation to:

(a) *The ways in which different relationships between state and religion manifest distinct challenges and opportunities at the local level.*

The National Commission on Violence against Women (Komnas Perempuan) is one of the national human rights institutions (NHRIs) in Indonesia which was founded based on Presidential Decree No. 181 of 1998 which was later strengthened through Presidential Regulation No. 65 of 2005 aimed at creating a conducive situation for the human rights of women and encouraging the handling and prevention of all forms of violence against women in Indonesia. In carrying out its work, Komnas Perempuan also carries out monitoring, fact-finding, and the strengthening of vulnerable women's groups, including indigenous women and women of minority religious groups in Indonesia.

The 1945 Constitution of the Republic of Indonesia (UUD RI 1945) includes guarantees for the right to freedom of religion, including:

- a. Article 29 paragraph (2): The state guarantees the freedom of every inhabitant to embrace his/her respective religion and to worship according to his/her religion and faith as such.
- b. Article 28E paragraph (1): Every person shall be free to embrace a religion and to worship according to his/her religion, to choose education and teaching, to choose work, to choose citizenship, to choose a place to reside in the territory of the state and to leave it, as well as be entitled to return. **)
- c. Article 28E paragraph (2): Every person shall be entitled to freedom to be convinced of a belief, to express thought and attitude in accordance with his/her conscience. **)

Although the 1945 Constitution of the Republic of Indonesia as the highest legal basis includes the right to freedom of religion, there are a number of laws with arrangements that contradict the mandate of the Indonesian Constitution, including:

- 1) Law No.1 Presidential Decree (PNPS) of 1965 on the Prevention of Religious Abuse and/or Blasphemy is one of the laws that still applies, even though it has been tested more than 5 times in the Constitutional Court. Religious blasphemy is also regulated in Article 59 of Law No.17 of 2013 on Community Organizations. In implementing this law, Komnas Perempuan noted that there were 2 women who were targeted for criminalization because of their minority status and the use of this law was used as a basis for discrimination by the local government over the policy limiting the right to freedom of religion for adherents of the Indonesian Ahmadiyya Congregation.¹ This law also threatens minority groups who have the potential to be considered and declared heretical.² Nonetheless, Komnas Perempuan also appreciates the government's move not to re-inscribe blasphemy regulations in the Criminal Code (KUHP) and Law No. 11 of 2008 on Information and Electronic Transactions (ITE). The ITE Law has the potential to criminalize what is considered blasphemy by using hate speech articles.
- 2) Law No. 1 of 1974 on Marriage. This law still applies, it contains discriminatory articles against women in family life, and the operational arrangements under it also prevent the marriage of women who are about to marry with religious differences, as well as marriages carried out by members of minority

1 Komnas Perempuan noted that Ms. M experienced layered discrimination as a minority woman who was sentenced to 1.8 months in prison in 2019 because she was considered to have committed blasphemy by a judge for her actions complaining about the sound of a mosque speaker. In 2020, Komnas Perempuan submitted evidence to the Judicial Commission (KY) to investigate the behavior of judges who were not impartial, and was followed up by the KY by imposing sanctions on the judges. However, Ms. M did not receive rehabilitation for the case she experienced. (<https://www.amnesty.org/es/wp-content/uploads/2021/05/ASA2190072018ENGLISH.pdf>) Komnas Perempuan also noted that a woman who brought a dog into a mosque was considered to have committed blasphemy, and was still found guilty by the judge, even though she has a psychosocial disability. (<https://www.hrw.org/id/news/2019/10/11/334678>)

2 In this case the Ahmadiyya Congregation is one of the religious minority groups that has experienced stigmatization of religious deviance by both the state apparatus and community groups. Komnas Perempuan has also recorded the Baha'is as one of the religious minority groups facing accusations of heresy.

religions and adherents of belief. This law also still contains discriminatory provisions against women with disabilities, namely allowing the condition of a wife's disability as an excuse to practice polygamy. Another regulation is the obligation to become a member of organization as one of the requirements for women who are adherents of beliefs to get married.³

- 3) Law Number 16 of 2004 on the Attorney General's Office which includes the authority of the Attorney General's Office to carry out surveillance on the adherents of religious beliefs in Indonesia.
- 4) Government Regulation No. 40 of 2019 on the Implementation of Law No. 23 of 2006 on Population Administration. This regulation requires adherents of belief to carry out marriages through a religious leader and must be a member or part of an organization. This rule does not apply to adherents of the other religions, where organizing is a right, not an obligation.
- 5) Joint Decree (SKB) of the Minister of Religious Affairs, the Attorney General, and the Minister of Home Affairs of the Republic of Indonesia No. 3 of 2008 No. Kep-033/A/Ja/6/2008 No. 199 of 2008 on Warnings and Orders to Adherents, Members, and/or Organizing Members of the Indonesian Ahmadiyya Congregation (JAI) and Community Members. This Joint Decree contains prohibitions and restrictions on activities for the Indonesian Ahmadiyya Congregation and is one of the policies referred to by the Regional Government where regional policies go beyond this regulation. The impact of the Joint Decree regulations and policies in the regions is attacks and threats both to places of worship and to the security of the Indonesian Ahmadiyya Congregation.

Komnas Perempuan has also noted discriminatory practices that are still ongoing due to a legal vacuum in the exercise of the right to population administration for minority religious groups such as Baha'i, Sikh, Taoist, etc. who cannot include information about their religion or belief in the column of their KTP (identity card), because they are not considered to be recognized as a religion in Indonesia. The absence of such regulation gives negative impacts to the right to population administration which can become an obstacle to other rights such as education, marriage, employment, and others.⁴

(b) The particular challenges and opportunities arising in the context of federal states.

Challenges:

- ❖ Komnas Perempuan notes that a number of regions still issue local bylaws that contain discrimination, including based on religion. Some Provincial Governments still issue forced attire on civil servants, students, etc. based on the certain religious view. Komnas Perempuan notes that policies regarding forced clothing are still being issued in several regions in the name of local character (as of January 2023 there are 51 policies that still applies).⁵
- ❖ Komnas Perempuan noted, in the completion of the permit case for Indonesian Christian Church (GKI) Yasmin, which according to the version of the Central Government and the Regional Government has

3 Government Regulation No. 40 of 2019 on the Implementation of Law Number 23 of 2006 on Population Administration, Article 39 on marriage procedures.

4 Komnas Perempuan Focus Group Discussion (FGD) with Religious Minority Groups 2020 and 2021.

5 Various organizations and individuals have been involved in raising public awareness and advocating for regulatory changes, particularly to ban the practice of enforced hijab in state and state-affiliated institutions. These include but are not limited to: (1) Komnas Perempuan (since 2010 to present) that has produced many reports on discriminatory regulations towards women. Said organization has also conducted an examination on a joint decision of three ministries that banned hijab enforcement in Indonesian [regular] public schools in 2022 and its cancellation by the Higher Court decision in the same year [See <https://www.youtube.com/watch?v=MO-DgdLSle4>]; (2) Human Rights Watch [particularly Human Rights staff Andreas Harsono] that conducted several researches and published its reports on obligatory hijab (2021, 2022). Both institutions have documented 64 regulations in various provinces and cities/regencies that obligate female citizens to don hijab; (3) Women Studies of Universitas Gadjah Mada (2021) that has hosted internal and public discussions in 2021; (4) a petition of Seruan Indonesia (2021) signed by 845 individuals [see <https://seruan.org/video-konferensi-pers-seruan-indonesia/>] calling for the banning of hijab enforcement among female students in Indonesian [general] public schools; (5) an informal group of the victims of hijab enforcement and their families/friends that have been providing a virtual venue for sharing experiences among its members since 2021; (6) Cahaya Guru, that works closely with teachers and schools [see <https://cahayaguru.or.id/publikasi/10/download-kertas-posisi>]; (7) mainstream news media that made attempts to uncover victims' perspectives on the issues they face; and (8) many related activities by other individuals and groups. Currently, the immediate plan is to revoke all regulations that shape the practice of enforced hijab in Indonesia.

been completed, there is still the need of recovery that has not been filled and needs to be an important concern of the government for female members of the congregation who have deeply traumatized experienced deep trauma for more than 16 years and need sustainable recovery.

- ❖ Komnas Perempuan also noted that there were obstacles in building houses of worship related to the policies in provincial areas that were issued with powers that exceeded regulations at the national level, for example in the Province of Aceh⁶, and the Province of Bali.⁷ Regarding the impact of the barriers to places of worship, Komnas Perempuan notes that women are more vulnerable and have multiple vulnerabilities when the construction of their houses of worship is hampered, such as long distances and difficulty in getting public transportation at affordable prices due to inadequate infrastructure while women sometimes have to bring their children or family members such as elderly and people with disabilities. Elderly women experience multiple traumas of their own. Other impacts are the economic costs that must be spent more, physical and psychological exhaustion, feeling as devalued citizens, trauma, difficulty in fulfilling the need for the right to spirituality-culture due to the absence of places of worship, and social segregation which impacts the social interaction of the community.
- ❖ Komnas Perempuan also noted that women human rights defenders (WHRD) experienced intimidation, bullying, threats, and terror in their advocacy work for mediation and conflict resolution and fulfillment of the right to freedom of religion.

(c) *How State models for ensuring tolerance such as interfaith mediation and conflict prevention, management and resolution can positively or negatively affect freedom of religion or belief.*

Komnas Perempuan noted that at the national level, there are already a number of regulations that promote efforts to prevent, handle conflicts, and recover victims, including the National Action Plan – Protection and Empowerment of Women and Children in Social Conflict (RAN-P3AKS) 2020-2025. Komnas Perempuan also noted that in the documentation of the conflict management model that was prepared in 2022 regarding efforts to prevent, handle conflicts including religion-based, and efforts to recover victims, many local governments ignore and have not referred to existing regulations including the meaningful involvement of women, the principles of handling of victims which includes vulnerable groups of the elderly, people with disabilities and sick people, and special needs based on women's experiences.

Komnas Perempuan noted that in the case of the burning of a monastery in Mareje Village, West Nusa Tenggara (NTB) Province year 2022, the recovery process for the women living in the village has not supported based on the ongoing basis to ensure that women's groups can enjoy a space for peace.

(d) *The role of National Human Rights Institutions, and related entities, in advancing and protection freedom of religion or belief.*

1. As one of the independent national human rights institutions, Komnas Perempuan promotes steps to advance the fulfillment of the right to freedom of religion, as well as encourage the commitment of the in efforts to fulfill the human rights of women victims, including:
2. In 2011-2012 Komnas Perempuan specifically carried out monitoring of the experiences of women belonging to the religious minorities who experienced acts of violence and discrimination.
3. In 2012 Komnas Perempuan conducted a documentation of the experiences of minority groups of women adherents of beliefs (*penghayat kepercayaan*), traditional religion adherents (*penganut agama leluhur*), and customary ritual performers (*pelaksana ritual adat*) in facing violence and discrimination.
4. Komnas Perempuan periodically conducts monitoring of conflicts over natural resources and agrarian affairs and finds that these conflicts not only have a negative impact on the enjoyment of the right to

⁶ Aceh Qanun No. 4 of 2016 on Guidelines for Maintaining Religious Harmony and the Establishment of Places of Worship,

⁷ Regulation of the Governor of Bali No. 33 of 2003 on Procedures and Provisions for the Development of Places of Worship in the Province of Bali.

the economy, the right to a healthy and safe environment, the right to health, and the right to work also social, spiritual and cultural rights. In indigenous peoples, the rights to religion and culture are closely intertwined with local knowledge in the form of herbal medicines which are seen to contain spiritual values and symbols. Therefore, Komnas Perempuan recommends to the government for substantive involvement of indigenous women in every natural resource and agrarian conflict resolution.

5. Komnas Perempuan also continuously issues recommendations to the Government/Regional Government for the protection of minority groups on the rights to freedom of religion. Since 2017, Komnas Perempuan has issued 10 recommendations specifically related to the guaranteed right to freedom of religion.
6. Komnas Perempuan also performs its mandate and authorities as a human rights institution in responding to and following up on complaints submitted to Komnas Perempuan regarding acts of violence and discrimination based on religion experienced by women.
7. Komnas Perempuan establishes space and coordination forums with state institutions (Government/Regional Government) to monitor the implementation of the recommendations submitted.
8. In Komnas Perempuan's Annual Notes on Violence against Women (CATAHU) issued since 2002, the problem of gender-based violence (GBV) in religious-based intolerance conflicts is an issue that often needs special attention so that stakeholders, civil society organizations, and the media pay attention and awareness. Komnas Perempuan also reports on the issue of freedom of religion or belief in the Universal Periodic Review, International Covenant on Civil and Political Rights (ICCPR), and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) reports.

2. How the administration of the status of religion or belief communities is manifested at local level, such as in relation to:

- (a) *Recognition and the accordance of status (registration) to religion or belief communities, including indigenous peoples: the interlocutors involved at domestic level and their respect for freedom of religion or belief.*

Komnas Perempuan notes that there are several obstacles experienced by indigenous peoples in obtaining recognition and protection, including:

- a. Until now, no law has been passed to provide protection for indigenous peoples, especially women, including in providing protection for their beliefs.
- b. Komnas Perempuan noted that one of the obstacles faced by the Sunda Wiwitan Indigenous People was that during the recognition process as an indigenous people, they faced administrative processes that kept them away from state recognition.
- c. Komnas Perempuan also documented the natural resource conflicts that occurred in the several regions of Indonesia and found the fact that in every conflict over natural resources women become victims because they are part of the community who defend their land as a livelihood. Every inch of the land has spiritual values, and the land is a source of livelihood for people's food, health, security, and culture. (CATAHU 2016)⁸.

8 1. The conflict between the Seko Indigenous People and a company, which occurred in North Luwu Regency in 2016. The local government gives licenses to electricity supply companies, which do not involve residents. Around 645 hectares of customary land and land of residents were affected by the project.

2. The burning of the Pubabu Besipae indigenous forest in 2009. The Pubabu Besipae indigenous people had one spring, then a drought occurred, so they had to collect it in a faraway place, the burden of fetching water was mostly done by women and children, water shortages impacted the reproductive health of women, and water shortage caused skin disease and vomiting. Women also lose their source of economic income because the tamarind trees in the forest have been burned (CATAHU Komnas Perempuan, 2010, p. 21)

3. Occupation of the traditional land of the people of Sei Jernih village, Deli Serdang, North Sumatra by the company PT Perkebunan Nusantara (PTPN II) using Mobile Brigade (Brimob), Security Officers (Papam), Security Guards (Satpam), and paid thugs on 17 and 18 June 2011. This occupation was followed by burning traditional houses, destroying agricultural fields, and beatings of indigenous women (14 victims).

4. The difficulty for indigenous women to obtain clean water has had an impact on their livelihoods and the products of cocoa, durian, and

- (b) *In this connection, the interlocutors involved in registration of religion or belief communities, often pertinent in relation to banking, taxation, property, charitable and humanitarian work, labour rights including recruitment, rest days, etc.*

Komnas Perempuan notes that there are obstacles to recording religion/belief in the identity card (KTP) column which are also replicated in the process of applications in fields such as banking, hospitals, or other types of administration which do not provide additional information if a woman is an adherent of belief or adheres to a religion such as Baha'i, Sikh, etc.

3. The role of domestic law enforcement and justice authorities in relation to freedom of religion or belief, such as in relation to:

- (a) *National security, and the need to respect freedom of religion or belief while countering violent extremism or terrorism.*

Komnas Perempuan noted that there were obstacles in the process of reviewing a policy at the Supreme Court where the trial mechanism did not present the parties to the trial. With this mechanism, there is minimal opportunity to be able to provide arguments on the existence of discriminatory practices in policies, including those that can hinder the right to freedom of religion.

Komnas Perempuan also notes that although the Supreme Court has issued a Supreme Court Regulation (Perma) regarding Guidelines for Trying Cases of Women Facing the Law (No.3/2017), Komnas Perempuan specifically notes that there is a serious problem because the Qanun Jinayat Law (No.6/2014) still applies. It regulates the punishment of caning for several types of crimes that do not exist in national law, which has the potential to make the situation vulnerable to women who face the law as suspects, defendants, and convicts.⁹ The application of the number of caning punishments lacks justice for female convicts.¹⁰

rice plantations experienced by women in 13 villages in the Dairi District, North Sumatra due to the entry of mining companies.

5. Residents of Pari Island, Province of the Special Capital Region of Jakarta, depend on their livelihoods from working as fishermen, seaweed cultivating farmers, and developing tourism. They live from generation to generation and have land ownership rights with evidence of land certificates. Residents also pay their land and building tax (PBB). However, in 1985 there was a withdrawal of the generational (*girik*) certificate and other land certificates by Tidung Island Sub-District officials for renewal. Since then, the Pari Island residents' land certificates have not been returned and residents have been unable to make payments. Furthermore, the corporation controlling 90% of the total area of Pari Island offered cooperation to develop tourism with the residents, but the residents still refused because so far, the residents had been managing tourism independently. This refusal was responded by forcibly measuring and sealing the houses and inns belonging to the residents on March 16 and 30 2016.
 6. The conflict over the construction of a reservoir in East Nusa Tenggara which affected the Lambo, Rendu, and Ndora people who live in customary territories in Aisesa District, South Aisesa, Nangaroo, Nagekeo Regency, East Nusa Tenggara Province (2021).
 7. The mining conflict of Dairi Prima Mineral in Dairi Regency, North Sumatra Province (2021).
 8. The Mining conflict on Sangihe Islands Regency, North Sumatra Province (2021).
 9. Pencemaran Lingkungan di Desa Watussalam, Pekalongan; dan Konflik Bendungan Bener di Desa Wadas (2021)
 10. Conflict of the indigenous peoples of Sedulur Sikep, Pati Regency, Central Java Province, who have refused the construction a cement factory (the conflict has been going on since 2009). Mothers who took action received violence from security forces, both physical violence such as being beaten, strangled, stepped on, dragged and their bodies thrown into the grass, as well as psychological violence in the form of threats to be kidnapped if they continued to obstruct the construction of the cement factory. The efforts made by Sedulur Sikep mothers was to maintain groundwater for their children and grandchildren, the karst mountain is a water storage area which, if exploited for cement, will run out of water supply (CATAHU, 2016). The beliefs of Sedulur Sikep upholds the values of environmental preservation, namely water sources and food sustainability for residents who live in the Kendeng Mountain area. Their efforts to campaign to save water were done by walking, protesting by cementing their feet, and setting up tents.
 11. The conviction of Mama Aleta Baun, a women environmentalist who opposed marble mining in East Nusa Tenggara. She was named a suspect in the case of destroying a protected forest, intimidating the family to pressure Mama Aleta not to organize the community for further protest.
- 9 Monitoring of the execution of caning since the enactment of the Qanun Jinayat in 2015. In that year one of the women who was unable to withstand the punishment fainted during the fifth lashing. The execution of the sentence was carried out in public, and witnessed by children (CATAHU, 2016). In 2016, there were 336 caning executions. In 2018, caning was imposed on citizens who were deemed to have had sexual relations with different sexual orientations (<https://icjr.or.id/iicjr-government-harus-evaluation-dan-abolish-penerapan-canbuk-dalam-qanun-jinayat/>). In 2021, there were 23 women facing the law who were found to have violated the Qanun Jinayat. Most of the women facing the law were charged with articles regarding *zina* (adultery), *khalwat* (close proximity), and *ikhtilat* (intermingling) with a verdict of 11 women facing the law received a sentence of 100 lashes on charges of adultery, 9 women faced the law were whipped between 17-20 years on charges of intermingling, and 2 people were added to 3 years in prison because they were considered to have committed prostitution (CATAHU 2021).
- 10 Komnas Perempuan paid close attention to the caning sentence against RJ, who was sentenced to 100 lashes because she was deemed guilty

Komnas Perempuan appreciates several policies that have been issued by the Government in an effort to prevent and deal with terrorism.¹¹ In terms of regulation, there are currently a number of policies regarding combating terrorism and related to victims of terrorism, both at the national and regional levels. However, this policy still does not cover the handling of deportants, returnees, and Foreign Terrorist Fighters, which also includes women, using a gender perspective approach. Therefore, the handling has only been in the context of criminal offenses but has not used a gender perspective in viewing the issue of how women were involved in a terrorist network.

Based on consultations held by Komnas Perempuan, it was found that victims affected by terrorism had not received comprehensive steps in sustainable recovery efforts, so there were still a number of victims who had not recovered and were still traumatized¹². Komnas Perempuan also notes the lack of coordination in carrying out the synergy of prevention and treatment programs so that prevention steps and treatment efforts have not been coordinated.

4. The role of domestic authorities responsible for economic and social policies which relate to the enjoyment of freedom of religion or belief, such as in relation to:

- (a) *The role of municipalities, including (but not limited to) in relation to places of worship, property, land and territory.*
- (b) *Education and more broadly the right to freedom of religion or belief of children and young people.*
- (c) *Access to justice for individuals or groups from marginalised religious or belief minorities and communities.*

Komnas Perempuan noted that until now there are still two locations where citizens who were evacuated in Indonesia have not received a comprehensive settlement or certainty of a settlement for the return of the internally displaced people to their place of origin, namely the evacuation of the Indonesian Ahmadiyya Congregation (JAI) in the transit city of Mataram, and Central Lombok district, West Nusa Tenggara Province,¹³ as well as internally displaced people from Sampang residents in Jemundo flats, Sidoarjo district, East Java Province, who have been displaced since 2012. Until recently, the information submitted (May 2023) there were still 50 families living in Jemundo flats, who had not received certainty about whether they can return to their hometown. They were expelled from their hometown due to differences in religious beliefs, where they were considered a Shiite group..

Komnas Perempuan also found that in one of the districts there are still schools that teach students a religion that is not their religion. This finding was denied by the local government. Komnas Perempuan's findings included non-Muslim students who was wearing headscarves in their certificates, who faced problems when graduating from college or looking for work, where arrangements for forcing clothing based on religious teachings are still enforced in the area.

of committing the crime of adultery on the basis of her confession based on the decision of the Sharia Court 4/JN/2021/MS.Idi. However, TS (her partner) was only sentenced to 15 lashes and was considered not proven to have committed the crime of adultery because there was no confession from the defendant based on 3/JN/2021/MS.Idi. Komnas Perempuan believes that RJ was discriminated against in terms of the difference in the number of sentences against defendant TS in the Case Decision 4/JN/2021/MS.Idi. Regarding this incident, Komnas Perempuan requested information from the Supreme Court regarding the decision, and no response has been given to date.

11 including Law (UU) No. 5 of 2018 Law on the Amendments to Law No. 15 of 2003 on the Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 on the Eradication of Criminal Acts of Terrorism to Become Laws, and Government Regulation (PP) No. 35 of 2020 on the Amendments to Government Regulation No. 7 of 2018 on the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, as well as Presidential Regulation (Perpres) No. 7 of 2021 on the National Action Plan for the Prevention and Mitigation of Violent-Based Extremism Leading to Terrorism 2020-2024.

12 Komnas Perempuan FGD with Civil Society 2021 and 2022.

13 The latest data on internally displaced people who have fled since 2007, now there are around 30 families.

