

# **ANNUAL REPORT**

## **2005**

**THE INDONESIAN NATIONAL HUMAN RIGHTS COMMISSION**  
**(KOMNAS HAM)**

## INTRODUCTION

The Indonesian Human Rights National Commission (Komnas HAM) is an independent institution, on equal level to other state institutions with the purposes to develop conditions conducive to the implementation of human rights and to enhance the protection and upholding of human rights in Indonesia. To achieve those purposes, Komnas HAM carries out the functions of research and study, education, monitoring, and mediation.

Under article 97 of the Act Number 39 Year 1999 on Human Rights (Act No. 39/1999), Komnas HAM has the obligation to provide an Annual Report on the implementation of its functions, obligations and mandates, as well as report of human rights condition and cases handled by Komnas HAM, to the House of Representatives and the President, with a reference to the Supreme Court. Komnas HAM Annual Report 2005 is also intended as a form of public responsibility of Komnas HAM.

For that purposes, this Annual Report will describe the human rights condition in Indonesia in 2005; the institutional activities of Komnas HAM according to its functions, which are research and study, education, monitoring and mediation; cases of gross human rights violations handled by Komnas HAM; and the activities of Komnas HAM regional offices and representatives. This Annual Report will also report the activities of Komnas HAM Secretary General and financial report of 2005.

The Annual Report will provide recommendations to be taken into consideration. These recommendations should be followed up by the state executors in order to optimally uphold and protect human rights, because the Government has the obligations in the protection, promotion, enforcement and fulfilment of human rights.

Jakarta, May 2005

## CHAPTER I INTRODUCTION

### A. KOMNAS HAM PROFILE

The Indonesian Human Rights National Commission (Komnas HAM) was established on 7 June 1993 based on the Presidential Decree No. 50 Year 1993 on the Indonesian Human Rights National Commission (Presidential Decree No. 50/1993). The legal status of Komnas HAM was subsequently strengthened through the Act No. 39 Year 1999 on Human Rights (Act No. 39/1999). According to article 1 point 7 of the Act No. 39/1999, Komnas HAM is an “independent institution, of an equal level to other state institutions and which holds the functions of carrying out research and study, education, monitoring and mediation of human rights”.

The enactment of the Act No. 39/1999 was a follow-up of the Decree of the People’s Consultative Assembly No. XVII/MPR/1998 on Human Rights. The Decree requires every State’s institutions and the Government to respect, uphold and promote human rights of all Indonesian people. The Decree also requires the President and the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) to ratify the United Nations human rights instruments in accordance with the Indonesian Five Principles (*Pancasila*) and the 1945 Constitution. Furthermore, the Decree also determined that a lawful national human rights institution should conduct the functions of research and study, education, monitoring and mediation of human rights.

With stronger legal bases, Komnas HAM should optimally perform its functions in order to accomplish its aims stated in the Act No. 39/1999: a) to develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter and the Universal Declaration of Human Rights; and b) to enhance the protection and upholding of human rights for the personal development of Indonesians as human beings in their entirety and their ability to participate in various aspects of life (article 75). The mandates of Komnas HAM to facilitate those aims are research and study, education, monitoring and mediation of human rights. The Act No. 39/1999 also provides Komnas HAM with *sub-poena* power in order to resolve cases of human rights violations.

Komnas HAM power also increased with the enactment of the Act No. 26 Year 2000 on Human Rights Courts (Act No. 26/2000). This Act has appointed Komnas HAM as the only institution to have the mandate to carry out inquiries of gross human rights violations, which according to the Act No. 26/2000 consist of genocide and crimes against humanity.

Commissioners or members of Komnas HAM are professional who have high integrity, dedication, who respect the idea of legal and welfare state based on justice, and who respect human rights and fundamental freedoms. According the law, Komnas HAM could have 35 members who are elected by the House of Representatives based on Komnas HAM's recommendation. They will be inaugurated by the President as the Head of State. The official period of Komnas HAM members are five years with one time re-election.

The 2002 – 2007 membership official period of Komnas HAM was determined by the Presidential Decree No. 165/M Year 2002 (Presidential Decree No. 165M/2002) dated 31 August 2002. The Decree had appointed 23 members of Komnas HAM who were elected by the House of Representatives. Since then, Komnas HAM had lost two of its members, Mansour Faqih (passed away on 16 February 2004) and Salahuddin Wahid (resigned to be nominated as a candidate for vice presidency in the national election in 2004).

In order to carry out the function of research and study, Komnas HAM has the following duties:

- a. to conduct study and research of various international human rights instruments with the purpose of providing recommendations on possible accession to or ratification of such instruments;
  - b. to conduct study and research of various legislations with a view to providing recommendations for the drawing up, amendment or revocation of legislation concerning human rights;
  - c. to publish the results of research and study;
  - d. to conduct literature studies, field studies and comparative studies in other countries;
  - e. to discuss various issues relating to protection, upholding, and promotion of human rights;
- and

- f. to conduct research and study in cooperation with organizations, institutions or other parties, at the national, regional and international levels, in the field of human rights.

In order to carry out the function of education and public information, Komnas HAM has the following duties:

- a. to disseminate human rights principles and information to Indonesian public;
- b. to endeavor to enhance public awareness of human rights through formal and non-formal education institutions and various other circles; and
- c. to cooperate with organizations, institutions, and other parties at the national, regional and international levels in the field of human rights.

In order to carry out the function of monitoring, Komnas HAM has the following duties:

- a. to monitor the implementation of human rights and make reports of the result of the observations;
- b. to investigate and examine incidents which by their nature or scope may reasonably be assumed that violations of human rights have taken place;
- c. to call on complainants or victims and those who are subjects of complaints to make statements;
- d. to call on witnesses to give testimony and request the complainants witness to submit the necessary evidence;
- e. to conduct surveys of the locations of incidents and at other locations which are deemed necessary;
- f. to call on concerned parties to provide written statements or submit necessary documents in accordance with their originals with the agreement of the Chair of the Court;
- g. to examine sites such as houses, yards, building and other places occupied or owned by certain parties with the agreement of the Chair of the Court; and
- h. to provide, on the basis of the agreement of the Chair of the Court, views on particular cases undergoing judicial process, in the event that violations of human rights in public issue and examination process by the court are found and the views of The Indonesian National Commission on Human Rights have to be made known to the parties by the judge.

In order to carry out the function of mediation, Komnas HAM has the following duties:

- a. to promote peaceful settlement between the two parties;
- b. to resolve cases by means of consultations, negotiations, mediations, conciliation and expert evaluation;
- c. to provide recommendations to the parties concerned to settle the dispute through court;
- d. to submit recommendations on a particular case of violations of human rights to the Government in order that the settlement may be followed up on; and
- e. to submit recommendations on a particular case of violations of human rights to the House of Representatives of the Republic of Indonesia for follow up action.

In carrying out its duties, a chairperson and two vice chairpersons are acting as coordinators. They are elected by and from the members or commissioners of Komnas HAM. In 2005, Komnas HAM only has a chairperson and vice chairperson due to the resignation of one vice chairperson resigned in 2004. Moreover, the organs of Komnas HAM consist of the Plenary Session (the highest decision makers in Komnas HAM) and Sub-Commissions.

The implementation of Komnas HAM activities were conducted by Sub-Commissions, consisted of Sub-Commission of Economic, Social and Cultural Rights; Sub-Commission of Civil and Political Rights; and Sub-Commission of Special Group Protection. Subsequently, each Commissioner of Komnas HAM was given a specific human rights theme or vulnerable group as his/her responsibility. Hereby is the structure of Komnas HAM membership on 2002 – 2007:

<b>CHAIRPERSONS</b>		
1.	Abdul Hakim Garuda Nusantara	<ol style="list-style-type: none"> <li>a. Coordinator of the implementation of the Act No. 26/2000</li> <li>b. Responsible for inter Sub-Commission themes and external human rights themes.</li> <li>c. Responsible for the implementation of the amendment of the Act No. 39/1999 and the Act No. 26/2000</li> <li>d. Responsible for regional and international relations</li> </ol>
2.	Zumrotin K. Susilo	<ol style="list-style-type: none"> <li>a. Responsible for human rights education</li> <li>b. Responsible for the coordination of regional offices and representatives of Komnas HAM</li> </ol>

		c. Responsible for the Documentation and Information Centre
<b>SUB-COMMISSION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b>		
1.	Amidhan	Commissioner for the right of workers and right to social security
2.	Anshari Thayib	Commissioner for the right to health and environment
3.	M. Habib Chirzin	Commissioner for the rights to education, science and technology
4.	Saafroedin Bahar	Commissioner for the right of <i>adat</i> law community
5.	Yuwaldi	Commissioner for the right to work
6.	Achmad Ali	Commissioner for the right to property
<b>SUB-COMMISSION OF CIVIL AND POLITICAL RIGHTS</b>		
1.	Soelistyowati Sugondo	Commissioner for the right to justice
2.	M. Said Nizar	Commissioner for the right of citizen
3.	Samsudin	Commissioner for the right to life
4.	Enny Soeprapto	Commissioner for the right to personal safety
5.	Chandra Setiawan	Commissioner for the right to personal freedom
6.	Hasto Atmojo Surojo	Commissioner for the right to personal development
7.	MM. Billah	Commissioner for political right
<b>SUB-COMMISSION OF SPECIAL GROUPS PROTECTION</b>		
1.	Ruswiati Suryasaputra	Commissioner for the protection of the rights of women
2.	M. Farid	Commissioner for the protection of the rights of children
3.	Djoko Soegianto	Commissioner for the protection of the rights of elderly and disabled persons
4.	Koesparmono Irsan	Commissioner for the protection of the rights of IDPs and the poor
5.	Hasballah M. Saad	Commissioner for the protection of the rights of migrant workers and peasants
6.	Taheri Noor	Commissioner for the protection of the rights of minorities and <i>adat</i> law community

Komnas HAM had established a Complaint Handling Unit based on Komnas HAM Decree Number 19/KOMNAS HAM/VI/2004 dated 15 June 2004 in order to provide better services to the people who want to submit their complaints to Komnas HAM. The responsibility of the Complaint Handling Unit is to provide operational and administrative supports with regard to complaints management, through direct complaints and also complaints by mails, phone, facsimile, or e-mail. The Complaint Handling Unit in 2005 had set up a Complaint Handling Procedure (see appendix 3).

To facilitate easy access for the people to file their complaints, Komnas HAM, pending this report, is developing an online complaint handling system. This service will be accessible through [www.komnasham.go.id](http://www.komnasham.go.id) or [www.portal.komnasham.go.id](http://www.portal.komnasham.go.id).

In carrying out its activities, Komnas HAM also needs a reliable and proper information and documentation system. Therefore, Komnas HAM had established an Information and Documentation Centre based on the Decree of Komnas HAM Chairperson Number 18/KOMNAS HAM/VI/2004 dated 15 June 2004. The Documentation and Information Centre has the responsibility to provide technical and administrative in documentation and information (library), information technology, publication, as well as public relations and media.

In implementing its function throughout Indonesia, Komnas HAM has three Regional Representatives in West Sumatera, West Kalimantan, and Papua, in addition to two Regional Offices in Nanggroe Aceh Darussalam (NAD) and Maluku. Moreover, Komnas HAM also has two Complaint Posts in Bireun and Lhokseumawe, Aceh. The purpose of the regional representatives, regional offices, and complaint posts is to provide easy access for the people in these areas far from Jakarta, to file their complaints with regard to human rights violations to Komnas HAM.

As a follow-up to a meeting between Komnas HAM and the Commission III of the House of Representatives in November 2004, Komnas HAM has gradually prepared the establishment of regional offices in several regions, such as Nusa Tenggara Timur (NTT) and Riau. Moreover,

Komnas HAM will establish a regional office in Palu, Central Sulawesi in order to monitor human rights violations in this area regarding the increasing conflicts in Poso. In 2005, Komnas HAM had completed its preparation in establishing the regional office in Central Sulawesi.

Komnas HAM will also increase the status of regional offices in Maluku and NAD into regional representatives of Komnas HAM so as to better manage the cases of human rights violations in these regions.

## **B. KOMNAS HAM VISION DAN MISI**

The vision of Komnas HAM is “The Protection and Enforcement of Human Rights for All”.

The missions of Komnas HAM are:

1. To improve the performance of Komnas HAM as a professional and credible institution at national and international level.
2. To create a conducive situation for the protection and enforcement of the human rights in order to develop an integrated and established Indonesian community so that they can participate in several aspects of life.
3. To establish cooperation networks with stakeholders in order to promote human rights protection and enforcement.

## **C. KOMNAS HAM STRATEGIC PLANNING 2004–2008**

Komnas HAM had formulated its Strategic Planning for 2004 – 2008. The strategic issues which had been identified are as follows:

1. Improvement of the performance
  - To improve the performance of Komnas HAM to increase public trust.
2. Protection and enforcement of human right
  - To improve Komnas HAM public services for human rights victims.
  - To prevent, protect and resolve human rights violations cases and horizontal conflicts.
3. Law enforcement

- To recommend the government to ratify international human rights instruments.
  - To monitor the implementation of the international human rights instruments ratified by the Government.
4. Institutionalization  
To facilitate the central and local governments in formulating human rights-based development policies.
  5. Empowerment  
To disseminate human rights values to the public and state apparatus.
  6. Networking  
To develop, maintain and establish networking with Komnas HAM stakeholders, institutions and human rights defenders.

The strategic objectives of Komnas HAM are as follows:

1. Optimalization of the implementation of Komnas HAM functions and obligations, which should be measured by the indicators related to public service quality, management system based on information technology, and appropriate number of organizational resources.
2. Establishing a conducive situation for the protection and enforcement of human rights in Indonesia with the following major indicators:
  - a. Credible human rights tribunals;
  - b. Human rights protection-oriented laws;
  - c. Increased participation and mandates of Komnas HAM regional offices and representatives regional areas;
  - d. Settlement of *gross violations of human rights cases*;
  - e. Comprehensive criteria and indicators of human rights violations provided for Komnas HAM stakeholders;
  - f. Ratification of international human rights instruments;
  - g. Education, counseling and training on human rights on continuous basis; and
  - h. Reconciliation and peace at conflicting areas.
3. Synergy between Komnas HAM and its stakeholders which should be measured by the indicators related to cooperation networking, communication and information management and active participation of Komnas HAM stakeholders in handling human rights cases.

## **D. KOMNAS HAM RELATIONS WITH OTHER INSTITUTIONS**

In implementing its functions, obligations and mandates, Komnas HAM has established relations and/or cooperation with governmental and nongovernmental organizations at national, regional and international levels. These relations and cooperation are as follows:

### **1. Hearing with DPR**

In 2005, Komnas HAM had several hearings with the Commission III of the House of Representatives to discuss human rights issues, such as:

- i) The continuity of unsolved gross violations of human rights cases, such as May Riot incidents in 1998; Trisakti, Semanggi I and Semanggi II incidents, and Wasior and Wamena incidents, as well as the assumption of human rights violations incidents in Manggarai (Nusa Tenggara Timur or NTT), Talangsari (Lampung), Bulukumba (South Sulawesi) and Poso (Central Sulawesi);
- ii) The progress of the study on forced disappearance cases in 1997 – 1998;
- iii) The rehabilitation of stigmatization victims of persons accused of involvement in 30 September Movement;
- iv) The establishment of the Commission of Experts by the United Nations Secretary General to review the judicial process of gross human rights violations occurred in East Timor in 1999.

### **2. Memorandum of Understanding between Komnas HAM and the Indonesian Police**

To enable the efforts to resolve human rights violations cases effectively, especially those related to police personnel, and to develop cooperation in the field of education to increase professionalism both Komnas HAM as well as the Indonesian Police, Komnas HAM had signed a Memorandum of Understanding with the Indonesian Police on 10 June 2005. The goal of the Memorandum of Understanding is to enhance the synergy and professionalism both parties in carrying out their functions, obligations and mandates. Socialization of the Memorandum of

Understanding has been conducted in several Regional Police offices until the end of 2005 and will be continued in 2006.

### **3. International Meetings on Human Rights Issues**

Komnas HAM had attended the 60<sup>th</sup> Session of the United National Human Rights Commission in Geneva on April 2005. During the session, Komnas HAM delegation had submitted its statement which outlined:

- i) The progress of the promotion and protection of human rights in Indonesia during 2004 - 2005;
- ii) The implementation of Komnas HAM functions, obligations and mandates, especially to enhance the protection and enforcement of human rights in Indonesia;
- iii) Komnas HAM efforts in resolving cases of gross human rights violations;
- iv) Komnas HAM efforts in developing cooperation with human rights national institutions in ASEAN countries.

### **4. The 10<sup>th</sup> Annual Session of Asia Pacific Forum for National Human Rights**

The 10<sup>th</sup> Annual Session of 10 national human rights institutions in Asia Pacific (APF-10) was conducted on 24 – 26 August 2005 in Ulaanbaatar, Mongolia. APF-10 was also a 10 years celebration of the establishment of Asia Pacific Forum for National Human Rights Institutions (APF). APF-10 had discussed several substantial issues of human rights, which were human rights education, protection of migrant workers, internally displaced persons (IDPs), prevention of torture and other forms of ill-treatment, and report of the Advisory Council of Jurists (ACJ). Moreover, the meeting also discuss the administrative procedure for complaint handling.

During the session, Komnas HAM delegation had submitted its statement that highlighted four crucial issues, which were:

- i) Bilateral, sub-regional, regional and international cooperation regarding migrant workers issues is imperative, and the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is essential.
- ii) Human rights education should be provided in formal education institutions since elementary level and should be extended to all members of the population, especially the grass-root level community and those living at remote areas.
- iii) IDPs issues, either caused by natural disasters or human-made disasters, are not only social-humanity problems and assistance issue, but also the fundamental problems of IDPs are the guarantee of the protection of their rights and fundamental freedoms.
- iv) Komnas HAM appeals for all APF members to urge their governments to ratify the Convention against Torture.

## **5. Cooperation with OHCHR, Fahamu, and APT**

The Office of the High Commissioner for Human Rights (OHCHR), Fahamu (an organization for human rights and social justice in Africa), and the Association for the Prevention of Torture (APT), in cooperation with Komnas HAM, had conducted a training workshop on the prevention of torture to enhance the capability of national human rights institutions in dealing with the prevention of torture. The workshop was conducted in Jakarta on 14 – 17 November 2005, where Komnas HAM acted as the host. The workshop was attended by 32 representatives from 17 national human rights institution in Asia Pacific. During the workshop, the participants had visited several correctional institutions in Jakarta, in cooperation with the Directorate General of Corrections of the Department of Law and Human Rights.

## **6. Asia Pacific Regional Cooperation for the Promotion and Protection of Human Rights in Asia Pacific**

OHCHR annually carries out a workshop to promote and enhance the protection of human rights in Asia Pacific. In 2005, the workshop was conducted in Beijing on 30 August to 2 September 2005 attended by government representatives in Asia Pacific and representatives from national

human rights institutions, non-governmental organizations, sub-regional organizations in Asia Pacific, and the United Nations agencies which area of works covers the Asia Pacific regions as observers. Initially, the workshop had reviewed a discussion paper titled “*In Search of the Rights Tracks: Evolving a Regional Framework for the Promotion and Protection of Human Rights in the Asia Pacific Region*”.

In the workshop, Komnas HAM delegation had submitted its statements which highlighted several important issues, such as:

- i) The importance of human rights education to be implemented in parallel with the fulfilment of right to education;
- ii) The importance of human rights education to reach grass-root level of the community and those who live in remote areas;
- iii) The importance of sub-regional cooperation in order to handle human rights issues of mutual interest of the states in the region;
- iv) The importance of the protection for human rights defenders;
- v) The importance of establishing a particular unit in ASEAN Secretariat to manage human rights issues.

## **7. National Human Rights Institutions Consultation in ASEAN**

As the follow-up of a consultative meeting between national human rights institutions in ASEAN in Jakarta on July 2004, another consultative meeting was held on October 2004 in Bangkok to agree on the human rights themes of mutual interests of Southeast Asia nations, which are:

- i) Human rights and terrorism;
- ii) Human trafficking;
- iii) Right to development;
- iv) Human rights education;
- v) Protection of migrant workers.

## **8. Cooperation with SUHAKAM**

Komnas HAM had initiated a meeting with Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM) to discuss the possibility of cooperation in dealing with the rights of Indonesian migrant workers in Malaysia. The meeting was conducted in Kuala Lumpur on 13 June 2005.

In the meeting, SUHAHAM stated that it was willing to cooperate and study human rights problems faced by the Indonesian migrant workers submitted by Komnas HAM. Moreover, SUHAKAM was also willing to assist the Indonesian Embassy in Kuala Lumpur regarding the problems of Indonesian migrant workers in Malaysia provided that these problems could be handled within SUHAKAM capacity and mandate.

## **CHAPTER II**

### **HUMAN RIGHTS CONDITION IN INDONESIA IN 2005**

#### **A. INTRODUCTION**

The year 2005 could be considered as the new starting point for the development of human rights in Indonesia with the ratification of two main international human rights covenants, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Observing the human rights condition in 2005 and the possibility of its impact on human rights implementation in 2006, condition conducive for human rights had not yet been fulfilled.

Pending this report, acts of violence has frequently taken place. However, the Government does not have proper planning and strategy to deal with the people's practices of using acts of violence in stating their opinions. The efforts to uphold human rights in 2005 has faced new challenges given that in the previous years acts of violence were mostly conducted by state actors while in 2005 they were mostly conducted by radical groups in the community. Moreover, problems in the past related to human rights violations have not yet received proper attention from the State. The Human Rights Courts as a way to uphold justice did not actually fulfil this aspiration. Meanwhile, the Truth and Reconciliation Commission as an alternative mechanism, which deadline was on 6 April 2005, had not yet been established until the end of 2005.

Nevertheless, there were several positive developments in 2005 which support the effort to realize the respect, promotion, enforcement and fulfilment of human rights in Indonesia. The signing of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Freedom Aceh Movement had ended the 29 years conflicts and had opened a new era for the respect of human rights of all Acehnese people. Furthermore, the implementation of direct elections in several regional areas has started since 1 June 2005. These elections should be considered as the realization of the right to participate in the government. However, the elections themselves should be assured as the means to increase the welfare of the people in order to fulfil

the main purpose of democracy. The implementation of the direct election at the regional levels had brought new colour in the local political dynamics in Indonesia.

Acts of terrorism as serious human rights violations especially violations of the right to life and right to personal safety still occurred in 2005. Human rights violations by acts of violence, intimidation, and taking the law in one's hands has occurred frequently. Nonetheless, the Government were dealing with the problems in lenient manners, especially in executing the law to prosecute the perpetrators. Consequently, these forms of human rights violation, occasionally rooted in excess-view of particular political and religious ideologies, are still occurring.

Disturbance to the freedom of the people to worship according to their religion or belief also occurred in 2005. Freedom of religion is one of the basic rights guaranteed not only by the law but also by the Constitution. Meanwhile, Government did not seem to seriously prevent these disturbances by prosecuting the perpetrators and guaranteeing the fulfilment of this right.

The stagnant economic condition in 2005 had caused the unfulfilment of the people's rights, especially the right to work. This was shown by the high number of unemployment and large number of laying-off cases. Moreover, the rise of fuel prices had negative impact on the life of the people, especially those from low-class economy. This has meant that these groups of people could not enjoy their rights to proper living.

In 2005, the actual progress in the protection of the rights of Indonesian migrant workers regarding their honour, dignity and safety, especially women migrant workers, has yet to be seen. Violations of their rights often occurred during their travel to receiving countries or during their stay in the receiving countries (such as in the work place).

Forced eviction practices of the people who stayed in land areas belonged to other parties without proper compensation or settlement still marked the human rights condition in 2005. These practices of force evictions were human rights violations on the right to housing. Moreover, the fulfilment of the right to education in 2005 has not yet achieved, as indicated by the large number and percentage of children who could not go to school or drop-out from school.

This report of the human rights condition in 2005 will be divided into two parts. *First*, it will describe the condition of the economic, social and cultural rights. *Second*, it will describe the condition of the civil and political rights in Indonesia. The description on the Government efforts to fulfil of economic, social and social rights will focus on the capacity of the State to deal with the decrease of the quality of life of the population indicated by the guarantee of basic rights such as the right to food, work, housing, education and health. Furthermore, the analysis on Government efforts to realize and uphold civil and political rights will focus on the right to personal safety, freedom of religion and freedom to perform religious ritual, right to participate in the government, right to obtain public information and the completion of gross human rights violations cases.

## **B. THE CONDITION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

The fulfilment of the economic, social and cultural rights could not be separated from the availability of resources. In 2005, in the context of the fulfilment of economic, social and cultural rights, the budget allocation for several sectors affected directly on the people's welfare had not shown significant progress. State budget mostly allocated to pay foreign debts and interests. Budget allocation for health and education were not adequate, which decisively hinder the fulfilment of economic, social and cultural rights of the people. Moreover, the politic of liberalization and down-sizing of state subsidy of several sectors had caused diminishing quality of life and welfare. The increase of fuel prices had caused uncontrolled increase of basic needs prices. The alternative strategy selected by the Government in the form of distribution of cash to the poor people (Direct Cash Assistance or *Bantuan Tunai Langsung* or BLT) did not actually answer the problem.

A number of regulations such as the Act on Electrical Energy, the Act on Water Resources, and the Act on Oil and Natural Gas, as well as the revision of the Act of Employment Affairs had shown the reinforcement of market influence over Government policies. Moreover, Government did not have a debt audit in order to identify possible invalidated foreign debt and possible relegated or eliminated bilateral and multilateral foreign debt. Meanwhile, the budget allocation

to pay these foreign debts and its interests could be allocated for the benefit of marginalized groups such as farmers, workers, fishermen, women and children.

Cases of *busung lapar* (type of illness where bloating of abdomen occurred due to starvation) occurred in several regional areas in Indonesia had received public attention in 2005. These incidents have indicated the Government failure to fulfil the right to food and health for its citizens. Starvation cases in Yahukimo, Papua and several areas in Nusa Tenggara Timur (NTT) and Nusa Tenggara Barat (NTB) were considered as the worst experience of Indonesia. Constant media news on these cases had forced the Government to declare the *busung lapar* cases as an extraordinary event of lack of nutrient (*Kejadian Luar Biasa Gizi* or *KLB Gizi*) in 2005 despite the fact that *busung lapar* has occurred since the economic crisis in 1998. However, the Government seems to consider this problem as natural disasters, which is curative, emergency and short term in nature. This condition had shown that the central and regional governments do not have consistent and long-term policies to fulfil the right to food and health of its people.

As publicize in national mass media in 2005, around 1,159 babies in Tangerang (an area close to Jakarta, the capital city of Indonesia) have suffered bad nourishment cases which made them on the point of reaching the state of *busung lapar*. Furthermore, according to the monthly record of babies' weighing in the end of 2004 and during 2005, it was recorded that 17,926 babies suffered from lack of nutrition from 28,628 babies being weighed. Inadequate health facilities and services in villages or *kelurahan* (political district administered by *lurah*) have caused a large number of mother and babies deaths, such as occurred in NTT. The number of mortality in NTT was 72 per 1000 life birth. Meanwhile at the national level, the number of baby mortality was smaller, which was 52 per 1000 life birth. The number of pregnant mother mortality in NTT had reached 554 per 1000 birth, while at the national level the number of pregnant mother mortality was smaller, which was 223 per 1000 birth. This disturbing condition had shown that inadequate health services and lack of food, which could cause death, have mostly affected the vulnerable groups of the community such as children and pregnant women (including women who give birth).

According to a study of the International Labour Organization (ILO), 4.18 million school-aged children in Indonesia had drop-out from school and became child labour. The study showed that

19 percent of children under the age of 15 did not go to school and had chosen to be labourers. The survey conducted by ILO had covered 1,200 families in five provinces, which were East Java, West Java, North Sumatera, East Kalimantan and South Sulawesi. This had indicated the unfulfilment of the right to basic education for school-aged children, as well as violations to the prohibition of using children as workers.

Labour conflicts also increased in 2005, in addition to deterioration of labour condition in manufacture industrial sector. In several provinces in Indonesia, such as East Java, large number of workers had protested to demand that Minimum Regional Wage (*Upah Minimum Regional* or UMR) should be adjusted with the basic needs index. Workers have also become criminal targets because of their struggle of the right to association and the right to social security guaranteed by the Universal Declaration of Human Rights (UDHR), the Act No. 21 Year 2000 on Employment (Act 21/2000), and the ILO Convention No. 87 and No. 98. Many violations of workers rights, such as the right to receive proper wages, the right to association and the right to social security guaranteed by the national legislation and international human rights instruments, had shown the lack of proper attention to the workers' interest.

Abroad, employment problems increased with cases such as injustice treatments at work places related to wages, protection from acts of violence, right to vacation or holiday and right to practice one's religion or belief, as well as the right to association. These problems faced by Indonesian migrant workers abroad. Moreover, problems also occurred domestically, such as the inaccuracy of personal identity, lack of skills and problems related to immigration process. With regard to political rights, many Indonesian migrant workers abroad could not participate in the national election and regional election.

In 2005, several Indonesian migrant workers abroad have faced judicial process ended with capital punishment sentences. They had to face judiciary in other countries without adequate legal assistance. Most death penalty cases, such as experienced by Nurmiati in Saudi Arabia and also Juminem and Siti Aminah in Singapore, were not made known to the public.

In Malaysia, undocumented Indonesian migrant workers had become serious problems in 2005 with the enactment of *Akta Imigrasi* 1154A Year 2002 which had caused deportation of thousand undocumented migrant workers in Malaysia. This coercive approach was carried out with investigation, arrest and detention of those who did not have complete legal documents. According to the Republic of Indonesia Embassy in Kuala Lumpur, around 1.1 million migrant workers from Indonesia did not have legal document, whereas 385.000 had been deported to Indonesia during the amnesty period. According to the deportation report of the Malaysian Government, payment of these workers (around 1.8 trillion Ringgit or 4.5 trillion Rupiah) were not paid since three months before the commencement of deportation process. Around 800 thousand Indonesian migrant workers had experienced this.

Force eviction cases still occurred in 2005, such as Tanak Awu case (Lombok, NTB), Siliwangi Complex case (Jakarta), reclamation of Dadap coastal area (Tangerang), Jatigede reservoir case (Sumedang, West Java) which evicted approximately 37 thousand families, Koto Panjang case in West Sumatera, Yogyakarta National Park case and Musi Bridge case in Palembang, South Sumatera.

Moreover, systematic negligence to the obligation to fulfil human rights especially the right to housing and right to property had increased with the endorsement of Presidential Regulation No. 36 Year 2005 on Land Procurement for Public Interest Development on 3 May 2005. This regulation had stated 21 “public interest development” projects which provide authorization for the President to take the land belonged to the people for public interest development projects. This provision has become a trigger of force eviction practices in several places and the cause of land conflicts in cities, villages and remote areas.

Violations of the right to good and healthy environment have intensified with the increasing number of environmental degradation cases in 2005. The efforts to abolish illegal lodging were not consistent. Moreover, illegal lodging in protected forests and national parks in several regional areas have occurred without intervention from law enforcement officers. Hectares of people’s and farmer’s land were converted into industrial and real estate complexes. Natural resources such as land and forest were not sustainably maintained. Environmental crisis also

occurred with the lack of clean water resources. Clean water has become expensive object with the privatization of natural water resources with the enactment of the Act No. 7 Year 2004 on Management of Water Resources (Act No. 7/2004). This legislation had endowed unlimited authority to private sectors to manage natural water resources which could obstruct the people's access to water.

Approximately 1.2 million people have to be internally displaced persons as the result of conflicts and natural disasters in 2005. They were widely spread in 20 provinces. Management of IDPs related to normalization, relocation and empowerment had not yet progressed adequately. IDPs still faced many problems such as lack of housing, health and education facilities, as well as their right to work. Children were not able to go to school. They also have become the first to suffer malnutrition and death. Problems faced by IDPs could not be solved with external aid, which was not distributed equally. This had indicated that a human rights approach should be applied in dealing with IDPs problems in the longer term, rather than just providing humanitarian aid.

### **C. CONDITION OF CIVIL AND POLITICAL RIGHTS**

In 2005, acts of violence, terror and taking justice into one's hand as violation of the right to personal safety had occurred in cities and villages. These acts of violence were conducted by state apparatus as well as groups of the community. Practices of violence by state apparatus had indicated that they have not yet conscious on the obligation to uphold human rights in performing their duties. Meanwhile, several groups of people on behalf of particular ideology or belief had seized the civil rights and freedom such as the right to express opinion, right to religion, and right to worship according to one's religion or belief.

Condition in 2005 related to the right to personal safety and freedom to choose religion and to worship according one's religion or belief as well as the right to information, were still not conducive. The attack of Ahmadiyah adherents in Lombok without prevention and prosecution actions to the perpetrators by the law enforcement officers was an example of the unwillingness and inability of the State to guarantee the rights of its citizen to freedom of religion and to worship according to one's religion or belief. Similar acts of violence also occurred to

Ahmadiyah adherents in Al Mubarak Campus, Parung (Bogor, West Java) on 9 July 2005 which caused many injured victims and destruction of campus facilities and vehicles.

The prohibition of the people with minority religion to practice their religion also occurred extensively, such as closing of religious holy places. This prohibition was based on the Joint Ministerial Decree between the Ministry of Religious Affairs and the Ministry of State Affairs, No. 01/BER/MDN-MAG/1969. This was a violation of the freedom to choose religion or belief and to worship according to one's religion or belief guaranteed by the Constitution and the law.

In 2005, the policy of the Department of Religious Affairs only acknowledged five religions considered as official religions in Indonesia by the "New Order" regime. Therefore, Indonesian citizens who have different religion or belief such as Khonghucu, Sikh, Bahai, local religions and the belief in One High God (*Kepercayaan terhadap Ketuhanan Yang Maha Esa*) do not received equal treatment with regard to their civil rights. For example, they were compelled to choose one of the "official religions" to be printed in official documents such as marriage licence and identity card. Moreover, children were obliged to choose one of the "official religions" as their religion class in school or education institution. These practices still occurred until the end of 2005.

Aside from threats of freedom of religion and right to worship according to one's religion or belief, the people also have to endure bomb terrors, such as the incidents in Pasar Tentena, Central Sulawesi on 28 May 2005, which caused 21 casualties and 72 injured victims. The Pasar Tentena tragedy was a reminder of previous incidents, such as Bali bombing in October 2002 which caused more than 200 casualties, JW Marriott hotel bombing in Jakarta in August 2003 which caused 13 casualties and bombing incidents in front of the Australian Embassy in Jakarta in September 2004 which caused 9 casualties. These incidents had shown concurrent acts of terrorism from 2002 to 2005 which should be considered as serious threats to the right to life and right to personal safety. Indifference to any motive behind the bombing incidents, the Government responsible to guarantee the right to personal safety of its people should investigate the incidents, take preventive measures and prosecute the perpetrators. These measures are important since the bombing incidents occurred in public places where most victims were the common people. However, the absence of comprehensive strategies and actual preventive actions

in dealing with the problems has signified the weakness of security personnel and the uncertainty of security and safety of the people.

In 2005, there were no significant changes in the enforcement of rule of law and human rights in Indonesia. The Government, the House of Representatives as well as law enforcement agencies have yet provide the guarantee to protect the rights of the people in Indonesia. Cases of gross human rights violations in East Timor after the 1999 referendum that had been investigated and tried by a human rights court had released almost all defendants, except for one defendant. Meanwhile, other cases, which inquiry processes completed by Komnas HAM in the previous years and submitted to the Attorney General, have not yet investigated until the end of 2005. These cases were Trisakti incidents (1998), Semanggi I incidents (1998) and Semanggi II incidents (1999) completed inquiry in 2002, May Riot incidents (1998) completed inquiry in 2003, and also Wasior incidents (2001-2002) and Wamena incidents (2003) completed inquiry in 2004. The Government did not shown genuine willingness to uphold human rights, especially in prosecuting perpetrators of gross human rights violations. Moreover, the judicial process of resolving gross human rights violations were deterred by the weakness and deficiency of the Act No. 26/2000.

The protection of victims and witnesses, especially related to gross human rights violations, illegal drugs crimes, corruption crimes and terrorism crimes, is imperative. However, the discussion of the draft of the legislation on Witness and Victim Protections have not yet completed by the House of Representatives until the end of 2005.

The signing of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Aceh Freedom Movement which ended the 29 years conflicts in Aceh was a positive development. However, several potential problems should be monitored such as the draft of the act on special regional government in Aceh and the implementation of the act regarding the establishment of human rights courts and the Truth and Reconciliation Commission in Aceh as stipulated in the Memorandum of Understanding.

The freedom of opinion as one of the human rights of each individual had been mended since the fall of the New Order. However, until the end of 2005, the draft of the act on the freedom in obtaining public information proposed since 2003 have not yet been concluded. Moreover, the Government seemed to be focusing more on the draft of act on state secrets.

Since 1 June 2005, Indonesia had entered new era in democratization process with the implementation of regional direct election in several regions. In the election, the people could directly choose the heads of regional governments and members of the Regional House of Representatives. This could be regarded as the realization of the right to participate in the government. However, acts of violence, money politics and acts of treachery still occurred in the implementation of the elections in several regions.

The homework of this Nation to create democratic life characterized by the supremacy of law and respect of human rights is not a simple matter. The State apparatus or the Government must seriously take the actions to protect, promote, uphold and fulfil human rights in order to achieve those goals, as entrusted by the Constitution and the law. Human rights and legal issues incorporated into the Government blue print in the form of National Development Programmes (*Program Pembangunan Nasional* or *Propenas*) managed by the National Planning and Development Board (*Badan Perencanaan Pembangunan Nasional* or *Bappenas*) should be elaborated as indicators for successful human rights based development.

**CHAPTER III**  
**THE IMPLEMENTATION OF KOMNAS HAM FUNCTIONS**  
**BASED ON THE ACT NO. 39/1999 ON HUMAN RIGHTS**

**A. INTRODUCTION**

To achieve its goals as stated in the Act No. 39/1999, Komnas HAM carries out the functions of study and research, education, monitoring and mediation. In implementing those functions, Komnas HAM had established three Sub-Commissions, which are the Sub-Commission of Economic, Social and Cultural Rights, the Sub-Commission of Civil and Political Rights, and the Sub-Commission of Special Group Protection, and also a Documentation and Information Centre.

This chapter will describe the implementation of Komnas HAM functions in protecting, upholding, and enforcing human rights in Indonesia. This chapter will also describe Komnas HAM's efforts in dealing with some human rights cases in 2005.

**B. IMPLEMENTATION OF STUDY AND RESEARCH FUNCTION**

The function of study and research was conducted through several activities regarding the reformation of legislation in order to respect human rights and to prevent the possibilities of human rights violations. Moreover, some researches were also to map problems relating to human rights violations of vulnerable groups. Several activities in study and research in 2005 are as follows:

**1. The Study on the Draft of a Witnesses and Victims Protection Act**

Komnas HAM embraced the draft of the act on witness and victim protection proposed by the House of Representatives. The protection of victims and witnesses is a fulfilment of the protection of human rights, especially the right to the personal safety, right to the safety of family, the right to honour and dignity, and the protection from threat.

Komnas HAM assessments of the draft of the act on witness and victim protection are as follows:

- i) The need for the victims and witnesses protection was only based on practical reasons, which were to enable victims and/or witnesses to give statement and/or testimony. However, in Komnas HAM opinion, the protection of victims and witnesses is an implementation of human rights and fundamental freedoms guaranteed by the law, especially the Act No. 39/1999 (article 29 para 1 and article 30);
- ii) The draft does not provide clear explanation on the concept of witnesses and victims protection as part of fair trial process and due process of law;
- iii) Albeit the General Provisions which provides protection to witnesses and victims throughout judicial process (from investigation to court), several articles and/or their elucidation merely emphasize the protection of witnesses and/or victims during the court process;
- iv) Implicitly, the purpose of the draft is merely to provide protection to *à charge* witnesses rather than to *à décharge* witnesses who could also become target of threats;
- v) The draft lacks of provisions to protect witnesses after the completion of the court process.

## **2. The Study on the Draft of the Citizenship Act**

As the conclusion of the study and research of the draft of the citizenship act, Komnas HAM considered that: a) the draft should apply the *ius soli* principle; and b) it should use single citizenship system, although, if necessary, it could also use double citizenship system. Komnas HAM inputs and considerations regarding the draft had been submitted to the Government.

## **3. The Study on the Draft of Population Administration Act**

Komnas HAM had conducted a study on the draft of civil registration act and considers that:

- a) There are two different substantive contents, population administration as part of public law and civil registration as part of civil law. Therefore, a separate act should be made for civil registration;
- b) The provisions on civil registration is very important to eliminate discrimination practices since Indonesia still applies discriminative colonial law products;
- c) The draft of civil registration act should be completed immediately in order to fulfil and protect children rights, such as the right to legal status and other relevant rights;
- d) “Civil Registration Consortium”, where Komnas HAM acts as coordinator, has prepared a draft on civil registration act as part of the Indonesian Civil Law.

#### **4. The Study on the Draft of the Indonesian Penal Code**

To respond to all problems related to the draft of the Indonesian Penal Code especially with regard to human rights perspective, Komnas HAM has established a research team on the Reformation of the Indonesian Penal Code from Human Rights Perspective. Komnas HAM has established cooperation with human rights centres at Surabaya University, Diponegoro University, and Padjajaran University, as well as the Institute for Policy Research and Advocacy (ELSAM).

The purpose of the study is to explore the problems with regard to the draft of the Indonesian Penal Code from the perspective of the protection of individual rights, public interest and state interest. Komnas HAM had conducted several discussion and seminars in several regional areas, such as:

- (i) Seminar on “The Political Direction of Criminal Law” on 24 November 2005 in Jakarta;
- (ii) Focus Group Discussion (FGD) on “Corporate Crimes” on 6 December 2005 at Bandung;
- (iii) Seminar on “Reviewing Criminal Acts on the Draft of the Indonesian Penal Code” on 7 December 2005 at Bandung;

- (iv) FGD on “Criminalization on Ideology, Philosophy and Contempt to the President or Government Policies and the State in the Draft of the Indonesian Penal Code” on 12 December 2005 at Surabaya;
- (v) Seminar on “Criminalization on the Contempt to Religion and Religious Traditions on the Draft of the Indonesian Penal Code” on 13 December 2005 at Surabaya;
- (vi) FGD on “Criminalization of Confidentiality and Personal Freedom” on 19 December 2005 in Semarang;
- (vii) Seminar on “Criminalization of Civil Liberties and Pornography” on 20 December 2005 in Semarang.

Considering the great scope covered in the draft of the Indonesian Penal Code, Komnas HAM therefore expanded its cooperation with Udaya University (Denpasar), Hasanuddin University (Makassar) and Indonesian Moslem University (Yogyakarta) to support Komnas HAM work in collecting inputs of substantive contents in the draft of the Indonesian Penal Code.

The research activities continued in 2006. The results of the seminars and focus group discussions will be documented into a policy paper which stated Komnas HAM position regarding the revision of the Indonesian Penal Code. Komnas HAM will use the policy paper as a recommendation material for the amendment of the Indonesian Penal Code which governs proportional provisions on the protection for human rights, public interest and state interest.

## **5. The Study on the Amendment of the Act No. 26/2000**

Since the enactment of the Act No. 26/2000 on 23 November 2000 until the end of 2005, Komnas HAM had completed nine inquiries of incidents assumed as gross violations of human rights. These incidents were the Tanjung Priok incident in 1984, May Riot incident in 1999, the Trisakti incident in 1998, the Semanggi incidents in 1998 (Semanggi I incident), the Semanggi incident in 1999 (Semanggi II incident), East Timor incident in 1999, Abepura incident in 2000, Wasior incident in 2001-2002 and Wamena incident in 2003. The inquiries of these incidents had been

completed by Komnas HAM through the establishment of *ad hoc* teams as stated in article 18 para 2 of the Act No. 26/2000.

In conducting the inquiries of gross human rights violations, Komnas HAM had faced several problems, as follows:

- (i) The impediments faced by inquirers such as refusal of witnesses or persons who could provide testimonies to answer Komnas HAM summons, since Komnas HAM does not have the authority to exercise its *sub-poenae* power under the Act No. 26/2000;
- (ii) The Attorney General did not conduct any follow-up to Komnas HAM inquiry findings;
- (iii) Lack of provisions on the establishment of an *ad hoc* tribunal, especially the provision that obligates the proper institution to ask the House of Representatives to proposed the establishment on an *ad hoc* tribunal;
- (iv) Several weaknesses, partiality and uncertainty of definition of several provisions, careless text formulation and disorderliness in using Bahasa Indonesia to substitute English terms from relevant international instrument, the Rome Statute.

These problems had caused the uncertainty of law and consequently many gross human rights violations remain unsolved. For that reason, Komnas HAM had conducted a study to amend the Act No. 26/2000. During the hearing with the Commission III of the House of Representatives on June 2005, the Commission III had agreed to support Komnas HAM effort in amending the Act No. 26/2000 in order to enhance Komnas HAM function and mandate to reveal cases of gross violations of human rights and to effectively implement the provisions in the Act.

As a follow up to the agreement, Komnas HAM had submit an academic paper on the amendment of the Act No. 26/2000 to the National Legislation Body of the House of Representatives and a copy to the Commission III of the House of Representatives with a letter No. 167/TUA/VI/2005 dated 3 June 2005. In addition, to facilitate public participation, Komnas HAM had carried out several focus group discussions on the amendment of the Act No. 26/2000 attended by Komnas HAM stakeholders in several regional areas, such as in Jakarta on 15-16 August 2005, Semarang on 3-4 October 2005, and in Makassar on 10-11 October 2005. Similar activities will be conducted in Medan in 2006. Subsequently, inputs and considerations acquired from the

discussion will be made into a report which will be use to formulate the draft of the amendment of the Act No. 26/2000.

## **6. The Study on the Rights of Indigenous Peoples**

With regard to the rights of indigenous peoples, Komnas HAM had conducted a research on indigenous peoples and their structural relationships with ethnicity, the nation and the state. The research started with a workshop in January 2005. The workshop had produced several recommendations, such as, the need for a change from state-centred into people-centred paradigm and the need for the acknowledgement of an *adat* tribunal as a way to solve conflicts between indigenous peoples.

Moreover, Komnas HAM also conducted several studies of the rights of indigenous peoples in several border areas, such as West Kalimantan and NTT. The study will be continued in Papua, Maluku and North Sulawesi in 2006. The purpose of the studies is to produce problems mapping, to strengthened networking and to enhance the effort to establish an indigenous institution to promote the dignity of indigenous peoples.

## **7. The Study on Conflicts in Poso**

Komnas HAM had conducted a research on the continuous conflicts in Poso and had submitted the result of the research to the President with a letter No. 148/TUA/VI/2005 dated 1 June 2005. The research had highlighted several points, as follows:

- i) The security personnel (police officers) had not yet optimally performed their duties, which shown from the fact that only one case had been revealed from 15 cases occurred since October 2003 to April 2004, pending this report;
- ii) The lack of coordination and transparency in humanitarian programmes for victims and IDPs as the result of the conflicts in Poso;

- iii) Each problem within the community, either social, economy of politic, could trigger new conflicts. However, prevention measures could reduce severe effects of the conflicts;
- iv) The idea to establish a new province in East Sulawesi since the beginning of 2002, which area covers some parts of Central Sulawesi as the existing province, had become potential source of conflicts;
- v) The post-conflict social and economic condition of the people in Poso should immediately be managed. Even though the life-cycle in the community had return to normal, that condition only occurred in urban areas, whilst in rural areas the condition had not yet returned to normal. IDPs conditions who were unwilling to return home because of their trauma should also immediately managed.

#### **8. The Study on “Women’s Rights in Three Kinship System (Matrilineal, Patrilineal and Paternal) to Improve Women Quality Towards the Millennium Development Goals 2015”**

The research on women’s rights was conducted to three kinship systems in three ethnicities in Indonesia, which were Batak ethnicity for patrilineal kinship system, Minangkabau ethnicity for matrilineal kinship system and Javanese ethnicity for paternal kinship system. The research had produced general and specific recommendations. Specific recommendations for two ethnicities are as follows:

- a) Batak Toba ethnicity (especially in Pematang Siantar and Toba Samosir)
  - i) To establish counselling agencies in North Sumatera area to handle cases related to women’s rights;
  - ii) To establish campaign on the awareness of the importance of the fulfilment of women’s rights in strategic places such as the church, mall/plaza and schools;
  - iii) To carry out many health programmes actively, especially in rural areas.
- b) Minangkabau ethnicity
  - i) Socialization of women’s rights in each *nagari* with the consideration of local wisdom;
  - ii) To empower *Bunda Kanduang* in every aspect of life as government institution and not merely as formality.

## **9. The Study on Two Ministries Agreement No. 01/BER/MDN-MAG/1969**

Komnas HAM had received many complaints on difficulties to build places for religious worship because of the Joint Ministerial Decree between the Ministry of Religious Affairs and the Ministry of State Affairs No. 01/BER/MDN-MAG/1969 on the Implementation of State Apparatus Obligations to Guarantee the Orderly and Efficiency of the Implementation of Religious Progress and Ritual by Its Adherent. With regard to this matter, Komnas HAM had conducted a study of the Joint Ministerial Decree from human rights perspective.

Komnas HAM study had concluded that from human rights perspective, the agreement had caused human rights violations, especially the right to religion and to worship according to one's religion or belief. Moreover, Komnas HAM considered that the construction of religious holy places was integrated in the freedom to practice one's religion guaranteed by the law. The Government plan to improve the Joint Ministerial Decree to become a Joint Regulation of the Ministry of Religious Affairs and the Ministry of State Affairs should only be temporarily to avoid the lack of law. Furthermore, the joint regulation should facilitate the implementation of the right to worship according to the five religions acknowledge by the Department of Religious Affairs as well as other religions and beliefs. The result of the study had been submitted to the President.

### **C. IMPLEMENTATION OF EDUCATION FUNCTION**

The education function of Komnas HAM is an important function in promoting and socializing human rights values in Indonesia. Several activities in the implementation of the education function in 2005 are described as activities in disseminating the perception of human rights and activities to increase public awareness on human rights.

#### **1. Activities in Disseminating the Perception of Human Rights**

The activities in disseminating the perception of human rights in 2005 are publication, development of library, campaign, receiving visits from students and the development of Komnas HAM website.

#### **a. Publication**

In 2005, Komnas HAM had published regular and incidental publications. Regular publications consisted of SUAR, Jurnal HAM (Human Rights Journal), Wacana HAM, and Jejaring. Several incidental publications are as follows:

1. “Lembar Fakta Perserikatan Bangsa-Bangsa Edisi II” translated from the *UN Fact Sheet* No. 1 – 29.
2. “Perlindungan dan Pemenuhan Hak atas Pendidikan” (Protection and Fulfilment of the Right to Education).
3. “Pendidikan untuk Semua” (Education for All).
4. “Pelanggaran Hak Ekosob oleh Media Massa” (ESC Rights Violations by Mass Media).
5. “Hak atas Pekerjaan: Masalah Pengangguran dan Solusinya Ditinjau dari Perspektif Hak Asasi Manusia” (Right to Work: Unemployment and Its Solutions from Human Rights Perspectives).
6. “Masyarakat Hukum Adat: Hubungan Struktural dengan Suku Bangsa, Bangsa, dan Negara” (*Adat Law Community: Structural Relationship with Ethnic Group, the Nation and the State*).
7. “Inventarisasi dan Perlindungan Hak Masyarakat Hukum Adat” (*Inventory and Protection of Adat Law Community*).
8. “Panduan Buruh Migran di Malaysia” (Guidelines for Migrant Workers in Malaysia).
9. “Panduan Buruh Migran di Arab Saudi” (Guidelines for Migrant Workers in Saudi Arabia).
10. “Panduan Buruh Migran di Taiwan” (Guidelines for Migrant Workers in Taiwan).
11. “Direktori Penelitian Agama, Konflik, dan Perdamaian” (Research Directory on Religion, Conflict and Peace).
12. “Pernikahan Beda Agama” (Inter-Religion Marriage).
13. “Catatan Sipil Nasional: Pokok-Pokok Pikiran dan Paradigma Baru” (National Civil Registration: Principles and New Paradigm).

Komnas HAM had also published a comic book *Petualangan di Dunia 1012* (Adventure in 1012 World) for school children in 2005. The comic is taking the right to personal safety as a theme. Furthermore, Komnas HAM had published a documentary movie on Komnas HAM with  $\pm$  25 minutes duration.

The publication of three editions of SUAR in 2005 had reached its sixth years. SUAR is a media with magazine format that covers contemporary human rights issues. This publication was distributed for free to all Komnas HAM stakeholders all around Indonesia. In 2005, 2000 copies were printed for each edition.

Komnas HAM had also started to publish a bi-weekly publication entitled “Wacana HAM”. This publication was published initially in 2001 as “Fakta HAM” (Human Rights Fact). In 2005, there were 21 editions of Wacana HAM. The themes of this publication varied and related to day-to-day lives, such as rape, domestic violence, force eviction, children rights, commercial sexual workers and migrant workers. The target audience of this publication was common public. The publication was distributed for free to schools and public places such as bus terminal, traditional markets and hospitals in Jakarta and surrounding areas. Number of copies of this publication for each edition was 5000 copies.

Jurnal HAM which was published since 2003 is a publication media in academic and scientific format and distributed freely to Komnas HAM stakeholders, especially decision makers. This publication provides analytical reference on human rights to the public. In 2005, Komnas HAM had published 1000 copies of one edition of Jurnal HAM titled “*Pembangunan Berbasis HAM*” (Human Rights Based Development).

In 2005, Komnas HAM also published Jejaring Newsletter, published by the Civil and Political Sub-Commission, as a media to distribute information for human rights defenders networking. The contents of this publication were network activities and human rights cases handled by members of the network.

#### **b. Komnas HAM Library**

Komnas HAM activities related to the library is an effort to provide support of human rights information for the public. The development of Komnas HAM library consisted of: a) collecting, processing and distributing information on human rights for the public in Indonesia and internationally; b) establishing database on human rights literature published in Bahasa Indonesia or English language (index, abstract and analysis); and c) developing human rights information network through active participation in information exchange with related institutions.

In 2005, the priority of the library's collection was for economic, social and cultural rights. In 2005, the number of Komnas HAM library's collections was 4074 books and 508 serial publication and articles. Komnas HAM library's collection also consists of magazine and working papers on human rights issues written by the commissioners of Komnas HAM. Moreover, Komnas HAM library also has some audio-visual collection. The procurement of Komnas HAM library's collection was conducted through purchases, contributions and exchanges with other libraries. Komnas HAM library also cooperate with the Canadian International Development Agency (CIDA), Raoul Wallenberg Institute (RWI), and Norwegian Centre of Human Rights in improving its collections.

Public services provided by Komnas HAM consisted of, among others, library catalogue, reference/information service, information tracing service, limited loaning service, reading service, copy service as well as other services, such as articles writing on human rights issues for information repackaging. In 2005, Komnas HAM library also improved its public services by proving an on-line catalogue in Komnas HAM website ([www.komnasham.go.id](http://www.komnasham.go.id) or [www.portal.komnasham.go.id](http://www.portal.komnasham.go.id)). The purpose was to provide better access of information through internet services.

Users of Komnas HAM library were mostly members and staff of Komnas HAM, students, non-governmental organizations, researchers, journalists and other professions from Indonesia and also abroad. The type of information needed by library users were largely information on national legislations, international human rights instruments, backgrounds of human rights issues

including data on human rights violations, newspaper's clipping and other references on human rights.

### **c. Field Study's Visits**

During 2005, Komnas HAM had received many field study's visits from educational institutions such as Menteng 01 Pagi Elementary School, Gonzaga High School, Jakarta, and Law Faculty, Bandar Lampung University, Lampung. The topics of the discussions during the visits were mostly on role, mandate and function of Komnas HAM in implementing, protecting and enforcing human rights in Indonesia, as well as on human rights problems in Indonesia.

### **d. Improvement of Komnas HAM Website**

Komnas HAM has developed its website since 2000 to provide human rights information to the public through internet facilities. Komnas HAM website can be accessed through [www.komnasham.go.id](http://www.komnasham.go.id) or [www.portal.komnasham.go.id](http://www.portal.komnasham.go.id). The improvement of the website used interactive and integrated information technology. Subsequently, the website should provide a link between Komnas HAM and the community at national and international levels. Komnas HAM website provides information on the organization and activities of Komnas HAM, including its Representatives and Regional Offices, regular and incidental publications, national and international human rights instruments, on-line catalogue, up-to-date human rights news and on-line complaint handling system. The improvement of Komnas HAM website was conducted through cooperation with CIDA.

### **f. Human Rights Campaign to Celebrate International Human Rights Day**

As an institution with the mandate to promote human rights in Indonesia, Komnas HAM had carried out series of activities in celebrating the International Human Rights Day on 10 December 2005. The aim of the campaign activities was to create creative and popular events to promote a "love for human rights" attitude among the younger generations in Indonesia. The activities were conducted since July 2005, consisted of popular writing competition, photo exhibitions,

discussion series, comic launching, moot court competition, people's market, art exhibitions and reflection night.

**i) Popular Writing Competitions on Human Rights Issues**

The purpose of this activity is to enhance better awareness and knowledge on human rights for junior and senior high school students. The activity also aimed to disseminate information on human rights to the community at large, to increase human rights awareness of the people and to increase public participation and involvement in the respect, protection, promotion and fulfilment of human rights. The themes for the competitions were “A World without Violence” for senior high school students and “Human Rights around Us” for junior high school students.

**ii) Photo Exhibition**

The aim of the photo exhibition was to provide visualization of pictures with human rights theme and social-humanity problems at every day life captured by camera. The photos displayed in this exhibition were the collections of Gatra Magazine.

**iii) Thematic Discussion and Film Showing for Junior and Senior High School Students**

Komnas HAM had conducted series of discussion on 7 – 8 December 2005 as part of the “A World without Violence” campaign program. The participants of the discussions were junior and high school students. The purpose of the discussion series were: a) to disseminate human rights values to the community at large; b) to encourage public participation in promoting human rights; c) to increase human rights awareness and knowledge of the people; d) to encourage the young generations in creating a peaceful and non-violence world; and e) to increase and broaden the efforts to protect, promote, enforce and fulfil human rights in Indonesia.

The discussions and film showing for senior high school students from Jakarta and surrounding areas was conducted on 7 December 2005 with the theme “Sexual Violence Occurred in the Community Life”. Meanwhile, the discussion and film showing for junior

high school students from Jakarta and surrounding areas was conducted on 8 December 2005 with the theme “Discrimination of Disabled Students at School”.

**iv) Comic Launching**

On 9 December 2005, Komnas HAM had conducted the “Adventure in 1012 World” comic launching which theme was the right to personal safety. The participants of the event were elementary school students from Jakarta and surrounding areas. The aim of the comic launching was to provide human rights education for elementary school students. The message of the comic was the importance of respecting differences and avoiding violence in social conduct.

**v) Moot Court Competition**

This activity was conducted in cooperation with Faculty of Law, Padjajaran University, Bandung. The target of the competition was college law students in Indonesia. The aim of the competition was to introduce the judicial process of gross human rights violations in Indonesia, especially the trial process. The participants of the competition were students from eleven universities, such as University of Indonesia, Jakarta, Trisakti University, Jakarta, Syiah Kuala University, Aceh, Diponegoro University, Semarang and Sebelas Maret University, Solo.

The competition started from October 2005 with evaluation and assessment on participants’ understanding of gross human rights violations concepts, especially crimes against humanity. The activity continued with the moot court competition on 5 – 10 December 2005 at Padjajaran University, Bandung.

**vi) People’s Market Day**

The campaign activities to celebrate the International Human Rights Day were concluded on 10 December 2005 with the people’s market day. The participants of the activity were human rights non-governmental organizations, street vendors and also food and home industry vendors. The aim of this activity was to encourage public participation and involvement in the effort to respect, protect, promote and fulfil human rights in Indonesia.

### **vii) Musical and Art Performances**

The event was conducted on 10 December 2005 with music, theatrical, poem reading, orations and art performances. The purpose of this activity was to create creative and popular events to promote a “love for human rights” attitude among the younger generations in Indonesia.

### **viii) Reflection and Reception Night**

The purpose of this activity was to reflect the human rights condition in Indonesia in 2005. The event was the final event to end series of activities conducted in celebrating International Human Rights Day of 10 December 2005. In the event, winners of several competitions were announced and several new publications of Komnas HAM were launched.

## **2. Activities to Increase Public Awareness on Human Rights**

Komnas HAM also carried out several activities to increase public awareness on human rights, such as trainings, discussions, seminars, workshops, networks’ development, as well as lectures and courses.

### **a. Human Rights Education for School Children**

The importance of human rights education for every person at early age, at least at school age, has been a concern of Komnas HAM for a long time. Komnas HAM has stated its opinion regarding this matter in every opportunity at national, regional and international levels. Komnas HAM considered that the best way to conduct this is by distributing of human rights messages through means which are easy to understand by children. With regard to this matter, Komnas HAM had published a comic book titled “Adventure in 1012 World” on December 2005.

The human rights education for school children was conducted through launching activity of the comic book in Pontinak in December 2005. During the event, some children performed the story of the comic. The launching was attended by elementary school children, representatives from

Regional Office of Education Affairs, non-government organizations, representatives from Regional House of Representatives and representatives of Regional Government. This type of activity will continue in several cities in Indonesia in 2006.

#### **b. Dissemination of Disabled Rights**

Dissemination of disabled rights is very important because people with disabilities in Indonesia still experience discrimination. The dissemination was carried out through a training of trainers programme, attended by Komnas HAM stakeholders from several regions. The participants of the training were those with different type of disabilities. The result of the training was a training module which would be applied by the participants in socializing human rights in each region. Moreover, the training also recommended several trainings for disabled trainers in three regions in Western Indonesia, Central Indonesia and Eastern Indonesia. The results of training of trainers in each region will be used to improve the human rights module.

#### **c. Dissemination of Women Rights**

Dissemination of women rights in 2005 was conducted through gender mainstreaming in the Human Development Index Workshop in West Sumatera in March 2005, East Java in July 2005 and West Kalimantan in November 2005. The aim of these activities was to encourage the development index and empowerment index based on gender.

#### **d. Socialization of IDPs Rights**

In order to enhance the understanding of human rights approach in dealing with IDPs problems, Komnas HAM had initiated training programmes on IDPs rights, especially to socialize the Guiding Principles on International Displacement (1998). The participants of the training were government officials, security officers and non-governmental organizations. The trainings were conducted in Purwakarta, East Java, Ambon, Maluku and Pontianak, West Kalimantan.

#### **e. Socialization of the Implementation of the Convention against Torture**

Indonesia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) with the Act No. 5/1998. Subsequent to the matter, in 2005, Komnas HAM had conducted several activities to socialize the Indonesian Government obligation to implement the Convention in Jayapura, Papua, Ambon, Maluku and Pontianak, West Kalimantan. The activities were conducted through discussions with law enforcement officers and the community.

#### **f. Mediation Basic Training on Right to Environment**

The training was carried out on 21 – 26 August 2005 which was attended by community leaders of victims of violations to the right to good and healthy environment in Java and Sumatera. The goals of the training were: a) to socialize the right to good and healthy environment as human rights problems; b) to increase the awareness on the importance of using human rights perspective in dealing with environmental problems; and c) to provide knowledge and skill on mediation and negotiation to solve environmental conflicts.

#### **g. Training on the Prevention of Torture**

The aim of the training was to enhance the capacity of national human rights institutions in Asia Pacific in the prevention of conflict and torture. The goals of the training were: (1) to introduce the participants with many aspects of the effort to prevent torture (ratification of international instruments, law and policy reform, training for security officers, public education, monitoring of detention and imprisonment places, and establishment of investigative report on torture); (2) to strengthened the capacity of national human rights institutions as part of the effort to uphold the human rights protection system; (d) to enhance the capacity of national human rights institutions in dealing and solving problems of torture and conflict; (4) to increase cooperation between national human rights institutions in Asia Pacific; and (5) to implement a monitoring mechanism at national level in the prevention of torture.

The training programme was conducted as distance-learning training since August 2005, continued with a training workshop in Jakarta on 14 – 17 November 2005. The participants of the training were representatives from national human rights institutions in Asia Pacific, which were Afghanistan, Australia, Fiji, Filipina, India, Indonesia, Iran, Maldives, Malaysia, Mongolia, Nepal, Korean Republic, Palestine, New Zealand, Srilanka, and Thailand.

The training discussed the procedure to visit detention or imprisonment places, investigation technique and other topics related to the prevention of torture. The module of the training was developed by Fahamu and APT. In the training workshop in Jakarta, the participants visited several correctional facilities in Jakarta and surrounding areas, which were Open Prison in Cinere, Jakarta, Cipinang Correctional Institution (prison for drug cases), Jakarta, Pondok Bambu Correctional Institution, Jakarta and Tangerang Boys Correctional Institution, Banten.

#### **D. IMPLEMENTATION OF MONITORING FUNCTION**

According to statistical data of complaints in 2005, the number of complaints received by Komnas HAM was 3.291 complaints, consisted of 1.430 new cases, and 1.861 continued and referenced cases. According to the type of rights, 490 were complaints on violations of economic, social and cultural rights, 727 were complaints on violations of civil and political rights and 213 were complaints related to violations of the rights of vulnerable groups.

In response to those complaints, in 2005, Komnas HAM had produced 402 recommendations, consisted of 139 recommendations related to violations of economic, social and cultural rights, 187 recommendations related to violations of civil and political rights and 76 recommendations related to violations of the rights of vulnerable groups.

Several cases handled by Komnas HAM in 2005 in implementing its monitoring function are described as follows.

## **1. Inquiry on Talangsari Incidents**

Inquiry on Talangsari incidents had started in May 2005 in accordance with monitoring function based on the Act No. 39/1999. Several activities conducted were: a) site visit to the location of the incidents; b) interview of victims and witnesses (52 persons); and c) visit to related institutions to gather information and data (Military Command 043/Garuda Hitam; Lampung Public Prosecutor; Rajabasa Correctional Institution; Regional Office of Social Welfare in Lampung; Metro Military District, Lampung; Danramil Way Jepara; and Way Jepara Police Sector). Komnas HAM had requested the investigation official report from Military Command 043/Garuda Hitam. However, until the end of 2005, the Military Command 043/Garuda Hitam has not yet fulfil Komnas HAM request. Moreover, until the end of 2005, the same request to Bandar Lampung State Prosecutor (through the head of local district court) has not yet been fulfilled. The inquiry was continued using the facts, information and data collected. The inquiry continues in 2006.

## **2. Investigation of Ahmadiyah Incidents**

In 2005, Ahmadiyah adherents had experienced several acts of violence with the attack to Mubarak campus, Parung, West Java on 9 and 15 July 2005, the attack of Ahmadiyah adherents in Cianjur, West Java on 19 September 2005, and the attack of Ahmadiyah adherents in Ketapang, Lombok in October 2005. As the consequences of the State obligations according to article 71 of the Act No. 39/1999, all religions of the Indonesian people should be protected and treated equally by the State, including the adherents of Ahmadiyah.

In response to those attacks, Komnas HAM considered that the Government should actively provide:

- i. protection guarantee to the victims;
- ii. firm actions to anarchy behaviours;
- iii. guarantee of protection for all Indonesian citizen wherever they stay.

### **3. Monitoring in Aceh Post Signing of Memorandum of Understanding between the Government of the Republic of Indonesia and the Aceh Freedom Movement**

With regard to the signing of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Aceh Freedom Movement, Komnas HAM had continued to conduct monitoring of human rights condition in Aceh. Subsequent to the Memorandum of Understanding, especially those related to human rights issues and therefore related to Komnas HAM mandate and function, Komnas HAM had noted several progressed in human rights condition. The Memorandum of Understanding has stated that the Government should comply with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Moreover, the Memorandum of Understanding also stated the possibility of establishing a human rights court in Aceh. Regarding this matter, Komnas HAM considered that the jurisdiction of the court should be governed clearly, especially with regard to the authority of the court to put on trial cases of gross human rights violations occurred before and after 23 November 2000 (the enactment of the Act No. 26/2000 on Human Rights Court) or only cases occurred after 15 August 2005 (the signing of the Memorandum of Understanding).

### **4. Monitoring on Tanak Awu Case, Central Lombok**

Komnas HAM had received direct complaint from representatives of Tanak Awu farmers, Central Lombok, NTB on 19 September 2005. They filed a complaint of human rights violations occurred during the farmers' meeting conducted by the NTB Farmers Union and Indonesian Farmers Union Federation (*Federasi Serikat Petani Indonesia* or FSPI) on 18 September 2005. They reported that at least 27 farmers, including children, was shot, 8 farmers were tortured and 4 farmers were detained by the Central Lombok police.

As a follow-up to this complaint, Komnas HAM had established a monitoring team to collect and find data, information and facts related to the assumption of violations of the right to land, right to

personal safety and right to assemble. After conducting the monitoring, the team concluded that:

- a) violation of the right to assemble had occurred because the permit for the events had been published previously by the Indonesian Police which then annulled just a couple of hours before the meeting. Moreover, the police tried to end the meeting by using violence which had caused physical conflicts between the police and the farmers. The conflict had caused injured victims;
- and b) violation of the right to personal safety and the right to protection from security threat had occurred because the security officers had conducted shooting and beating which had caused victims among the farmers.

## **5. Monitoring of the Right to Health on Buyat Case**

Komnas HAM had conducted a monitoring of the right to health in Buyat case and had completed its final report in September 2005. The team concluded that:

- i) The Government has not entirely, integratedly and continuously maintained the condition of health, prevented illness and restored the health condition of the people, as obligated by the Act No. 23 Year 1992 on Health (Act No. 23/1992).
- ii) The Government has not conducted the effort to prevent illness, to provide community health education and also to provide medicine, medical officers and health facilities.
- iii) The Government has not fulfilled the right to information on health and good environment related to its role in managing the environment as governed in the Act No. 23 Year 1997 on Management of the Environment (Act No. 23/1997).
- iv) The Government has not yet taken the preventive and proactive measures to prevent environmental degradation.

These considerations, as stated in point a to point d above, had shown violations of the right to health and the right to good and healthy environment in Buyat case. With regard to this matter, Komnas HAM had recommended the Government: a) to take immediate actions on the respect, protection and fulfilment of the right to health and the right to good and healthy environment in

Buyat case; and b) to take affirmative actions in order to restore the rights of the victims, such as health audit of the Buyat community to ensure the link between the illness suffered by the local people and the pollution. Moreover, the Government should immediately develop a clean water distribution mechanism from the water source in Kampung Lotung Desa Buyat, immediately facilitate the relocation of Buyat Pante community by providing housing units with minimal health standard including access to sanitation facilities and clean water, and immediately enhance the role and function of health clinics in Buyat Kampung by ensuring the availability of doctors, medical equipment, medicine and other health facilities.

## **6. Inquiry on Force Disappearance Cases in 1997 – 1998**

Based on article 76 para (1) jo article 89 para (3) of the Act No. 39/1999, Komnas HAM had established a team on force disappearance cases in 1997 – 1998 to find data, facts and information in determining whether or not human rights violations had occurred in the form of kidnapping of human rights activists in the period of 1997 – 1998. The conclusions of the team are as follows:

- i) Force disappearance cases in 1997 – 1998 had occurred in authoritarian political system of the New Era which applied security approach that considered every opposition as a threat to national stability;
- ii) Force disappearance cases in 1997 – 1998 has to be perceived from the political context at that time, where the Government had tried to minimalize every plan or action which could disturb the Government programme to carry out the 1997 National Election and annual meeting of the Peoples' Consultative Assembly in 1998; and
- iii) Force disappearance cases in 1997 – 1998 are human rights violations according to article 1 point 6 jo article 33 para (3) of the Act No. 39/1999.

As a follow-up to the report, Komnas HAM had established an *ad hoc* team to inquiry the assumption gross human rights violations in the incidents based on the Act No. 26/2000 to conduct a *projustitia* investigation.

## **E. IMPLEMENTATION OF MEDIATION FUNCTION**

Mediation function is an important function because of the decisive result, which is an agreement which could be implemented immediately. Several human rights violations cases which could be handled through mediation by Komnas HAM are as follows:

### **1. The Case of Tambusai Timur Conflict**

In 2005, Komnas HAM had handled land conflict between PT Panca Surya Agroindo and the Tambusai Timur community. The community had accused PT Panca Surya Agroindo of using more land in its operations than what was legally endorsed. They demanded PT Panca Surya Agroindo to return the 2880.8 hectares plantation excess land. Komnas HAM and the Regional Government of Riau had carried out mediation process for this case. The mediation by the Regional Government of Riau had reached an agreement between the conflicting parties on 28 November 2005. PT Panca Surya Agroindo had agreed to develop 1000 hectares plantation areas at Bunga Tanjung Village for the Tambusai Timur community. Subsequently, the meeting of the conflicting parties mediated by Komnas HAM on 23 December 2005 had established agreements on: 1) Komnas HAM will strengthen the agreement on 28 December 2005; 2) PT Panca Surya Agroindo and the Tambusai Timur community will establish a joint plan of action to implement the agreement on 28 November 2005 under the monitoring of Rokan Hulu Regency; and 3) PT Panca Surya Agroindo will immediately assist victims of acts of violence.

### **2. Mediation of Land Conflict between Luhut Ujung Batu and Luhut Simangambat Communities with PT FMP&I**

The case started when Luhut Ujung Batu and Luhut Simangambat communities demanded PT FMP&I to return 4.629.44 hectares of excess land as stated by the North Sumatera National Land Agency in its letter No. 600.526/04/2003 dated 21 April 2003 to Komnas HAM. In response to this matter, Komnas HAM had started the mediation process in 2003. This process had failed because the company withdrew its agreement to be mediated by Komnas HAM. The second

mediation effort was conducted in 15 December 2005 attended by conflicting parties and representatives of Tapanuli Selatan Regency. The meeting had produced agreements that: 1) An independent team, assisted by experts, will be established to re-measure the 12.309 hectares land areas of PT FMP&I; 2) The results should be submitted and signed by each party, and the excess land will be returned to Luhut Ujung Batu and Luhut Simangambat communities.

### **3. Mediation of Colol Coffee Plantation Land Conflict, Manggarai Regency, NTT**

Government policy to determine Colol Village in Manggarai Regency, NTT as protected forest areas had caused force eviction of the local community who planted coffee in the village. Komnas HAM had started the mediation process due to the requests of Colol community who wanted to use the land. On 25 July 2005, a meeting between representatives from Manggarai Regency local government with Colol community had agreed that the case would be mediated by Komnas HAM. Mediation was carried out with meetings with each of the conflicting parties in December 2005. During the process, the local government of Manggarai Regency has allowed the Colol community to use the land in the area.

**CHAPTER IV**  
**CASES HANDLED BY KOMNAS HAM BASED ON**  
**THE ACT NO. 26/2000 ON HUMAN RIGHTS COURTS**

**A. INTRODUCTION**

According to the Act No. 26/2000, Komnas HAM is also the only institution that has the mandate to conduct inquiry on gross human rights violations. The scope of the inquiry is *projustitia* investigation. The result of Komnas HAM inquiry is a legal document which should be followed-up with an investigation by the Attorney General. Hence, Komnas HAM is a part of the judicial process for gross human rights violations.

Gross human rights violations are extra ordinary crimes which, at the national and international levels, have massive consequences. These violations were not ordinary criminal acts as regulated in the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP). Therefore, these violations could not be solved through the usual judicial mechanism. They should be judicially processed through a specific mechanism, the human rights courts.

The disclosure of gross human rights violations cases is different with ordinary criminal acts. Consequently, they need particular judicial instruments (*lex specialis*). The distinctiveness of the handling of gross human rights violations could be noticed from:

- a. The possibility to establish an *ad hoc* tem, to appoint *ad hoc* investigators and *ad hoc* prosecutors, and to elect *ad hoc* judges apart from career judges;
- b. Komnas HAM is the only institution that has the mandate to conduct inquiry, while the investigators do not have the mandate to receive report or complaints made by other institutions than Komnas HAM as regulated in KUHP;
- c. The provision that regulates special time-schedule to complete the investigation and to prosecute, as well as to complete the trial process;
- d. The provision that regulates victims and witnesses protection;

- e. The provision that affirms that gross human rights violations do not expire;
- f. The provision that regulates retroactive nature of the Act No. 26/2000.

Hereby some description of gross human rights violations cases handled by Komnas HAM in 2005, and also the development of some cases which reports had been submitted to the Attorney General to be investigated. Moreover, this chapter will also describe some cases which already processed by *ad hoc* human rights courts and by human rights courts in 2005.

## **B. DESCRIPTION OF THE CASES**

### **1. The Enforced Disappearance Cases**

In the enforced disappearance cases occurred in 1997 to 1998, Komnas HAM data, obtained from complaints and monitoring activities of Komnas HAM, showed that at least 13 persons were victims of force disappearance. They are: activists of People's Democratic Party (Petrus Bima Anugerah, Herman Hendrawan, Suyat, and Wiji Tukul); activists of Indonesian Democracy Party Pro-Megawati (Yani Afri and Sonny); activist of Development and Unity Party (Dedi Hamdun); activist of Mega Bintang (Noval Al Katiri); chauffeur of Dedi Hamdun (Ismail); M. Yusuf; and people's missing at the May riot 1998 (Ucok Siahaan, Hendra Hambali, and Yadin Muhidin).

The kidnapping of pro-democracy activists conducted by the Mawar Team, closely related to force disappearance cases during 1997 to 1998, are the activists of the People's Democratic Party (Mugiyanto, Aan Rusdianto, Nezar Patria, Faisol Riza, Raharja Waluyo Jati, and Andi Arief); activist of the Indonesian Democratic Party (Haryanto Taslam); activist of Aldera (Pius Lustrilanang); and activist of Nusantara Legal Aid Institute (*Lembaga Bantuan Hukum Nusantara* or LBHN) (Desmond J. Mahesa).

Some returning victims and the families of the unfound victims had demanded Komnas HAM to solve cases of enforced disappearance. Therefore, Komnas HAM had established an Inquiry Team for Enforced Disappearance Cases during 1997 to 1998 according to the Act No. 39/1999.

The Team concluded that there was a strong indication that gross human rights violations had occurred in the cases.

As a follow-up to the Team conclusion, the Plenary Session had established an *Ad Hoc* Investigation Team for Enforced Disappearance Cases during 1997 to 1998 according to the Act No. 26/2000. Pending the end of 2005, the *Ad Hoc* Team are still conducting inquiry to the cases, through collecting statements from victims or families and conducting site-visits.

## **2. The Follow-Up of Wasior and Wamena Cases**

Komnas HAM had completed a *projustitia* investigation for 2001 – 2002 Wasior incidents and 2003 Wamena incident (both in Papua) in 2004. The result of the inquiry had been submitted to the Attorney General office through a letter No. 290/TUA/IX/2004 dated 3 September 2004. However, the Attorney General had returned the documents through a letter No. R-209/A/F.6/11/2004 dated 30 November 2004, which stated that Komnas HAM inquiry was not complete.

In response, Komnas HAM had returned the inquiry findings to the Attorney General through a letter No. 376/TUA/XII/2004 dated 29 December 2004, which firmly stated that according to article 20 paragraph 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”. Until the end of 2005, Komnas HAM inquiry findings on Wasior and Wamena incidents have not yet investigated by the Attorney General.

## **3. Follow-up of May Riot 1998 Case**

The May Riot incidents occurred in 13 – 15 May 1998 in Jakarta. Similar incidents with similar pattern also occurred in several cities outside Jakarta. These incidents occurred approximately at the same time had caused casualties and property damages. In the May Riot 1998 incidents

various acts of killing, ill-treatment, destruction, burning, looting, force disappearance and rape happened, which indicated gross human rights violation.

On 23 May 1998, the President (B.J. Habibie at that time) had established the Collective Team of Fact Finding (TGPF) to find and disclose the facts of and motives behind the incidents. The team had concluded that in the riot there were indications of gross human rights violations related to the political transformation in Indonesia. However, the Government did not further process the TGPF report.

In 2003, Komnas HAM had established a research team to study the TGPF report. The study concluded that May Riot 1998 incidents indicated occurrence of gross human rights violations as stated in the Act No. 26/2000. To follow-up the result of the study, Komnas HAM carried out an inquiry to disclose the possibilities of the occurrence of gross human rights violations in.

The inquiry result had concluded that gross human rights violations had occurred in the May Riot 1998 incidents. The result had been submitted to the Attorney General through a letter No. 197/TUA/IX/2003 dated 19 September 2003 for further investigations.

However, the documents had been returned to Komnas HAM several times. It was returned for the last time to the Attorney General in 6 January 2005 through a letter No. 09/TUA/I/2005. The letter stated that according to article 20 para 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”.

To accelerate the judicial process of the case, Komnas HAM had held a meeting with the Chairpersons of the House of Representatives on 27 October 2003 to urge the House of Representative to recommend the establishment of an *ad hoc* Human Rights Court because the incidents occurred before the enactment of the Act No. 26/2000. The House of Representatives had assigned the Commission III to conduct a research and study of the case.

Until the end of 2005, the judicial process had not yet progressed, either from the House of Representatives or the Attorney General.

#### **4. Follow-up of Trisakti, Semanggi I and Semanggi II Incidents**

Komnas HAM had established an *ad hoc* team to conduct inquiry on Trisakti, Semanggi I and Semanggi II incidents (TSS) on 27 August 2001. The establishment of the team was based on the assumption that gross human rights violations had occurred in Trisakti incident on 12 May 1998, Semanggi I incidents on 13 – 14 November 1998 and Semanggi II incidents on 23 – 24 September 1999. The inquiry result concluded gross human rights violations had happened, such as murder, torture, ill-treatment, force disappearance and deprivation of liberty and other physical freedom.

The documents of the inquiry had been submitted to the Attorney General and they had been returned several times. For the last time, Komnas HAM had returned the documents to the Attorney General through a letter No. 10/TUA/I/2005 dated 6 January 2005. The letter highlighted that according to article 20 para 3 of the Act No. 26/2000, the investigator can only return the inquiry findings to the inquirer when the inquiry findings are insufficient, which defined as “not sufficient to meet the conditions for a gross violation of human rights to be followed up by investigation”.

The follow-up of the case had not known for certain since the Attorney General still considered that the House of Representatives had determined that TSS case was not gross human rights violations. With regard to the Attorney General opinion, Komnas HAM had sent a letter on 19 March 2003 to the Chairpersons of the House of Representatives to review its previous decision. Komnas HAM had also met with the Chairpersons of the House of Representatives on 29 October 2003 to discuss the matter.

During the hearing with Commission III of the House of Representatives on 30 November 2004, Komnas HAM had once again inquired on the follow-up of Komnas HAM request. However, due to the lack of a carry-over process from the 1999 – 2004 working period to the 2004 – 2009

working period of the House of Representatives members, the Chairperson of Commission III of the House of Representatives had suggested Komnas HAM to re-submit the problem to the Chairperson of the House of Representatives. Therefore, Komnas HAM had sent another letter to the Chairperson of the House of Representatives No. 363/TUA/XII/2004 dated 9 December 2004.

As a follow-up, Commission III of the House of Representatives had concluded its study on the matter and had recommended the Plenary Session of the House of Representatives to review its decision regarding Trisakti, Semanggi I and Semanggi II incidents. However, until the end of 2005, the Plenary Session of the House of Representatives had not yet set the issue on its agenda.

## **5. Progress of Abepura Case**

On 5 February 2001, Komnas HAM had established KPP HAM Papua/Irian Jaya to conduct inquiry on Abepura incident where gross human rights violations had presumably occurred. The incident had involved violence by the police which had caused casualties and injured victims of civilians. The result of the inquiry concluded that there was an indication of gross human rights violations in the forms of torture, summary killing, ill-treatment, arbitrary deprivation of liberty or arbitrary deprivation of other physical freedom of the civilians. The report had been submitted to the Attorney General in 2001. This case had been investigated, which determined two defendants, Daud Sihombing and Jhony Waenal Usman. The two defendants had been tried in human rights courts.

The Human Rights Court in Makassar had released Daud Sihombing on 8 September 2005 and Jhony Waenal Usman on 9 September 2005. Subsequently, the Attorney General has appealed the case to the Supreme Court.

## **6. Progress of Tanjung Priok 1984 Case**

In 2000, Komnas HAM had established an *ad hoc* team to conduct inquiry on Tanjung Priok incidents in 1984. The team was established on the assumption that gross human rights violations

had occurred in the incidents. The result of the inquiry had concluded that gross human rights violations had happened in the incidents. The result of the inquiry had been submitted to the Attorney General in 2001.

The case had been investigated and determined 14 defendants. They had been put into trial. The decisions of the Tanjung Priok *Ad Hoc* Human Rights Court in 2003 are as follows:

NO	DEFENDANT	CHARGES	DISTRICT COURT	HIGH COURT	SUPREME COURT
1.	R Butar-Butar	10 years	10 years	Released	-
2.	Sriyanto	10 years	Released	-	Cassation
3.	Pranowo	5 years	Released	-	Cassation
4.	Sutrisno Mascung	10 years	3 years	Released	-
5.	Asrori	10 years	2 years	Released	-
6.	Siswoyo	10 years	2 years	Released	-
7.	Abdul Hallim	10 years	2 years	Released	-
8.	Zulfata	10 years	2 years	Released	-
9.	Soemitro	10 years	2 years	Released	-
10.	Sofyan Hadi	10 years	2 years	Released	-
11.	Prayogi	10 years	2 years	Released	-
12.	Winarko	10 years	2 years	Released	-
13.	Idrus	10 years	2 years	Released	-
14.	Muchson	10 years	2 years	Released	-

## 7. Progress of East Timor 1999 Case

Komnas HAM had established KPP HAM for East Timor on 22 September 1999 to conduct inquiry on the riots in East Timor which had caused casualties and destruction of personal properties and public facilities. The establishment of the team was based on the assumption that gross human rights violations had occurred in the incidents. The result of the inquiry had concluded that there were indications that gross human rights violations occurred.

The case had been investigated, prosecuted and tried before an *ad hoc* human rights court. The decisions of the East Timor *Ad Hoc* Human Rights Court are as follows:

NO	DEFENDANT	CHARGES	DISTRICT COURT	HIGH COURT	SUPREME COURT
1.	Former Dili Chief of Police Resort, Hulman Gultom	10 years	3 years	Released	Released
2.	Former East Timor	10 years	5 years	Released	Released

	Commander of Military Command, M. Noer Muis				
3.	Former Dili Commander of Military District 1627, Endar Priyanto	10 years	Released	-	Released
4.	Former East Timor Chief of District Police, GM Timbul Silaen	10 years 6 months	Released	-	Released
5.	Former Dili Commander of Military District 1627, Soedjarwo	10 years	5 years	Released	Released
6.	Former East Timor Commander of Military Command, Tono Suratman	10 years	Released	-	Released
7.	Former Regent of KDH Tk. II Covalima East Timor, Herman Sedyono	10 years	Released	-	Released
8.	Former Suai Commander of Military District, Liliek Koeshadianto	10 years 6 months	Released	-	Released
9.	Former Kasdim 1635 Suai, Achmad Syamsudin	10 years	Released	-	Released
10.	Former Suai Sub-district Military Commander, Sugito	10 years	Released	-	Released
11.	Former Suai Head of Police Force, Gatot Subiyaktoro	10 years 3 months	Released	-	Released
12.	Former Liquisa Commander of Military District, Asep Kuswani	10 years	Released	-	Released
13.	Former Liquisa Chief of Police Resort, Adios Salova	10 years	Released	-	Released
14.	Former Regent of LIiquisa, Leonito Martins	10 years	Released	-	Released
15.	Former Commander of Intelligent Taskforce Tribuana VIII, Yayat Sudrajat	10 years	Released	-	Released
16.	Former Aitarak Commander of Militia, Eurico Guterres	10 years	10 years	5 years	Cassation process
17.	Former Governor of East Timor, Abilio Jose Osorio Soares	10 years 6 months	3 years	3 years	3 years Review, released
18.	Former Commander of Regional Military IX/Udayana, Adam R. Damiri	Released	3 years	Released	Released

In the progress of the case, Komnas HAM had met with the United Nations Commission of Experts<sup>1</sup> to discuss the result of Komnas HAM inquiry on East Timor incidents.

According to the result of their visit, the United Nations Commission of Experts had recommended, among others, the Government of Indonesia should re-open the judicial process of East Timor Human Rights Court. If the Government refused the recommendation, the Commission of Experts had recommended the United Nations Security Council to establish an International Human Rights Tribunal for East Timor according to Chapter VII of the United Nations Charter.

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<sup>1</sup> In response to the Court's decision which freed almost all defendants of gross human rights violations cases of East Timor, the United Nations Security Council had requested the United Nations Secretary General to review and re-asses the judicial process. As a follow-up to the Security Council request, the United Nations Secretary General had established a Commission of Experts on 18 February 2005 consisted of Justice P.N. Bhagwati (India), Dr. Shaista Shameem (Fiji), and Professor Yozo Yokota (Jepang). In conducting their duties, the United Nation Commission of Expert had visited East Timor and Indonesia.

## **CHAPTER V**

### **REPRESENTATIVES/REGIONAL OFFICES OF KOMNAS HAM**

#### **A. INTRODUCTION**

Considering the wide scope and areas of Komnas HAM mandate in creating conducive condition for the implementation, protection and enforcement of human rights, the Act No. 39/1999 endows Komnas HAM with the opportunities to establish representatives of Komnas HAM in regional areas. Hence Komnas HAM had established several Representatives in West Sumatera, West Kalimantan and Papua; and several Regional Offices in NAD and Maluku. The aim is to provide better access for the peoples living in regional areas, especially victims of human rights violations.

Komnas HAM Representatives are institutions established to carry out delegated functions, duties and mandates of Komnas HAM. Komnas HAM Regional Offices are institutions established to assist Komnas HAM in conducting its functions, duties and mandates in particular areas.

As a follow-up to Commission III of the House of Representatives appeal to establish Komnas HAM in all provinces in Indonesia, Komnas HAM had commenced the preparation of the establishment of Komnas HAM Representatives and/or Regional Office in NTT, Riau and Central Sulawesi. The establishment of these Representatives and/or Regional Offices will be conducted gradually.

Descriptions of activities carried out by the Representatives and Regional Offices of Komnas HAM are as follows:

## **B. REGIONAL OFFICE IN NAD**

Given that NAD is a conflict area with potential human rights violations and in order to provide better access for human rights violations victims to submit their complaints, Komnas HAM had established a Regional Office of Komnas HAM in NAD on September 1999.

In carrying out its activities, Regional Office in NAD was supported by two Human Rights Complaint Posts, each in Lhokseumawe and Bireun. Subsequent to the security condition following the signing of the Memorandum of Understanding between of Government of the Republic of Indonesia and the Aceh Freedom Movement, the complaint posts were discontinued at the end of 2005.

Several activities conducted by Komnas HAM Regional Office in NAD are as follows:

1. Fact finding and also data and information compilation of human rights violation occurred in NAD, from complaints and reports as well as from, as well as by conducting monitoring and investigating the news on the media.
2. Handling of 24 complaints of civil and political rights (5 on right to personal safety, 16 on right to justice, 1 on the right to life and 2 on the rights to personal freedom) and 2 complaints on economic, social and cultural rights. These complaints were not solved entirely due to the lack of witnesses and evidence. The low numbers of complaints of economic, social and cultural rights were due to the basic understanding of the people in NAD that only violations to civil and political rights are human rights violations.
3. Monitoring on economic, social and cultural rights related to the reconstruction process in NAD post-tsunami disasters. The monitoring activities had found 20 cases of economic, social and cultural rights violations, such as the right to housing, right to education, right to health and right to work. As a follow-up to these cases, Komnas HAM Regional Office in NAD had requested an explanation from the Information and Communication Deputy of the Reconstruction and Rehabilitation Agency for Aceh and Nias (*Badan Rekonstruksi dan Rehabilitasi* or BRR) in order to urge the fulfillment of IDPs rights, especially their economic,

social and cultural rights. Many IDPs still lived in temporary barracks and emergency tents. Meanwhile, the Guiding Principles for Internal Displacement has not yet been socialized, which should be considered as a reference in dealing with IDPs problems.

4. Monitoring on the implementation of the Memorandum of Understanding between the Government of the Republic Indonesia and the Aceh Freedom Movement in coordination with the Aceh Monitoring Mission (AMM). AMM had received some complaints of human rights violations occurred in the past, such as force disappearance and also the finding of mass grave.
5. Development of networking with non-governmental organizations in order to collect data on human rights violations, especially in out-of-monitored areas.
6. Socialization of human rights principles and institutional function of Komnas HAM conducted through discussions and seminars.

### **C. REGIONAL OFFICE IN MALUKU**

The Island of Maluku is also a conflict area, especially horizontal conflict, with potential human rights violations. In order to optimally monitor and handle human rights violations occurred in this area, Komnas HAM had established a Regional Office in Ambon in 2001.

Some activities conducted by the Regional Office in Ambon are as follows:

1. Handling of complaints in 2005 consisted of complaints on attacks by Dian Barat people/village towards Debut Village in Kei Sub-District; torture of several young people and students by Brimob officers in Waringin Village, Sirimau Sub-District; murder of two people of TNS Village by Naulu ethnic group, Central Maluku Regency; and complaints of IDPs rights in Morella Village, Central Maluku Regency and Waeheru Village, Baguala Passo Sub-District.
2. Socialization of human rights for churches community, press and the community in Ambon. Socialization of human rights was also conducted in Masohi, Central Maluku Regency, and in Tual, Southeast Maluku Regency.

#### **D. KOMNAS HAM REPRESENTATIVE IN WEST SUMATERA**

Komnas HAM Representative in West Sumatera was established in 6 August 2002 to carry out the functions of education, monitoring and mediation in West Sumatera Province.

Several activities conducted by Komnas HAM Representative in West Sumatera are as follows:

1. Handling of human rights violations complaints in 2005 consisted of 77 complaints (37 complaints on economic, social and cultural rights and 40 complaints on civil and political rights). 51 complaints had been settled and 26 complaints were on process.
3. Human rights training for high school and vocational teachers in Padang, West Sumatera.
4. Socialization of the rights of indigenous people in West Sumatera.
5. Monitoring of the implementation of regional election at regency level.

#### **E. KOMNAS HAM REPRESENTATIVE IN WEST KALIMANTAN**

West Kalimantan Province is a conflict area, especially horizontal conflict, with potential human rights violations, including violations of the rights of migrant workers and human trafficking problems. To optimally conduct its functions, duties and mandates in West Kalimantan area, Komnas HAM had established the Komnas HAM Representative in West Kalimantan in 6 June 2000.

Komnas HAM Representative in West Kalimantan activities in 2005 are as follows:

1. Handling of human rights violations complaints in 2005 consisted of 36 complaints (16 complaints on economic, social and cultural rights and 20 complaints on civil and political rights).
2. Socialization on:
  - a) IDPs right to education, health and housing, to government officers, non-governmental organizations, community and religious leaders, IDPs representatives, universities and research institutions in West Kalimantan;

- b) human development to guarantee the fulfillment of economic, social and cultural rights by West Kalimantan Regional Government, to government officers, members of the Regional House of Representatives, academicians, community organizations and non-governmental organizations;
  - c) national and international human rights instruments to state officials in Sanggau Regency;
  - d) the prevention and management of human trafficking victims from human rights perspective, to government officers, law enforcement officers, academicians and non-governmental organizations.
3. Monitoring on:
- a) the rights of fishermen in Singkawang;
  - b) the implementation of regional election in Sintang Regency which had caused injured victims, destruction of several buildings and threats to security of the people in the area;
  - c) children and women trafficking in Singkawang through contractual marriage and the misuse of identity card;
  - d) the treatment towards detainees in correctional facility class II A in Pontianak and Mempawah. The monitoring had found that basic needs and facilities of detainees were not fulfilled (small and unclean cell rooms, overcrowded, inadequate sanitation facilities, insufficient food and limited health facilities);
  - e) IDPs condition in relocation area in Marhaban, Pasir Panjang Village, Tujuh Belas Sub-District, Singkawang, especially the fulfillment of their rights (identity documents, housing, health service and education);
  - f) property conflict on 71 hectares land between the transmigrated people of Pangmilang, South Singkawang Sub-District with the local people;
  - g) the attack of Ahmadiyah adherent in Balai Harapan Village, Tempunak Sub-District, Sintang Regency.

## **F. KOMNAS HAM REPRESENTATIVE IN PAPUA**

Papua is a conflict area with potential human rights violations. To optimally carry out its functions in this province, Komnas HAM had decided to establish Komnas HAM Representative

in Papua in 2003. However, the establishment of Komnas HAM Representative in this area was realized in January 2005.

As a Representative recently functioned since January 2005, in the beginning of 2005, Komnas HAM Representative focused on the structuring of the organization and internal procedures. Some activities conducted by Komnas HAM Representative in Papua were mostly socialization and monitoring, such as:

1. The handling of human rights violations complaints consisted of 6 complaints, such as the riot incident in Abepura Court building, the assumption of human rights violation of Putowaiburu indigenous people, Far East Mimika Regency and complaints regarding right to traditional land in Papua.
2. Socialization on public policies for human rights enforcement in Papua to the people in Papua.

## **CHAPTER VI**

### **CLOSING**

In 2005 law enforcement was still inadequate and various national legislations on human rights were not implemented, including international human rights instruments ratified by the Government. These conditions have caused continuity of human rights violations such as act of violence, discrimination, abuse of power, restriction of right to religion and performing religious ritual. These have shown the poor condition of human rights in 2005. Moreover, some cases of human rights violations, which inquiry had been completed in 2002, 2003 and 2004, have not yet been followed-up with investigations. This has illustrated the lack of commitment of law enforcement officers concerning human rights enforcement.

The implementation of direct election in several regional areas in 2005 was the realization of the citizen right to participate in the government. However, several regional direct elections were marked by acts of violence by supporters of particular candidate, which were considered as human rights violence.

Acts of violence by particular group to other group of the community, without preventive and repressive actions of law enforcement officers, were recent problems in enforcement of law and respect of human rights.

Several positive developments also occurred which support the respect of human rights, the implementation of protection, and the enforcement of human rights in Indonesia in 2005. These positive developments were, among others, the continuity of legal process of two gross human rights violations cases, started in the previous years, which were East Timor 1999 incidents and Tanjung Priok 1984 incidents. Moreover, the ratification of International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966) in October 2005 had also become an important milestone of human rights history in Indonesia. Becoming a state party to the two main international human rights instruments should be a new encouragement in the respect, protection, promoting, enforcement and fulfilment of human rights in Indonesia.

Another positive progress which was considered as an important milestone in Indonesian history and offered positive impacts on the efforts to respect human rights was the signing of the peace agreement between the Indonesian Government and the Aceh Free Movement. This agreement had ended the 29 years conflicts in Aceh. Subsequently, this agreement should not be considered as the end of the process but as the beginning of the process to create a peaceful and democratic condition in Aceh, marked by law supremacy and respect of human rights.

Conclusively, realizing the dynamic of the nation and the development of international relations impacted to the achievement of its goal, which was the creation of condition conducive for the implementation of human rights and for the improvement of human rights protection and enforcement, in 2005, Komnas HAM has continuously improved its ability through internal capacity building and improvement of inter-institutions relationship at national and international levels.

## **APPENDIX 4**

### **REPORT OF KOMNAS HAM SECRETARY GENERAL IN 2005**

Year 2005 was the third year of management structuring of Komnas HAM according to the Presidential Decree No. 48 Year 2001 on Komnas HAM Secretary General. The purpose of the management structuring was to accomplish organizational support and professional, transparent and accountable Komnas HAM management resources. The process started in 2003 – 2004 with the structuring of Komnas HAM secretary general organization, including the administration of Komnas HAM Representatives and Regional Offices as well as the development of employee affairs and financial managements. Employee affairs and financial guidelines have been applied in 2004 – 2005. With regard to employee affairs, Komnas HAM had carried out restructuring and assessment of its staff by an independent agency. The management improvement was also carried out through the establishment of guidelines in property inventory, office affairs, official correspondence and information and documentation system.

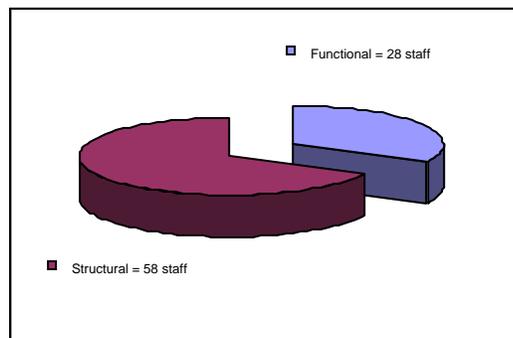
The effort to restructure the Secretary General management was in line with the restructuring of Sub-Commission of Komnas HAM which was focused to effectively manage all aspect of human rights, which were the economic, social and cultural rights as well as civil and political rights, with special consideration for the protection of vulnerable groups in the community. In the implementation of the structuring process, Komnas HAM also improved cooperation with human rights institutions networking in Indonesia and abroad.

The function of the Secretary General, in accordance with article 81 of the Act No. 39/1999, is to provide support for the implementation of Komnas HAM programmes. The Presidential Decree No. 48/2001 has specifically stated that the obligations of the Secretary General are to provide technical operational support for Komnas HAM, to coordinate, synchronize and integrate programmes administration and to follow-up Komnas HAM programmes; to administer the preparation of Komnas HAM works plans and programmes, and establishment of the Secretary General reports; to manage the administration of Komnas HAM membership and to conduct the organizational development, employee affairs and financial administrations of Komnas HAM; to

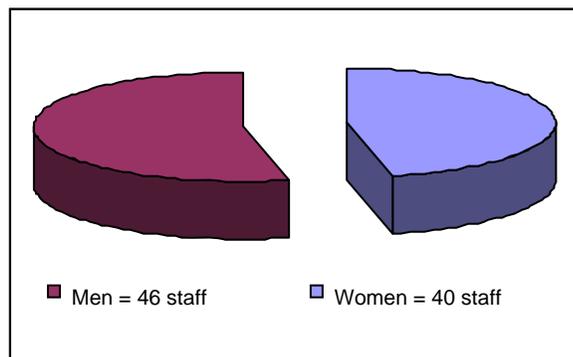
manage Komnas HAM cooperation with related government agencies and non-governmental organizations in Indonesia and abroad.

The organization of the Secretary General consists of three bureaus, which are Bureau of Planning and Inter-Institute Relation, Bureau of General Affairs and Bureau of Administration and Conference Services. Until the end of 2005, the number of Komnas HAM staff had increased from 79 to 86 staff, consisted of 28 functional staff and 58 structural staff. According to gender distribution, Komnas HAM staff consisted of 40 women and 46 men.

**Diagram 1: Komnas HAM Staff Based on Their Function**

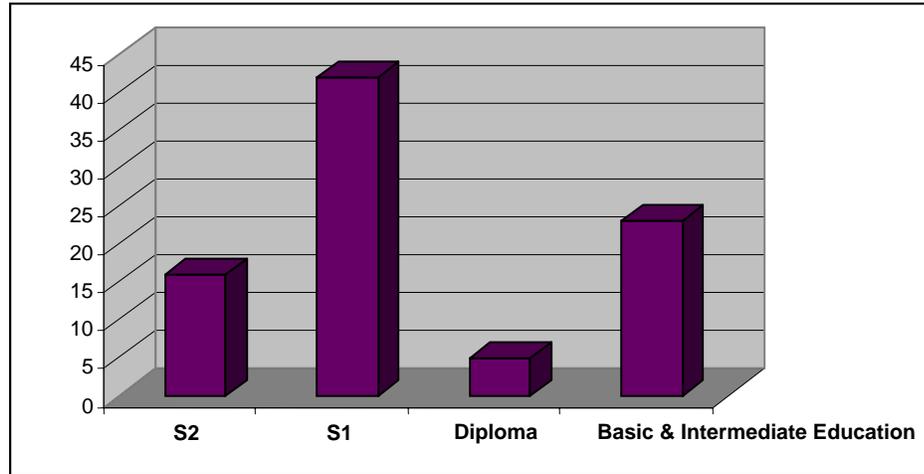


**Diagram 2: Komnas HAM Staff Based on Gender Distribution**



Based on education background, Komnas HAM staff consisted of 16 master (S2), 42 bachelor (S1), 5 diploma (D1 and D3), and 23 basic and intermediate education.

**Diagram 3: Komnas HAM Staff Based on Education Background**

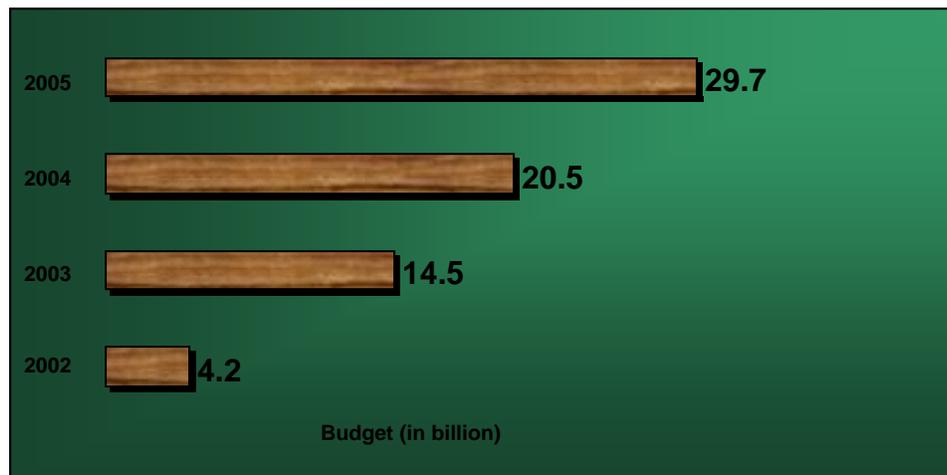


The capacity building for Komnas HAM staff was carried out through developing the institutional capacity to develop training programmes in planning and project management, administration and technical skill, human rights knowledge and information system. Staff trainings abroad also conducted with the support of donor agencies.

To enhance the staff capacity, Komnas HAM Secretary General had conducted five basic human rights trainings for all Komnas HAM staff from January to February 2005. The goals of the training were: a) to develop human rights awareness and to strengthen the capacity of Komnas HAM staff; b) to strengthened Komnas HAM works as a state institution who provides public services; c) to increase the basic knowledge on human rights of Komnas HAM staff in Jakarta and the regions. The trainings were carried out through cooperation with CIDA.

Komnas HAM budget also increased in the last three years, from Rp. 4.2 billion in 2002, to Rp. 14.5 billion in 2003 and Rp. 20.5 billion in 2004. In 2005, Komnas HAM budget was Rp. 29.7 billion. The increasing budget was used to finance routine and operational expenses of Komnas HAM.

**Diagram 5: Komnas HAM Budget in 2002 – 2005**



\* Budget sources: State Budget

In 2005, Komnas HAM also received assistance from CIDA, AusAID and European agencies to increase Komnas HAM capacity. The assistance was conducted through technical trainings and human rights training for Komnas HAM staff, members and members of Komnas HAM networks; dissemination programmes and publication; development of information and documentation system; as well as seminars and workshops.

## KOMNAS HAM FINANCIAL REPORT 2005

(unaudited)

Activities	Total (Rupiah)	
	Revenues	Expenditures
<b>A. REVENUE</b>		
I. Routine budget from the Government <sup>*)</sup>		
1. Honorarium	9,929,146,000	
2. Procurement	14,664,940,000	
3. Capital	200,000,000	
4. Others	12,661,307,000	
<i>Sub total A.I: Routine budget</i>	<b>37,455,393,000</b>	
II. Grants		
1. Balance on 2004 grants	798,800,452	
2. 2005 aid:		
a. IALDF	106,385,500	
b. CIDA	1,649,838,449	
<i>Sub total A. II: Grants</i>	<b>2,555,024,401</b>	
<b>TOTAL REVENUES (A.I + A.II)</b>	<b>40,010,417,401</b>	
<b>B. EXPENDITURE</b>		
I. Routine expenditure from Government Budget		
1. Honorarium		8,142,932,703
2. Procurement		4,217,983,366
3. Capital		-
4. Others		10,489,260,597
<i>Sub total B.I: Routine expenditures</i>		<b>22,850,260,597</b>

II. Expenditure of grants		
1. IALDF		234,798,714
2. CIDA		2,245,539,799
3. Norwegia		13,248,600
<i>Sub total B. II: Expenditures of grants</i>		<b>2,493,587,113</b>
<b>TOTAL EXPENDITURES (B.I + B.II)</b>		<b>25,343,763,779</b>
<b>C. FUND RETURN</b>		
Balance on the Government Treasury		14,605,216,334
<b>TOTAL FUND RETURN</b>		<b>14,605,216,334</b>
<b>BALANCE PER 31 DECEMBER 2005 (A-B-C)</b>	<b>61,437,288</b>	

\*) DIPA 001.0/74-01.0/2005

DIPA 176.0/69-03.0/2005