

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 5 TAHUN 1998
TENTANG
PENGESAHAN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT
(KONVENSI MENENTANG PENYIKSAAN DAN PERLAKUAN ATAU PENGHUKUMAN LAIN YANG KEJAM,
TIDAK MANUSIAWI, ATAU MERENDAHKAN MARTABAT MANUSIA)

DENGAN RAHMAT TUHAN YANG MAHA ESA
PRESIDEN REPUBLIK INDONESIA,

Menimbang :

- a. bahwa negara Republik Indonesia yang berdasarkan Pancasila dan Undang-Undang Dasar 1945 adalah negara hukum yang menjunjung tinggi harkat dan martabat manusia serta menjamin semua warga negara bersamaan kedudukannya di dalam hukum. sehingga segala bentuk penyiksaan dan perlakuan atau penghukuman lain yang kejam. tidak manusiawi. atau merendahkan martabat manusia harus dicegah dan dilarang;
- b. bahwa bangsa Indonesia sebagai bagian masyarakat internasional menghormati, menghargai, dan menjunjung tinggi prinsip dan tujuan Piagam Perserikatan Bangsa-Bangsa serta Deklarasi Universal Hak-hak Asasi Manusia;
- c. bahwa Majelis Umum Perserikatan Bangsa-Bangsa di dalam sidangnya pada tanggal 10 Desember 1984 telah menyetujui Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak -Manusiawi. atau Merendahkan Martabat Manusia) dan Pemerintah Republik Indonesia telah menandatangani konvensi tersebut pada tanggal 23 Oktober 1985;
- d. bahwa konvensi tersebut pada dasarnya tidak bertentangan dengan Pancasila, Undang-Undang Dasar 1945, dan peraturan perundang-undangan Republik Indonesia serta selaras dengan keinginan bangsa Indonesia untuk secara terus menerus menegakkan dan memajukan pelaksanaan hak asasi manusia dalam kehidupan berbangsa dan bernegara;
- e. bahwa berdasarkan pertimbangan tersebut dalam huruf a, b, c. dan d dipandang perlu mengesahkan Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia) dengan Undang-undang.

Mengingat :

Pasal 5 ayat (1), Pasal II, Pasal 20 ayat (1), Pasal 21 ayat (1), dan Pasal 27 ayat (1) Undang-Undang Dasar 1945:

Dengan Persetujuan
DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA

MEMUTUSKAN :

Menetapkan :

UNDANG-UNDANG TENTANG PENGESAHAN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (KONVENSI MENENTANG PENYIKSAAN DAN PERLAKUAN ATAU PENGHUKUMAN LAIN YANG KEJAM, TIDAK MANUSIAWI, ATAU MERENDAHKAN MARTABAT MANUSIA).

Pasal 1

- (1) Mengesahkan Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusia, atau Merendahkan Martabat Manusia) dengan Declaration (Pernyataan) terhadap Pasal 20 dan Reservation (Pensyaratan) terhadap Pasal 30 ayat (1).
- (2) Salinan naskah asli Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia), Declaration (Pernyataan) terhadap Pasal 20, dan Reservation (Pensyaratan) terhadap Pasal 30 ayat (1) dalam bahasa Inggris, dan terjemahannya dalam bahasa Indonesia sebagaimana terlampir merupakan bagian yang tak terpisahkan dari Undang-undang ini.

Pasal 2

Undang-undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan di Jakarta
pada tanggal 28 September 1998
PRESIDEN REPUBLIK INDONESIA,

ttd
BACHARUDDIN JUSUF HABIBIE

Diundangkan di Jakarta
pada tanggal 28 September 1998
MENTERI NEGARA SEKRETARIS NEGARA
REPUBLIK INDONESIA,

ttd
AKBAR TANDJUNG

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 1998 NOMOR 164

PENJELASAN
ATAS
UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 5 TAHUN 1998
TENTANG
PENGESEAHAN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT
(KONVENSI MENENTANG PENYIKSAAN DAN PERLAKUAN
ATAU PENGHUKUMAN LAIN YANG KEJAM, TIDAK
MANUSIAWI, ATAU MERENDAHKAN MARTABAT MANUSIA)

I. UMUM

Pada tanggal 9 Desember Tahun 1975 Majelis Umum Perserikatan Bangsa-Bangsa telah menerima Deklarasi tentang Perlindungan Semua Orang dari Penyiksaan dan Perlakuan atau Penghukuman yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia.

Deklarasi tersebut memuat perlindungan terhadap semua orang dari sasaran penyiksaan dan perlakuan atau hukuman yang kejam, tidak manusiawi, atau merendahkan martabat manusia, dan menyatakan perlunya langkah-langkah yang efektif untuk menjamin pelaksanaan Deklarasi tersebut. Langkah-langkah ini mencakup antara lain perbaikan cara

interogasi dan pelatihan bagi setiap aparaturnya penegak hukum dan pejabat publik lain yang bertanggungjawab terhadap orang-orang yang dirampas kemerdekaannya. Adapun pengertian penyiksaan dalam Deklarasi ini adalah tindak pidana menurut ketentuan dalam hukum pidana.

Namun, karena deklarasi itu bersifat tidak mengikat secara hukum, Komisi Hak Asasi Manusia Perserikatan Bangsa-Bangsa telah menyusun rancangan Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia yang selanjutnya diajukan kepada Sidang Majelis Umum PBB untuk disahkan.

Majelis Umum Perserikatan Bangsa-Bangsa menyetujui secara konsensus rancangan konvensi tersebut pada tanggal 10 Desember 1984 yang menyatakan mulai berlaku secara efektif pada tanggal 26 Juni 1987. Pemerintah Republik Indonesia menandatangani konvensi itu pada tanggal 23 Oktober 1985.

Deklarasi dan Program Aksi Wina 1993 sepakat antara lain menghimbau negara-negara anggota PBB untuk secepatnya mengesahkan perangkat-perangkat internasional yang sangat penting di bidang hak asasi manusia (HAM), termasuk Konvensi Menentang Penyiksaan. Sesuai dengan isi Deklarasi Wina 1993, Pemerintah Indonesia telah menyusun Rencana Aksi Nasional HAM Indonesia 1998-2003 yang berisi kegiatan-kegiatan prioritas dalam rangka pemajuan dan perlindungan HAM. Prioritas kegiatan tahun pertama Rencana Aksi tersebut mencakup pengesahan tiga perangkat internasional di bidang HAM, termasuk Konvensi Menentang Penyiksaan.

Karena didorong oleh rasa tanggung jawab untuk memajukan dan menegakkan hak asasi manusia dan pembangunan hukum di Indonesia, DPR-RI memutuskan menggunakan hak inisiatifnya untuk mengajukan Rancangan Undang-Undang tentang Pengesahan Konvensi Menentang Penyiksaan dan Perlakuan atau Penghukuman Lain yang Kejam, Tidak Manusiawi, atau Merendahkan Martabat Manusia yang telah diterima oleh masyarakat internasional sebagai salah satu perangkat internasional di bidang HAM yang sangat penting. Saat ini Konvensi telah disahkan oleh 105 negara.

Sebagai negara berdaulat dan sesuai dengan ketentuan hukum internasional yang berlaku, Indonesia memutuskan untuk menyampaikan suatu pernyataan (declaration) terhadap Pasal 20 Konvensi. Pernyataan ini menegaskan bahwa dalam melaksanakan kewajiban-kewajiban sebagaimana dimuat dalam konvensi, kedaulatan nasional dan keutuhan wilayah Negara Pihak harus tetap dihormati dan dijunjung tinggi. Pernyataan (declaration) ini tidak mempunyai kekuatan mengikat secara hukum sehingga pernyataan tersebut sama sekali tidak menghapuskan kewajiban atau tanggung jawab Negara Pihak untuk melaksanakan isi Konvensi.

Sesuai dengan ketentuan Konvensi, Indonesia juga menyatakan Pengecualian (Reservation) terhadap Pasal 30 ayat (1) Konvensi yang mengatur upaya penyelesaian sengketa mengenai penafsiran dan pelaksanaan konvensi melalui Mahkamah Internasional (International Court of Justice). Sikap ini diambil antara lain atas pertimbangan

bahwa Indonesia tidak mengakui yurisdiksi yang mengikat secara otomatis (compulsory jurisdiction) dari Mahkamah Internasional. Persyaratan tersebut bersifat prosedural sesuai dengan ketentuan hukum internasional yang berlaku.

II. POKOK-POKOK PIKIRAN YANG MENDORONG LAHIRNYA KONVENSI

1. Penyiksaan dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi, atau merendahkan martabat manusia masih terus terjadi di berbagai negara dan kawasan dunia, yang diakui secara luas akan dapat merapuhkan sendi-sendi tegaknya masyarakat yang tertib, teratur, dan berbudaya. Dalam rangka menegakkan sendi-sendi masyarakat demikian itu, seluruh masyarakat internasional bertekad bulat melarang dan mencegah segala bentuk tindak penyiksaan, baik jasmaniah maupun rohaniah. Masyarakat internasional sepakat untuk pelarangan dan pencegahan tindak penyiksaan ini dalam suatu wadah perangkat internasional yang mengikat semua Negara Pihak secara hukum.
2. Dalam kaitan itu, Majelis Umum PBB telah menerima Deklarasi Universal HAM pada tanggal 10 Desember 1948. Pasal 5 Deklarasi ini menjamin sepenuhnya hak setiap orang untuk bebas dari segala bentuk penyiksaan dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi, atau merendahkan martabat manusia.
3. Selanjutnya, perangkat internasional di bidang HAM yang bersifat sangat penting lainnya, yakni Kovenan Internasional tentang Hak-Hak Sipil dan Politik (Pasal 7), menetapkan bahwa hak tersebut merupakan hak fundamental yang tidak boleh dikurangi dengan alasan apapun (non-derogable rights).

III. ALASAN INDONESIA MENJADI NEGARA PIHAK DALAM KONVENSI

1. Pancasila sebagai falsafah dan pandangan hidup bangsa Indonesia dan Undang-Undang Dasar 1945 sebagai sumber dan landasan hukum nasional, menjunjung tinggi harkat dan martabat manusia seperti tercermin dalam Sila Kemanusiaan yang Adil dan Beradab. Asas ini merupakan amanat konstitusional bahwa bangsa Indonesia tertekad untuk mencegah dan melarang segala bentuk penyiksaan, sesuai dengan ini Konvensi ini.
2. Dalam rangka pengamalan Pancasila dan pelaksanaan Undang-Undang Dasar 1945, Indonesia pada dasarnya telah menetapkan peraturan perundang-undangan yang langsung mengatur pencegahan dan pelarangan, segala bentuk penyiksaan yang tidak manusiawi dan merendahkan martabat manusia. Namun perundang-undangan itu karena belum sepenuhnya sesuai dengan Konvensi, masih perlu disempurnakan.
3. Penyempurnaan perundang-undangan nasional tersebut, akan meningkatkan perlindungan hukum secara lebih efektif, sehingga akan lebih menjamin hak-hak setiap warga negara bebas dari penyiksaan dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi atau merendahkan martabat manusia, demi tercapainya suatu masyarakat Indonesia yang tertib, teratur, dan berbudaya.
4. Suatu masyarakat Indonesia yang tertib, teratur, dan berbudaya akan mampu mewujudkan upaya bersama untuk memelihara perdamaian, ketertiban umum, dan kemakmuran dunia serta melestarikan peradaban umat manusia.
5. Pengesahan dan pelaksanaan isi Konvensi secara bertanggungjawab menunjukkan kesungguhan Indonesia dalam upaya pemajuan dan perlindungan HAM, khususnya hak bebas dari penyiksaan. Hak ini juga akan lebih meningkatkan citra positif Indonesia di dunia internasional dan memantapkan kepercayaan masyarakat internasional terhadap Indonesia.

IV. POKOK-POKOK ISI KONVENSI

1. Konvensi menentang penyiksaan terdiri atas pembukaan dengan 6 paragraf dan batang tubuh dengan 3 bab yang terdiri atas 33 pasal.
 - a. Pembukaan meletakkan dasar-dasar dan tujuan Konvensi. Dalam konsideran secara tegas dinyatakan bahwa tujuan Konvensi ini adalah lebih mengefektifkan perjuangan di seluruh dunia dalam menentang penyiksaan dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi, atau merendahkan martabat manusia.
 - b. Bab I (Pasal 1-16) memuat ketentuan-ketentuan pokok yang mengatur definisi tentang penyiksaan dan kewajiban Negara Pihak untuk mencegah dan melarang penyiksaan dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi, atau merendahkan martabat manusia.
 - c. Bab II (Pasal 17-24) mengatur ketentuan mengenai Komite Menentang Penyiksaan (Committee Against Torture) dan tugas serta kewenangannya dalam melakukan pemantauan atas pelaksanaan Konvensi.
 - d. Bab III (Pasal 25-33) merupakan ketentuan penutup yang memuat hal-hal yang berkaitan dengan mulai berlakunya Konvensi, perubahan, persyaratan (reservation), ratifikasi dan aksesi, pengunduran diri serta mekanisme penyelesaian perselisihan antar Negara Pihak.
2. Ketentuan-ketentuan Pokok Konvensi
Konvensi mengatur pelarangan penyiksaan baik fisik maupun mental, dan perlakuan atau penghukuman lain yang kejam, tidak manusiawi, atau merendahkan martabat manusia yang dilakukan oleh atau atas hasutan dari atau dengan persetujuan/sepengertian pejabat publik (public official) dan orang lain yang bertindak dalam jabatannya.
Adapun pelarangan penyiksaan yang diatur dalam Konvensi ini tidak mencakup rasa sakit atau penderitaan yang timbul, melekat, atau diakibatkan oleh suatu sanksi hukum yang berlaku. Negara Pihak wajib mengambil langkah-langkah legislatif, administratif, hukum, dan langkah efektif lainnya guna mencegah tindak

penyiksaan di dalam wilayah yurisdiksinya. Tidak terdapat pengecualian apapun, baik dalam keadaan perang, ketidakstabilan politik dalam negeri, maupun keadaan darurat lainnya yang dapat dijadikan sebagai pembenaran atas tindak penyiksaan. Dalam kaitan ini, perintah dari atasan atau penguasa (public authority) juga tidak dapat digunakan sebagai pembenaran atas suatu penyiksaan.

Negara Pihak diwajibkan mengatur semua tindak penyiksaan sebagai tindak pidana dalam peraturan perundang-undangannya. Hal yang sama berlaku pula bagi siapa saja yang melakukan percobaan, membantu, atau turut serta melakukan tindak penyiksaan. Negara Pihak juga wajib mengatur bahwa pelaku tindak pidana tersebut dapat dijatuhi hukuman yang setimpal dengan sifat tindak pidananya.

Konvensi juga mewajibkan Negara Pihak memasukkan tindak penyiksaan sebagai tindak pidana yang dapat diekstradisikan. Konvensi selanjutnya melarang Negara Pihak untuk mengusir, mengembalikan, atau mengekstradisikan seseorang ke negara lain apabila terdapat alasan yang cukup kuat untuk menduga bahwa orang itu menjadi sasaran penyiksaan. Negara Pihak lebih lanjut harus melakukan penuntutan terhadap seseorang yang melakukan tindak penyiksaan apabila tidak mengekstradisikannya.

Negara Pihak lebih lanjut wajib saling membantu dalam proses peradilan atas tindak penyiksaan dan menjamin bahwa pendidikan dan penyuluhan mengenai larangan terhadap penyiksaan sepenuhnya dimasukkan ke dalam program pelatihan bagi para aparat penegak hukum, sipil, atau militer, petugas kesehatan, pejabat publik dan orang-orang lain yang terlibat dalam proses penahanan, permintaan keterangan (interogasi), atau perlakuan terhadap setiap pribadi individu yang ditangkap, ditahan, atau dipenjarakan. Negara Pihak juga wajib mengatur dalam sistem hukumnya bahwa korban suatu tindak penyiksaan memperoleh ganti rugi dan mempunyai hak untuk mendapatkan kompensasi yang adil dan layak, termasuk sarana untuk mendapatkan rehabilitasi.

3. Implementasi Konvensi

Implementasi Konvensi dipantau oleh Komite Menentang Penyiksaan (Committee Against Torture) yang terdiri dari sepuluh orang pakar yang bermoral tinggi dan diakui kemampuannya di bidang HAM.

Negara pihak harus menanggung pembiayaan yang dikeluarkan oleh para anggota Komite dalam menjalankan tugasnya dan pembiayaan penyelenggaraan sidang Negara pihak dan sidang Komite.

Menurut ketentuan Pasal 19, Negara Pihak harus menyampaikan kepada Komite, melalui Sekretaris Jenderal PBB, laporan berkala mengenai langkah-langkah yang telah mereka lakukan dalam melaksanakan kewajibannya menurut Konvensi. Setiap laporan akan dipertimbangkan oleh Komite, yang selanjutnya dapat memberikan tanggapan umum dan memasukkan informasi tersebut dalam laporan tahunannya kepada Negara pihak dan kepada Sekretaris Jenderal PBB.

Selanjutnya melalui penyampaian laporan berkala oleh Negara Pihak, pemantauan atas pelaksanaan Konvensi juga dapat dilakukan melalui cara-cara berikut :

- a Menurut Pasal 20, apabila Komite menerima informasi yang dapat dipertanggungjawabkan (reliable), bahwa penyiksaan dilakukan secara sistematis di wilayah suatu Negara Pihak. Komite harus mengundang Negara pihak tersebut untuk bekerja sama membahas informasi tersebut dan Komite menyampaikan hasil pengamatannya. Komite dapat memutuskan, apabila informasi tersebut benar-benar dapat dipertanggungjawabkan, segera melaporkannya kepada Komite dan menugaskan anggotanya seorang atau lebih, melakukan suatu penyelidikan rahasia dan segera melaporkan hasilnya kepada Komite. Dengan persetujuan Negara Pihak, penyelidikan semacam itu dapat berupa kunjungan ke wilayah Negara Pihak tersebut.
- b Negara Pihak, sesuai dengan ketentuan Pasal 21, dapat membuat deklarasi yang mengakui kewenangan Komite untuk menerima dan membahas laporan pengaduan (communications) suatu Negara Pihak yang menyatakan bahwa Negara Pihak lain tidak memenuhi kewajibannya berdasarkan Konvensi. Komite hanya berwenang menerima dan membahas laporan pengaduan oleh Negara Pihak yang telah membuat Deklarasi. Komite tidak berhak menerima dan membahas laporan pengaduan tentang suatu Negara Pihak yang tidak membuat suatu Deklarasi.
- c Negara Pihak, sesuai dengan ketentuan Pasal 22, dapat membuat deklarasi mengakui kewenangan Komite untuk menerima dan membahas laporan pengaduan dari atau atas nama pribadi individu yang berada dalam yurisdiksinya, yang menyatakan diri menjadi korban pelanggaran yang dilakukan Negara Pihak itu terhadap Konvensi. Komite tidak berhak menerima dan membahas laporan pengaduan jika menyangkut suatu Negara Pihak yang tidak membuat Deklarasi. Komite juga tidak berhak menerima dan membahas laporan pengaduan dari seseorang, kecuali jika Komite menyatakan bahwa :
 - 1) Pengaduan tersebut belum pernah atau tidak sedang dibahas oleh prosedur penyelesaian atau penyelidikan internasional lainnya;
 - 2) Perorangan yang dimaksudkan sudah menggunakan segala upaya penyelesaian hukum di dalam negerinya.

4. Pengecualian (Reservation) dan Deklarasi (Declaration)

Konvensi ini memperbolehkan Negara Pihak mengajukan pengecualian terhadap 2 pasal, yakni :

- a Menyatakan tidak mengakui kewenangan Komite Menentang Penyiksaan dalam Pasal 20, sebagaimana diatur dalam Pasal 28 ayat (1) Konvensi.
- b Menyatakan tidak terikat pada pengajuan penyelesaian suatu perselisihan di antara Negara Pihak kepada Mahkamah Internasional, berdasarkan Pasal 30 ayat (1) Konvensi.

Konvensi ini juga memungkinkan Negara Pihak membuat deklarasi mengenai kewenangan Komite Menentang Penyiksaan, sebagaimana diatur oleh Pasal 21 dan Pasal 22 Konvensi.

V. PASAL DEMI PASAL

Pasa 1

Ayat (1)

Diajukannya Deklarasi (Declaration) terhadap Pasal 20 adalah berdasarkan prinsip untuk menghormati kedaulatan negara dan keutuhan wilayah Negara Pihak dan diajukannya Pensyaratan (Reservation) terhadap Pasal 30 ayat (1) adalah berdasarkan prinsip untuk tidak menerima kewajiban dalam pengajuan perselisihan kepada Mahkamah Internasional, kecuali dengan kesepakatan Para Pihak.

Ayat(2)

Apabila terjadi perbedaan penafsiran terhadap terjemahannya dalam bahasa Indonesia, naskah yang berlaku adalah naskah asli Konvensi. Deklarasi terhadap Pasal 20 dan Pensyaratan terhadap Pasal 30 ayat (1) dalam bahasa Inggris.

Pasal 2

Cukupjelas

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 3783

Sumber : Himpunan Peraturan Perundang-undangan Republik Indonesia Tahun 1998, Buku 2.

LAMPIRAN

UNDANG-UNDANG REPUBLIK INDONESIA
NOMOR 5 TAHUN 1998
TENTANG
PENGESAHAN CONVENTION AGAINST TORTURE AND OTHER,
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
(KONVENSI MENENTANG PENYIKSAAN DAN PERLAKUAN ATAU PENGHUKUMAN LAIN
YANG KEJAM, TIDAK MANUSIAWI, ATAU MERENDAHKAN MARTABAT MANUSIA)

DEKLARASI TERHADAP PASAL 20 DAN PENSYARATAN TERHADAP PASAL 30 AYAT (1) KONVENSI
MENENTANG PENYIKSAAN DAN PERLAKUAN ATAU PENGHUKUMAN LAIN
YANG KEJAM, TIDAK MANUSIAWI, DAN MERENDAHKAN MARTABAT MANUSIA

Pernyataan :

Pemerintah Republik Indonesia menyatakan bahwa ketentuan Pasal 20 ayat (1), ayat (2) dan ayat (3) Konvensi akan dilaksanakan dengan memenuhi prinsip-prinsip kedaulatan dan keutuhan wilayah suatu negara.

Pensyaratan :

Pemerintah Republik Indonesia menyatakan tidak terikat pada ketentuan Pasal 30 ayat (1) Konvensi dan berpendirian bahwa apabila terjadi perselisihan akibat perbedaan penafsiran atau penerapan isi Konvensi, yang tidak terselesaikan melalui jalur sebagaimana diatur dalam ayat (1) pasal tersebut, dapat menunjuk Mahkamah Internasional hanya berdasarkan kesepakatan para Pihak yang berselisih.

PRESIDEN REPUBLIK INDONESIA

ttd

BACHARUDDIN JUSUF HABIBIE

LAMPIRAN
UNDANG-UNDANG REPUBLIK INDONESIA
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PENGESAHAN CONVENTION AGAINST TORTURE AND OTHER,
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ATAU PENGHUKUMAN LAIN YANG KEJAM, TIDAK
MANUSIA WI, ATAU MERENDAHKAN MARTABA T MANUSIA)

DECLARATION TO ARTICLE 20 AND RESERVATION TO ARTICLE 30 PARAGRAPH I
CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Declaration :

The Government of the republic of Indonesia declares that the provisions of paragraphs 1, 2 and 3 of Article 20 of the Convention will have to be implemented strict compliance with the principles of the sovereignty and territorial integrity of States.

Reservation :

The Government of the Republic of Indonesia does not consider itself bound by the provision of Article 30, paragraph 1, and takes the position that relating to the interpretation and application of the Convention which cannot be settled through the channel provided for in paragraph I of the said article, may be referred to the International Court of Justice only with the consent of all parties to the disputes.

PRESIDEN REPUBLIK INDONESIA

ttd

BACHARUDDIN JUSUF HABIBIE

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984

entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure; (a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article; (e) Subject to the provisions of subparagraph

(c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued

consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following: (a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.