**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**CALL FOR CONTRIBUTIONS**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing legal frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

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| **Name of the country/entity submitting information** | Indonesian Caucus for Academic Freedom KIKA |

**Questions**

**General framework**

1. How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.

* Indonesia has ratified the International Covenant on Social, Economic, and Cultural Rights (ICESCR), through Law No. 11 of 2005. and International Covenant on Civil and Political Rights (ICCPR), through Law No. 12 of 2005.
* Based on the 1945 Constitution of the Republic of Indonesia [As amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002]. There are at least two provisions which relate to academic freedom: Article 28: “The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.” Article 28C(1): “Every person shall have the right to develop him/herself through the fulfillment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.”
* Indonesia’s constitution provides for the right to education (Article 31), the right to “benefit from science and technology, arts and culture” (Article 28C), freedoms of expression, association, and assembly (Article 28E(2-3)), and freedom of thought and conscience (Article 28I(1)).[[1]](#footnote-1) Although it does not provide explicit protections for the right to academic freedom, Indonesia’s Higher Education Law (2012) states that the “implementation of academic freedom, freedom of academic expression and scientific autonomy in Tertiary Education Institutions is the personal responsibility of the Academic Civitas [lecturers and students] and shall be protected and facilitated by the management of Tertiary Education Institutions.”[[2]](#footnote-2)
* Specific provisions on academic freedom can be found in the Law Number 12 of 2012 on Higher Education (HE Law). HE Law clearly stipulates academic freedom under the Chapter of Science of Knowledge and Technology Development. There is a specific section that underlines the importance of establishing Academic Freedom, Academic platform Freedom and Science Autonomy. In its elucidation for article 8, ‘academic’ in the context of ‘academic freedom’ and ‘academic platform freedom’ is defined as something that is scientific and theoretical in nature that is developed in Higher Education and free from the influences of practical politics. This freedom is carried out by academic society through scientific learning and research by placing in high regards religious and national unity values for advancing human civilization and welfare (Article 8 section 2). Academic freedom, academic platform freedom and scientific autonomy at higher education are the individual responsibility of the academic community, which should be protected and facilitated by the higher education’s leadership (article 8 section 3).
* The words ‘free from the influence of practical politics’ are also problematic, especially due to the lack of clear parameter or indicator for judging to what extent academic activities are considered as part of such influence. HE Law Art 9 section (1) also stipulates that academic freedom is the academic community’s freedom in HE to learn in-depth and develop science and technology responsibility through the implementation of the three mandates of HE (*Tridharma Perguruan Tinggi*). These mandates include education, research, and civil service. However, when it comes to subjects who should be protected, the HE Law is often interpreted as excluding university students. Such interpretation can be drawn from Article 9 section (2) which stipulates that academic platform freedom is the authority of professors and/or lecturers who have the scientific expertise and dignity to express openly and responsibly matters related to their science and branch of science. However, when discussing about ‘academic community’, the law actually includes students, who also have ‘scientific autonomy’. Scientific autonomy is defined as the academic community’s autonomy in the branch of science and technology to discover, develop, unravel, and or defend a scientific truth in accordance to scientific method and academic culture (Article 8 of HE Law). Hence, this article argues that those who carry out academic activities, including developing critical thinking, should be protected under HE Law. Nevertheless, the constraint might be encountered in the condition that HE Law places on the promotion and development of academic culture and maintenance of scientific and technological knowledge, namely that they should be a ‘process and product of moral responsibility and paradigm’. There is no specific standard to measure it. Hence it is open to debate since such responsibility is vague or too general.

2. Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.

* The regulations formally state protection of academic freedom. However, the legal framework is vague or unclear. In fact the regulations conflict with another, academic freedom usually opposite with the reputation of the university, local official, autonomy university. So the majority of academic staff, teachers, and students weren't entitled to academic freedom, in the name of a freedom to learn (*kampus merdeka*).
* The Academic staff get impacted by Job Creation Laws (no equal payment, uncertainty work, afraid to join union etc).
* The Students get a high cost of university tuition and exploitation by the university in the name of accreditation, consuming high loans of payment (Institute Technology Bandung case).[[3]](#footnote-3)
* The teacher gets multiple burdens in administration, fraud in many ways, seen be civil servants not academician, too many professor/honoris causa sale, rejection of academic union registration, criminalization (Haris Azhar case,[[4]](#footnote-4) Saiful Mahdi case,[[5]](#footnote-5) Basuki Wasis case[[6]](#footnote-6)). It pressures academic freedom in physic, psychology, and digital, especially if it is related to environment and government criticism.

What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?

**The main challenges to academic freedom**

The challenges relate to repressive acts from the state, authorities and even from paramilitary. This includes criminalization targeting academics in criticizing policies or even arguing critically on their own internal campus. While at the same time, the government intervenes too deep at policy level. For example, discussions in campus related to Papua, or political expressions about Papuan independence, often get repression, violence, and even racial discrimination, as happened in Malang and Surabaya in August-October 2019. As a result of the discrimination, dozens of students were arrested in various locations in Indonesia, including in Jakarta and Jayapura. In fact, overall, the article of treason (*makar*) alleged to Papuan activists throughout 2019 amounted to 72 citizens. These cases actually reflect the fundamental problem of free expression, freedom to assembly, which cannot be easily discussed in campuses. Even academics in Papua face difficulty in attaining and disseminating certain information, grappling with sensitivity and facing possible threats especially when their study is related to military occupation, excessive natural resources exploitation, and violence.

**The gaps in the legal framework for protecting academic freedom**

There’s no instrument for enforcing academic freedom. No strong union since it has also been easily attacked by university management and the government. Sometimes academic freedom can only be accessed by lecture. Therefore, at least two academic alliances to fill the gap, which are KIKA and SPK (Campus Workers Union).

**Becoming distinct is challenging in Indonesia**

Being an academician in Indonesia involves avoiding standing out. Academicians in Indonesia are required to align with government-established programs. Conversely, opting for an independent path poses risks: 1) the potential suspension of academic careers (possible because academic positions are controlled by the government, not by higher education institutions); 2) encountering opposition from fellow academicians.

**Autonomy of educational institutions**

4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.

* In general, Indonesian campuses didn’t have the autonomy (including State or Private Universities), in terms of management, structural appointment, and even budget. All are still controlled by the Ministry of Education and even in relation to Rector appointment, the ministry has 35 percent of the vote. It should be impact on interference regarding autonomy of HE and also protection of academic freedom.
* In Indonesia, the employment status of lecturers are determined through an agreement between the lecturer and the Higher Education Institution (HEI). However, concerning the lecturer's position (Lector, Senior Lector/Associate Professor, *Guru Besar* / full Professor), this authority lies entirely with the Indonesia Ministry of Education, Culture, Research, and Technology (*Kemendikbudristek)*, and the HEI can only suggest nominations for lecturer promotions. In practical terms, an HEI can terminate a lecturer but not their position, while *Kemendikbudristek* has the authority to revoke a lecturer's position but not their employment.

5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.

In normative terms, all universities in Indonesia, both public and private, have included the recognition of academic freedom as an implication of the HEI Law However, in practice, there are various threats and challenges, so the protection, recognition, and respect for academic freedom are certainly at risk

**Funding**

6. How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?

* The general implementation of research grants is usually done competitively (either through the Ministry of Education and Culture, Kedairekan, etc), but in the development of policies by the Indonesian Minister of Education and Culture that require research to link and match with the industrial world, it becomes fundamental for the research objectives to be based on the development of science, which tends to be sidelined.
* On the selection and preference of research grant recipients from universities (especially large public universities), most funding didn't get in competitive ways, but in collegial, like dislike and depend on grade of person.

7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.

Higher Education Laws giving protection in academic freedom, but for implementing need technical instruments. Sometimes technical instruments that used by universities are ethics instruments.

**Surveillance**

8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?

The condition are not surveillance through cameras, but it was found to discipline the posts of lecturers and researchers on social media that sought to criticize the government. This means that discipline in the digital space for the academic community should not occur and academic freedom in various spaces should be protected and respected

**Freedom of expression in teaching and access to books**

9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?

Limitations and restriction regarding the freedom of expression of lecturers and professors in Indonesia Not only on issues of religion and politics, but the more crucial thing is the significant political intervention from the government through the Minister of Education and Culture of Indonesia with 35 percent of the vote in the rector election, making the policy choices made by the leaders of higher education institutions very easy to be intervened by the government

10. Please explain the extent to which teachers and professors at different education levels can choose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why? Yes, they can, but they must be supervised or pro with government.

Although the intensity has decreased, the restriction of discourse on the issue of 1965[[7]](#footnote-7) and the Indonesian Communist Party is still prohibited in Indonesia In addition, restrictions on discussions such as the impeachment of the President that resulted in terror and threats addressed to professors who acted as speakers at Universitas Gadjah Mada[[8]](#footnote-8) and discussions about treason in Papua held by students and lecturers at several universities[[9]](#footnote-9) remain a serious problem in freedom of expression and academic freedom in Indonesia

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** [hrc-sr-education@un.org](mailto:hrc-sr-education@un.org), using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.

1. Constitute Project, “Indonesia's Constitution of 1945, Reinstated in 1959, with Amendments through 2002,” https://www.constituteproject.org/constitution/Indonesia\_2002.pdf?lang=en. [↑](#footnote-ref-1)
2. Law of the Republic of Indonesia, Number 12 Year 2012, on Higher Education, Section 8(2), translated by Tjeng Goam Halim, available at https://wiki.creativecommons.org/images/f/f4/Indonesia\_Higher\_Ed\_Law\_(2012).pdf. [↑](#footnote-ref-2)
3. See <https://news.detik.com/berita/d-6407927/mahasiswa-ipb-ceritakan-awal-mula-terjerat-utang-pinjol> [↑](#footnote-ref-3)
4. See <https://kontras.org/2023/10/10/sidang-pemeriksaan-ahli-dalam-kasus-kriminalisasi-fatia-dan-haris-ahli-menegaskan-bahwa-tindakan-fatia-dan-haris-bagian-dari-kebebasan-berekspresi-kebebasan-akademik-dan-dilindungi-ham/> [↑](#footnote-ref-4)
5. See <https://tirto.id/vonis-dosen-unsyiah-saiful-mahdi-tak-memihak-kebebasan-akademik-gi8s> [↑](#footnote-ref-5)
6. See <https://news.detik.com/berita/d-4251414/geger-dua-pakar-ipb-digugat-rp-3-51-triliun> [↑](#footnote-ref-6)
7. See <https://www.hukumonline.com/berita/a/pembubaran-diskusi-sejarah-1965--ciderai-hukum-dan-demokrasi-lt59bf75965f231/> [↑](#footnote-ref-7)
8. See <https://www.kompas.id/baca/polhuk/2020/05/31/ungkap-dalang-di-balik-teror-diskusi-ugm> [↑](#footnote-ref-8)
9. See <https://tirto.id/komnas-ham-kecam-pembubaran-diskusi-mahasiswa-papua-di-jawa-timur-cNP6> [↑](#footnote-ref-9)